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

Rule 1:1. Finality of Judgments, Orders and Decrees.

(a) *Expiration of Court's Jurisdiction.* — All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, shall not extend the time limits hereinafter prescribed for applying for a writ of error. The date of entry of any final judgment, order, or decree shall be the date it is signed by the judge either on paper or by electronic means in accord with Rule 1:17.

(b) *General Rule: Orders Deemed Final.* — Unless otherwise provided by rule or statute, a judgment, order or decree is final if it disposes of the entire matter before the court, including all claim(s) and all cause(s) of action against all parties, gives all the relief contemplated, and leaves nothing to be done by the court except the ministerial execution of the court's judgment, order or decree.

(c) *Demurrers.* — An order sustaining a demurrer or sustaining a demurrer with prejudice or without leave to amend is sufficient to dispose of the claim(s) or cause(s) of action subject to the demurrer, even if the order does not expressly dismiss the claim(s) or cause(s) of action at issue. An order sustaining a demurrer and granting leave to file an amended pleading by a specific time is sufficient to dispose of the claim(s) or cause(s) of action subject to the demurrer, if the amended pleading is not filed within the specific time provided, even if the order does not expressly dismiss the claim(s) or cause(s) of action at issue.

(d) *Pleas in Bar and Motions for Summary Judgment.* — An order sustaining a plea in bar or sustaining a plea in bar with prejudice or without leave to amend is sufficient to dispose of a claim(s) or cause(s) of action subject to the plea in bar, as is an order granting a motion for summary judgment, even if the order does not expressly dismiss the claim(s) or cause(s) of action at issue or enter judgment for the moving party.

(e) *Motions to Strike.* — In a civil case, an order which merely grants a motion to strike, without expressly entering summary judgment or partial summary judgment or dismissing the claim(s) or cause(s) of action at issue, is insufficient to dispose of the claim(s) or cause(s) of action at issue.

Last amended by Order dated August 30, 2018; effective November 1, 2018.

RULES OF SUPREME COURT OF VIRGINIA
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RULES APPLICABLE TO ALL PROCEEDINGS

Rule 1:1A. Recovery of Appellate Attorney's Fees in Circuit Court.

a) Notwithstanding any provision of Rule 1:1, in any civil action in which an appeal lies from the circuit court to the Supreme Court and a petition for appeal is denied by the Supreme Court (and, if a petition for rehearing has been filed pursuant to Rule 5:20, such petition has been denied), an appellee who has recovered attorneys' fees, costs or both in the circuit court pursuant to a contract, statute or other applicable law may make application in the circuit court in which judgment was entered for attorneys' fees, costs or both incurred on appeal. The application must be filed within thirty (30) days after denial of the petition for appeal or of any petition for rehearing, whichever is later, and may be made in the same case from which the appeal was taken, which case shall be reinstated on the circuit court docket upon the filing of the application. The appellee shall not be required to file a separate suit or action to recover the fees and costs incurred on appeal, and the circuit court shall have continuing jurisdiction of the case for the purpose of adjudicating the application. The circuit court's order granting or refusing the application, in whole or in part, shall be a final order for purposes of Rule 1:1.

b) Nothing in this Rule shall restrict or prohibit the exercise of any other right or remedy for the recovery of attorneys' fees or costs, by separate suit or action, or otherwise.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 1:1B. Jurisdictional Transfer During Appeal of Final Judgment.

(a) *Jurisdiction After Notice of Appeal.* — When a final judgment entered in a civil or criminal case is appealed from a circuit court directly to the Supreme Court or to the Court of Appeals – whether by right, by petition, or as a partial final judgment pursuant to Rule 1:2 – the following principles govern the exercise of jurisdiction by the circuit and appellate court:

(1) *Effect of Notice.* Immediately upon the filing of a notice of appeal the appellate court acquires jurisdiction over the case. After the filing of the notice of appeal, however, the circuit court retains concurrent jurisdiction for the purposes specified in this Rule, including acting upon any of the matters set forth in subparts (a)(3)(A)–(H) of this Rule.

(2) *Notice of Appeal Within 21 Days.* If a notice of appeal has been filed prior to the expiration of the 21-day period prescribed by Rule 1:1, the circuit court retains plenary, concurrent jurisdiction over the case until the expiration of that period.

(A) If the circuit court vacates the final judgment during this 21-day period, a notice of appeal filed prior to the vacatur order is thereby rendered moot and of no effect. The clerk of the circuit court must forward a copy of the vacatur order to the appropriate appellate court and – if an appeal has been docketed in the matter – upon receipt of the circuit court's vacatur order the appellate court must issue an order dismissing the appeal as moot.

(B) Following a circuit court's vacatur order, a new notice of appeal from the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated. The fact that a prior notice of appeal has been rendered moot by a vacatur order, and that any docketed appeal thereon has been dismissed, has no effect upon proceedings pursuant to a notice of appeal filed after the entry of a subsequent final judgment by the circuit court.

(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:

(A) addressing motions to grant post-conviction bail during the pendency of an appeal in criminal cases;

(B) addressing motions to stay the judgment pending appeal;

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

(D) correcting clerical mistakes in a final judgment in accordance with Code § 8.01-428(B), but only with leave of the appellate court;

(E) exercising its authority under Code § 19.2-306 to revoke suspended criminal sentences and to pronounce judgment for violations of any terms of suspension, conditions of probation, either or both;

(F) addressing motions to enforce a final judgment, including, but not limited to, the exercise of the court's contempt powers;

(G) appointing appellate counsel for indigent criminal defendants; or

(H) taking any other action authorized by statute or Rule of Court to be undertaken notwithstanding the expiration of the 21-day period prescribed by Rule 1:1, which actions include, but are not limited to, those authorized by Code §§ 8.01-392 to -394, 8.01-428, 8.01-623, 8.01-654(A)(2), 8.01-677, 19.2-303, 20-107.3(K), 20-108, and 20-109 and Rules 1:1A, 5:10(b), 5:11, 5A:7(b), and 5A:8, so long as the party requesting the action complies with the applicable time limitation in the statute or Rule authorizing such action.

(b) *Motion to Dismiss in the Appellate Court.* — At any time after a notice of appeal has been filed and after the expiration of the 21-day period prescribed by Rule 1:1, any party to an appeal may file a motion in the appellate court to dismiss the appeal. The motion may assert that the appeal has become moot or cannot proceed for some other sufficient reason. The failure to file such a motion, however, does not preclude a party from making such arguments in its appellate briefs. The appellate court may decide the motion based upon the existing record or, in its discretion, issue a temporary remand of the

matter to the circuit court for the purpose of making findings of fact regarding factual issues relevant to the motion.

(c) *Motion in Appellate Court for Appointment of Counsel.* — At any time after a notice of appeal has been filed and after the expiration of the 21-day period prescribed by Rule 1:1, a party legally entitled to appointed counsel may file a motion in the appropriate appellate court for the appointment of appellate counsel. The appellate court may act upon the motion or may, in its discretion, refer the motion to the circuit court for appointment.

Promulgated by Order dated July 2, 2019; effective September 1, 2019.

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

Rule 1:1C. Jurisdictional Transfer During Appeal of Interlocutory Orders.

(a) When a petition for review is filed pursuant to Code § 8.01-626, the appellate court shall have exclusive jurisdiction over the appealable interlocutory order and the circuit court shall retain jurisdiction over any part of the case that has not been appealed, unless the circuit court or the appellate court enters an order staying the proceedings in the circuit court.

(b) In any other appeal of an interlocutory order, the circuit court shall retain concurrent jurisdiction over the case unless the circuit court or the appellate court enters an order staying all or part of the proceedings in the circuit court.

Promulgated by Order dated July 2, 2019; effective September 1, 2019.

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Rule 1:2. Appeal From Partial Final Judgment in Multi-Party Cases.

(a) *When Available.* – When claims for relief are presented in a civil action against multiple parties – whether in a complaint, counterclaim, cross-claim, or third-party claim – the trial court may enter final judgment as to one or more but fewer than all of the parties only by entering an order expressly labeled "Partial Final Judgment" which contains express findings that (i) the interests of such parties, and the grounds on which judgment is entered as to them, are separate and distinct from those raised by the issues in the claims against remaining parties, and (ii) the results of any appeal from the partial final judgment cannot affect decision of the claims against the remaining parties, and (iii) decision of the claims remaining in the trial court cannot affect the disposition of claims against the parties subject to the Partial Final Judgment if those parties are later restored to the case by reversal of the Partial Final Judgment on appeal.

(b) *Time to Appeal.* – Entry of an order of Partial Final Judgment as provided in subparagraph (a) of this Rule commences the period for filing a notice of appeal from such Partial Final Judgment under Rule 5:9 and a petition for appeal under Rule 5:17, subject to the provisions of Rule 1:1 and these Rules.

(c) *Refusal of Partial Final Judgment.* – No appeal shall lie from a refusal by the trial court to enter a Partial Final Judgment under this Rule.

(d) *Other Dispositions Adjudicating Claims Against Fewer than All Parties.* – In the absence of the entry of a Partial Final Judgment order as provided in subparagraph (a) of this Rule, any order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties in the action is not a final judgment.

Former Rule 5:8A, promulgated by Order dated April 30, 2010; effective July 1, 2010. Relocated and renumbered as Rule 1:2 by Order dated November 1, 2016; effective January 1, 2017.

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Rule 1:3. Reporters and Transcripts of Proceedings in Courts.

Reporters shall be first duly sworn to take down and transcribe the proceedings faithfully and accurately to the best of their ability, and shall be subject to the control and discipline of the judge.

When a reporter takes down any proceeding in a court, any person interested shall be entitled to obtain a transcript of the proceedings or any part thereof upon terms and conditions to be fixed in each case by the judge.

The proceedings may be taken down by means of any recording device approved by the judge.

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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.

(b) A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted.

(c) Counsel or an unrepresented party who files a pleading shall sign it and state his address.

(d) Every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposite party of the true nature of the claim or defense.

(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. An allegation in a pleading that the party does not know whether a fact exists shall be treated as a denial that the fact exists.

(f) Requirements of pleadings applicable to instruments not under seal shall apply to instruments under seal.

(g) Requirements of pleadings applicable to legal defenses shall apply to equitable defenses.

(h) The clerk shall note and attest the filing date on every pleading. In an Electronically Filed Case, the procedures of Rule 1:17 shall be applicable to the notation by the clerk of the date of filing.

(i) The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such exhibit a part of the pleading. Filing of such exhibits shall be governed by Rule 3:4.

(j) Brevity is enjoined as the outstanding characteristic of good pleading. In any pleading a simple statement, in numbered paragraphs, of the essential facts is sufficient.

(k) A party asserting either a claim, counterclaim, cross-claim, or third-party claim or a defense may plead alternative facts and theories of recovery against alternative parties, provided that such claims, defenses, or demands for relief so joined arise out of the same transaction or occurrence. When two or more statements are made in the

alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds.

(l) Every pleading, motion or other paper served or filed shall contain at the foot the Virginia State Bar number, office address and telephone number of the counsel of record submitting it, along with any electronic mail (E-mail) address and facsimile number regularly used for business purposes by such counsel of record.

Last amended by Order dated November 1, 2012; effective January 1, 2013.

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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 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.

(3) Service on one member or associate of such firm shall constitute 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 – shall sign every pleading, motion, or other paper that he or she serves or files, and shall state his or her address.

(d) (1) Counsel of record shall not withdraw from or terminate appearances in a case except by (i) leave of court after notice to the client of the time and place of a motion for leave to withdraw, or (ii) pursuant to the provisions in subpart (f)(4) of this Rule.

(2) Any order permitting withdrawal shall state the name, Virginia State Bar number, office address and telephone number of the attorney or law firm being substituted as counsel of record for the party, along with any electronic mail (email) address and any facsimile number regularly used for business purposes by such counsel; or

(3) if replacement counsel is not being designated at the time of withdrawal by an attorney or law firm, the order permitting withdrawal shall state the address and telephone number of the formerly represented party for use in subsequent mailings or service of papers and notices, and the pro se party shall be deemed counsel of record.

(e) As required by Code §§ 8.01-319(A) and 16.1-88.03, any party not represented by counsel who has made an appearance in the case shall promptly file with the clerk of the court in which the action is pending a written statement of his or her place of residence and mailing address, and shall inform the clerk in writing of any changes of residence and mailing address during the pendency of the action. The clerk and all parties to the action may rely on the last written statement filed as aforesaid.

(f) *Limited Scope Appearance; Notice; Service; Completion or Termination of Appearance.*

(1) Notice of Limited Scope Appearance by a Qualified Legal Services Provider. In any civil court proceeding an attorney may file and serve on all parties a notice of limited-scope appearance: (A) providing evidence that the attorney is (i) employed by a qualified legal services provider, as that is defined in Section IV, Paragraph 3(e) of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court (hereafter "QLSP"), or (ii) acting pro bono on a direct referral from a QLSP; (B) stating that the attorney and the party have a written agreement that the attorney will make a limited scope appearance in such action; and (C) specifying the matters, hearings, or issues on which the attorney will appear for the party.

(2) Limited Scope Appearance by Leave of Court. Any attorney not proceeding under subpart (f)(1) of this Rule may seek leave of court to make a limited scope appearance in any civil case. If such leave is granted, the appearance shall be governed by the notice requirements of subparts (f)(1)(B) and (C) of this Rule, the service and unrepresented party provisions of subpart (f)(3), and the completion or termination provisions of subpart (f)(4).

(3) Service of Papers After Notice. Service of all papers after the filing of a notice of limited scope appearance as provided in this Rule shall be made upon

both the attorney making such limited scope appearance and the party on whose behalf the appearance is made, who shall be considered an unrepresented party.

(4) Completion or Termination of Limited Scope Appearance.

(A) *Notice of Completion of Limited Scope Appearance.* — An attorney who has completed the obligations identified in a notice of limited scope appearance shall file a notice of completion of limited scope appearance, providing at least seven (7) days' notice to the party on whose behalf the attorney appeared. The notice shall be accompanied by a declaration by the attorney that counsel's obligations under the limited scope appearance agreement have been satisfied, and shall be (i) endorsed by the party on whose behalf the limited scope appearance was made, and (ii) served on all counsel and any unrepresented parties. Upon the filing of the notice of completion of limited scope appearance, the attorney shall be deemed to have ceased appearances in the matter.

(B) *Termination of Limited Scope Appearance.* — If the party on whose behalf the limited scope appearance was made cannot or will not endorse the notice of completion of limited scope appearance, the attorney may file a motion to terminate the limited scope appearance, serve it on all parties, and afford seven days for objection. If an objection is filed, the court may hold a hearing to determine whether the attorney's obligations under the notice of limited scope appearance have been met. If the court finds that the attorney's obligations under the notice of limited scope appearance have been met, it shall grant the motion to terminate the limited scope appearance.

(C) *Replacement Counsel or the Party Acting Pro Se.* — If replacement counsel is not being designated at the time of the attorney's completion of limited scope appearance, the notice of completion of limited scope appearance or order permitting termination of limited scope appearance shall state the address and telephone number of the party on whose behalf the limited appearance was made for use in subsequent mailings or service of papers and notices, and said party shall be deemed self-represented.

(5) Pilot Project. The provisions of this subpart (f) shall remain in effect until December 31, 2021, unless by Order of the Supreme Court operation of these provisions is ended, modified, or extended; except that any limited scope appearance commenced prior to December 31, 2021, shall be completed in accordance with these provisions.

(6) Local Counsel or Covering Docket Calls. Nothing in this subpart (f) shall apply where a party is represented for all purposes by counsel of record and another attorney appears in lieu of counsel of record for a particular proceeding or docket call.

Last amended by Order dated October 31, 2018; effective January 1, 2019.

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Rule 1:5A. Curing Signature Defects.

(a) *Pro Se Litigants – Signature Defects*. — A litigant appearing in propria persona shall personally sign every pleading and paper served or filed, as required by Rule 1:5 and Virginia Code § 8.01-271.1. Subject to subpart (c) of this Rule, if a pleading or other paper is not signed or is not validly signed, within a reasonable time thereafter the pro se litigant may, upon written notice to all other parties, seek leave of court to properly sign such pleading or other paper. Upon obtaining such permission from the court, the properly signed pleading or other paper shall be valid and shall relate back to the date on which it was originally served or filed.

(b) *Curing Defective Signatures by Purported Representative; Relation Back.* — If a pleading or other paper filed on behalf of a party was not signed, or was signed by a person not authorized to practice law in the Commonwealth, within a reasonable time thereafter counsel authorized to practice law in Virginia may—upon notice to the opposing parties—seek leave of court to properly sign and file such pleading or other paper. If permitted by the court in the exercise of its discretion as provided in subpart (c) of this Rule, the properly executed pleading or other paper shall be valid and shall relate back to the date on which it was originally served or filed.

(c) *Discretion of the Trial Court; Time for Compliance.* — Leave to cure a signature defect under subparts (a) or (b) of this Rule shall be within the sound discretion of the court, and shall be liberally granted in furtherance of the ends of justice. An order granting such leave may be conditioned with provisions necessary to protect other parties from unnecessary burdens or prejudice. Such conditions may include a requirement that the party seeking to cure the signature defect reimburse any extra costs and fees, including reasonable attorney's fees, incurred by other parties solely as a result of the defective or missing signature. An order granting leave to cure a signature defect shall specify a date for filing and service of the properly executed paper.

(d) *Statute of Limitations Governed by Statute.* — If a complaint filed commencing a civil action—as provided in Rule 3:2(a)—is dismissed because it was signed by a person who is not authorized to practice law in Virginia, the statute of limitations for refiling of any claims asserted therein shall be computed in light of the time the action was pending as required by Virginia Code § 8.01-229(E)(1).

(e) *Notices of Appeal.* — If a notice of appeal from the circuit court is filed with only the signature of an attorney or other purported representative who is not then authorized to practice law in the Commonwealth, a later notice of appeal in the same proceeding on behalf

of the same party or parties and relating to the same judgment or order—if properly executed by an attorney qualified to practice law in Virginia, and filed within 90 days after the original—shall relate back to the date of filing of the original notice of appeal.

Promulgated by Order dated May 31, 2017; effective August 1, 2017.

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PART ONE
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Rule 1:6. Res Judicata Claim Preclusion.

(a) *Definition of Cause of Action.* A party whose claim for relief arising from identified conduct, a transaction, or an occurrence, is decided on the merits by a final judgment, shall be forever barred from prosecuting any second or subsequent civil action against the same opposing party or parties on any claim or cause of action that arises from that same conduct, transaction or occurrence, whether or not the legal theory or rights asserted in the second or subsequent action were raised in the prior lawsuit, and regardless of the legal elements or the evidence upon which any claims in the prior proceeding depended, or the particular remedies sought. A claim for relief pursuant to this rule includes those set forth in a complaint, counterclaim, cross-claim or third-party pleading.

(b) *Effective Date.* This rule shall apply to all Virginia judgments entered in civil actions commenced after July 1, 2006.

(c) *Exceptions.* The provisions of this Rule shall not bar a party or a party's insurer from prosecuting separate personal injury and property damage suits arising out of the same conduct, transaction or occurrence, and shall not bar a party who has pursued mechanic's lien remedies pursuant to Virginia Code § 43-1 et seq. from prosecuting a subsequent claim against the same or different defendants for relief not recovered in the prior mechanic's lien proceedings, to the extent heretofore permitted by law.

(d) *Privity.* The law of privity as heretofore articulated in case law in the Commonwealth of Virginia is unaffected by this Rule and remains intact. For purposes of this Rule, party or parties shall include all named parties and those in privity.

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Rule 1:7. Computation of Response Dates.

Whenever a party is required or permitted under these Rules, or by direction of the court, to do an act within a prescribed period of days after service of a paper upon counsel of record,

(a) No days shall be added if the paper is served by:

(1) manual delivery no later than 5:00 p.m. by counsel, counsel's agent or courier, or a commercial delivery service making same-day delivery;

(2) facsimile transmission completed no later than 5:00 p.m.; or

(3) electronic mail transmitted no later than 5:00 p.m.

(b) One day shall be added to the prescribed time if the paper is served by:

(1) placing the paper in the hands of a commercial delivery service before midnight for next-day delivery, or

(2) completion of the following after 5:00 p.m. but before midnight: (A) manual delivery by counsel, counsel's agent or courier, or a commercial delivery service making same-day delivery; (B) transmission by facsimile; or (C) transmission by electronic mail.

(c) three days shall be added to the prescribed time if the paper is served by mail. With respect to Parts Five and Five A of the Rules, this Rule applies only to the time for filing a brief in opposition.

Last amended by Order dated October 31, 2018; effective January 1, 2019.

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Rule 1:8. Amendments.

No amendments shall be made to any pleading after it is filed save by leave of court. Leave to amend shall be liberally granted in furtherance of the ends of justice. Unless otherwise provided by order of the court in a particular case, any written motion for leave to file an amended pleading shall be accompanied by a properly executed proposed amended pleading, in a form suitable for filing. If the motion is granted, the amended pleading accompanying the motion shall be deemed filed in the clerk's office as of the date of the court's order permitting such amendment. If the motion is granted in part, the court may provide for filing an amended pleading as the court may deem reasonable and proper. Where leave to amend is granted other than upon a written motion, whether on demurrer or oral motion or otherwise, the amended pleading shall be filed within 21 days after leave to amend is granted or in such time as the court may prescribe. In granting leave to amend the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 1:9. Discretion of Court.

All steps and procedures in the clerk's office touching the filing of pleadings and the maturing of suits or actions may be reviewed and corrected by the court.

The time allowed for filing pleadings may be extended by the court in its discretion and such extension may be granted although the time fixed already has expired; but the time fixed for the filing of a motion challenging the venue shall in no case be extended except to the extent permitted by § 8.01-264.

Rule 1:10. Verification.

If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed. In an Electronically Filed Case, verification shall be subject to the provisions of Rule 1:17.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

Rule 1:11. Motion to Strike the Evidence.

If the court sustains a motion to strike the evidence of either party in a civil case being tried before a jury, or the evidence of the Commonwealth in a criminal case being so tried, then the court shall enter summary judgment or partial summary judgment in conformity with its ruling on the motion to strike.

If the court overrules a motion to strike the evidence and there is a hung jury, the moving party may renew the motion immediately after the discharge of the jury, and, if the court is of opinion that it erred in denying the motion, it shall enter summary judgment or partial summary judgment in conformity with its ruling on the motion to strike.

Last amended by Order dated August 30, 2018; effective November 1, 2018.

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Rule 1:12. Service of Papers after the Initial Process.

All pleadings, motions and other papers served after the initial process in an action and not required to be served otherwise and requests for subpoenas duces tecum shall be served by delivering, dispatching by commercial delivery service for same-day or next-day delivery, transmitting by facsimile, transmitting by electronic mail when Rule 1:17 so provides or when consented to in writing signed by the person to be served, or by mailing, a copy to each counsel of record on or before the day of filing.

Subject to the provisions of Rule 1:17, service pursuant to this Rule shall be effective upon such delivery, dispatch, transmission or mailing. Service by electronic mail under this Rule is not effective if the party making service learns that the attempted service did not reach the person to be served.

At the foot of such pleadings and requests shall be appended either acceptance of service or a certificate of counsel that copies were served as this Rule requires, showing the date of delivery and method of service, dispatching, transmitting, or mailing. When service is made by electronic mail, a certificate of counsel that the document was served by electronic mail shall be served by mail or transmitted by facsimile to each counsel of record on or before the day of service.

Last amended by Order dated October 31, 2018; effective January 1, 2019.

Rule 1:13. Endorsements.

Drafts of orders and decrees shall be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served pursuant to Rule 1:12 upon all counsel of record who have not endorsed them. Compliance with this Rule and with Rule 1:12 may be modified or dispensed with by the court in its discretion. In an Electronically Filed Case, endorsement and specification of any objections to the draft order shall be accomplished as provided in Rule 1:17.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 1:14. Preservation of the Record.

A court may authorize the use of electronic or photographic means for the preservation of the record or parts thereof.

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

Rule 1:15. Local Rules of Court.

(a) Whenever a local rule is prescribed by a circuit court it shall be spread upon the order book and a copy with the date of entry shall be forthwith posted in the clerk's office, filed with the Executive Secretary of the Supreme Court, and furnished to attorneys regularly practicing before that circuit court; and whenever an attorney becomes counsel of record in any proceedings in a circuit court in which he does not regularly practice, it shall be his responsibility to ascertain the rules of that court and abide thereby. The clerk shall, upon request, promptly furnish a copy of all rules then in force and effect.

(b) Whenever a local rule is prescribed by a circuit court providing for the orderly management of the civil docket by use of the praecipe system, the praecipe shall be substantially in the form appearing in the appendix of forms at the end of this Part One.

(c) Whenever a local rule is prescribed by a circuit court providing for the submission of instructions prior to trial, such local rule shall be substantially in the form appearing in the appendix of forms at the end of this Part One.

(d) The chief judges of the circuit and juvenile and domestic relations district courts shall, on or before December 31 of each year, furnish the Executive Secretary of the Supreme Court current general information relating to the management of the courts within each circuit and district. This information shall be assembled and published electronically by the Executive Secretary.

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

CIRCUIT COURTS OF VIRGINIA
Times for the Commencement of the Regular Terms

CIRCUIT	COUNTY OR CITY	TERM
First	Chesapeake	Criminal terms: First Tuesday of each month, 2:00 p.m. except when election date is Term Day, then Term Day will be held on Wednesday after the first Tuesday. Civil terms: First Tuesday in each month, 10:00 a.m. except when election date is Term Day, then Term Day will be held on Wednesday after the first Tuesday.
Second	Virginia Beach	First Monday in each month unless holiday, then following day.
	Accomack	First Monday in February, April, June, August, October and December.
	Northampton	Second Monday in January, March, May, July, September and November.
Third	Portsmouth	First Thursday in each month.
Fourth	Norfolk	Terms begin the first day of the month.
Fifth	Isle of Wight	Second Monday in January, March, May July, September and November.
	Southampton	Third Monday in January, March, May, July, September, and November.
	Suffolk	Fourth Monday in January, March, May, July, September and November.
Sixth	Hopewell	Second Tuesday in February, April, June, August, October and December.
	Prince George	Third Tuesday in January, March, May, July, September and November.
	Surry	Fourth Tuesday in January, March, May, July, September and November.
	Sussex	Second Tuesday in January, March, May, July, September and November.
	Greenville	First Tuesday in February, April, June, August, October and December.
	Brunswick	Fourth Tuesday in February, April, June, August, October, and December.
Seventh	Newport News	Criminal terms: Second Monday in each month. Civil terms: Second Monday in January, March, May, July, September and November.
Eighth	Hampton	First Monday in February, April, June, August, October and December. Criminal Term Grand Juries: First Monday of each month at 9:00 a.m.

CIRCUIT	COUNTY OR CITY	TERM
Ninth	James City County/Williamsburg	Third Wednesday in January, March, May, July, September and November.
	York County/ Poquson	Third Tuesday in January, March, May, July, September and November.
	Charles City	First Tuesday in January, March, May, July, and September; Nov. 1
	New Kent	Second Monday in January; third Monday in March, May, July, September and November.
	Gloucester	First Monday in January, March, May, July, September and November.
	Mathews	Third Monday in January, March, May, July, September and November.
	Middlesex	Fourth Monday in January, March, May, July, September and November.
	King William	First Monday in February, April, June, August, October and December.
	King and Queen	Second Monday in February, April, June, August, October and December.
Tenth	Halifax	Second Monday in January, March, May, July, September and November.
	Mecklenburg	Third Monday in February, April, June, August and October; and the second Monday in December.
	Lunenburg	First Monday in February, April, June, August, October and December.
	Charlotte	Wednesday after the first Monday in February, April, June, August, October and December.
	Prince Edward	Tuesday after the third Monday in January, April, June, September and November.
	Buckingham	Tuesday after the second Monday in January, April, June, September and November.
	Cumberland	Tuesday following the fourth Monday in January, April, June and September.
	Appomattox	Tuesday after the first Monday in April, June, October and December.
Eleventh	Powhatan	Second Tuesday in February, April, June, October and December.
	Dinwiddie	Third Tuesday in January, March, May, July, September and November.
	Nottoway	First Tuesday in January, March, May, July, September and November.
	Ameila	First Tuesday in February, April, June, October and December.
	Petersburg	Criminal terms: Third Thursday in each month. Civil terms: Third Thursday in each month.
Twelfth	Chesterfield	Criminal and Civil terms: Tuesday following third Monday in January, and third Monday in March, May, July, September and November.
	Colonial Heights	First Tuesday in January, March, July, September and November.

CIRCUIT	COUNTY OR CITY	TERM
Thirteenth	Richmond City	Criminal terms: First Monday in each month. Civil terms: Fourth Monday in January, April, July and October. Civil term days: First Monday in March, June and December and third Monday in September.
Fourteenth	Henrico	Criminal terms: Second Monday in January, March, May, July, September and November. Civil cases set second Monday in January, April, July and October at 2:00 p.m. or may be set by telephone. Criminal cases set when appealed or at preliminary hearing.
Fifteenth	Caroline	First Wednesday at 10:00 a.m. in January, April, July and October.
	Essex	Fourth Wednesday in January, April, July and October.
	Fredericksburg	Fourth Monday in January, April, July and October.
	Hanover	Third Tuesday in January, March, May, July, September and November. Criminal: 9:00 a.m.; Civil: 2:00 p.m.
	King George	Second Thursday in January, April, July and October at 10 a.m.
	Lancaster	Fourth Friday in January, April, July and October.
	Northumberland	Fourth Tuesday in January, April, July and October.
	Richmond County	Fourth Monday of January, April, July and October. All cases set by agreement with Commonwealth's Attorney at preliminary hearing, on Term Day, or by agreement of counsel and the Court. The latter may be done by a telephone call to the Judge's office @ 804-333-5568.
	Spotsylvania	Third Monday at 9:00 a.m. in January, April, July and October.
	Stafford	Criminal Term: First Monday in each month. Civil Terms: First Monday in January, April, July and October. Motion Days: First and third Mondays, Pendente Lite Second Friday of each month. If any Monday is a State holiday, Term/Motions will be held the following day.
	Westmoreland	Fourth Thursday in January, April, July and October.
Sixteenth	Charlottesville	Third Monday in April, June, August, October and December; third Tuesday in February (as third Monday is a holiday).
	Madison	First Monday in January, March, May, July, September and November.
	Louisa	Second Monday in January, March, May, July, September and November.
	Greene	Second Monday in February, April, June, August, October and December.
	Orange	Fourth Monday in January, March, May, July, September and November.

CIRCUIT	COUNTY OR CITY	TERM
Sixteenth (cont'd)	Albemarle	Criminal terms: First Monday in February, April, June, August, October and December. Civil terms: Last Thursday of each month except November and December (which is the third Thursday). Grand Juries: First day of Term.
	Goochland	Second Tuesday in February, April, June, August, October and December.
	Culpeper	Third Monday in February, April, June, August, October and December.
	Fluvanna	Fourth Monday in February, April, June, August and October; and third Tuesday in December.
Seventeenth	Arlington	Third Monday (or Tuesday, if holiday falls on Monday) in February, April, June, August, October and December.
Eighteenth	Alexandria	Second Monday in January, March, May, July, September and November; at 9:00 a.m.; cases may also be set for trial by telephone (703-838-4123).
Nineteenth	Fairfax	Criminal terms: Tuesday following third Monday in January, March, May, July, September and November. Civil terms: Fourth Monday in January, March, May, July, September and November.
Twentieth	Fauquier	Misdemeanor Appeal Days: Second Tuesday of each month. Terms: Fourth Monday in January, March, May, July, September and November.
	Loudoun	Second Monday in February, April, June, August and December; and Tuesday following second Monday in October.
	Rappahannock	Second Monday in January, March, May, July, September and November.
Twenty-First	Henry	Tuesday following Third Monday in January; third Monday in March, May, July, September and November at 9 a.m.
	Martinsville	Criminal terms: Second Monday in February; the first Monday in May; the fourth Monday in July; and the first Monday in November. Civil cases set by Pretrial Scheduling Order.
	Patrick	First Monday in March, June, September and December.
Twenty-Second	Danville	Grand Juries and Terms: Jan. 3, Feb. 26, April 23, June 25, Aug. 27 and Oct. 29.
	Pittsylvania	Third Monday in February, April, June, August, October and December.
	Franklin	First Monday in February, April, June, August, October and December. Criminal cases set the week following the preliminary hearing. Civil cases are set 90 days after filing.

CIRCUIT	COUNTY OR CITY	TERM
Twenty-Third	Roanoke County	Criminal terms: First Friday in February, April, June, October and December; and the second Friday in August. Civil terms: First Friday in January, February, April, June, October and December; and second Friday in August.
	Roanoke City	Criminal terms: First Monday in each month. Civil terms: Tuesday after first Monday in each month.
	Salem	Third Friday in February, May, July and September; and the second Friday in December.
Twenty-Fourth	Lynchburg	Criminal terms: First Monday in each month. Civil terms: First Monday in each month.
	Amherst	Second Tuesday in February, April, June, October and December.
	Bedford	First Tuesday in January, March, May, July, September and November.
	Campbell	Second Monday in January, March, May, July, September and November.
	Nelson	Fourth Tuesday in January, March, May, September and November.
Twenty-Fifth	Buena Vista	Fourth Wednesday in January and July; the first Monday in April; and the fourth Monday in September.
	Clifton Forge	* Consolidated with the County of Alleghany as of July 1, 2001.
	Staunton	Third Monday in January, April, July and October.
	Waynesboro	Second Monday in January, March, May, September and November.
	Alleghany	Second Monday in January, April and July, and the first Tuesday after second Monday in October.
	Augusta	Fourth Monday in January, April, July and October.
	Bath	Third Monday (or Tuesday, if holiday falls on Monday) in January, June and September; and the first Monday in April.
	Botetourt	First Monday in March, June, August, October and December.
	Craig	Last Monday in February; and the second Monday in May, September and November.
	Highland	Third Tuesday in March, June, September and December.
	Rockbridge	First Monday in February, May and November; second Monday in July; and Tuesday following Labor Day in September.
Twenty-Sixth	Clarke	Third Monday in January, April, July and October.
	Frederick	Thursday after the first Monday in January, April, July and October.
	Page	Fourth Monday in January, April, July and October.
	Shenandoah	Wednesday after the second Monday in January, April, July and October.

CIRCUIT	COUNTY OR CITY	TERM
Twenty-Sixth (cont'd)	Warren	First Monday in January, April, July and October.
	Winchester	Second Monday in January, April, July and October.
	Rockingham	Criminal terms: Third Monday in January, April, July and October. Civil terms: First Monday and Wednesday after third Monday each month except Wednesday after third Monday only in January and August.
Twenty-Seventh	Bland	Criminal terms: Second Monday in March, June, September and December. Civil terms: Immediately following end of criminal term.
	Carroll	Third Monday in March, June and September; and the second Monday in December.
	Floyd	First day of March, June, September and December.
	Giles	Second Tuesday in January, April, July and October.
	Grayson	Fourth Friday in January, April, July and October.
	Montgomery	Second Tuesday of January, April, July and October.
	Pulaski	Third Monday in February and November; the fourth Monday in May; and the second Monday in September.
	Radford	Second Friday in March, June, September and December.
	Wythe	Third Monday in January, April, July and October.
Twenty-Eighth	Washington	Fourth Tuesday in January, April, July and October.
	Smyth	Fourth Tuesday in March, June and September; and second Tuesday in December.
	Bristol	Tuesday in February, May, August and November.
Twenty-Ninth	Buchanan	Terms begin second Monday in January, April, July and October. Criminal terms: Fourth Monday in January, April, July and October. Civil terms: Second Tuesday in January, April, July and October.
	Dickenson	Criminal terms: Second Monday in March, June and September; and the first Monday in December. Civil terms: Tuesday, following Grand Jury (Grand Juries: Second Monday in March, June and September; first Monday in December).
	Russell	Second Monday in February, May, August and November.
	Tazewell	Second Tuesday in January, March, May, July, September and November.
Thirtieth	Wise	First Tuesday after the third Monday in January; and the third Monday in April, July and October.
	Scott	First Monday in February, May, August and November.
	Lee	First Monday in March, June and December; and second Monday in September.

CIRCUIT	COUNTY OR CITY	TERM
Thirty-First	Prince William	First Tuesday of every month, the next business day on which the Court is open if the Court is closed on the first Tuesday.

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

Rule 1:16. Filing Format and Procedure.

(a) Except as provided in Rules 1:17, 3:3, 3A:23, 7A:7(c), and 8:8(f) pertaining to Electronically Filed Cases,

(1) All pleadings, motions, briefs, depositions, requests for discovery and responses thereto, and all other documents filed in any clerk's office in any proceeding pursuant to these Rules shall be produced on pages 8 1/2 by 11 inches in size and all typed material shall be double spaced except for quotations.

(2) Subdivision (a)(1) of this Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(b) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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

Rule 1:17. Electronic Filing and Service.

(a) *Scope of Electronic Filing Rules.* Pursuant to § 8.01-271.01 and Article 4.1 (§§ 17.1-258.2 et seq.) of Chapter 2 of Title 17.1 of the Code of Virginia, this Rule shall be applicable in any court that has established an electronic filing system under the standards and procedures set forth in subdivision (c) of this Rule, and applies in civil cases in circuit court as provided in Rule 3:3, in criminal cases in circuit court as provided in Rule 3A:23, in general district court proceedings as provided in Rule 7A:7(c), and in juvenile and domestic relations district court proceedings as provided in Rule 8:8(f).

(b) *Definitions*.

(1) "**Electronic Document**" means any defined set of textural matter, graphic content or other encoded information in an approved format, that can be read, printed, and stored or retained as electrical, magnetic or optically encoded signals in some medium and that can be transmitted by a data-link.

(2) "**Data-link**" refers to any means of electronic transmission of a document in a coded form such that the document can be received, read, printed, and stored by the recipient.

(3) "**E-Filing Portal**" means the electronic web site maintained by the Supreme Court of Virginia designated as the facility for electronically filing documents, or an alternative which meets the standards set forth in this Rule and is made available by individual circuit courts.

(4) "**Electronic filing**" means the official filing of an electronic document on the court's docket and case files in electronic form by transmission over a data-link.

(5) "**Electronically Filed Case**" means a case in which pleadings, motions, notices and other filings are made electronically in accordance with these rules.

(6) "**Hyperlink**" means an electronic connection or reference to another place in the document, such that when the hyperlink is selected the user is taken to the portion of the document to which the link refers. It is not in itself a part of the document.

(c) *System Operational Standards.* In addition to the obligations and procedures set forth in subdivision (d) of this Rule, electronic filing systems under this Rule shall meet these requirements:

(1) Electronic documents must be stored without loss of content or material alteration of appearance.

(2) Files capable of carrying viruses into court computers must be scanned for viruses prior to being written to disk in the clerk's office.

(3) The electronic filing system must be capable of securing the document upon receipt so that it is protected from alteration.

(4) The electronic filing system must be capable of establishing the identity of a sender of a document by means of a registered user identity and password, or by digitally encrypted electronic signatures, or by any other means reasonably calculated to ensure identification to a high degree of certainty.

(5) Remote electronic access to documents submitted in an electronically filed case and stored electronically shall be limited to judges, court personnel, any persons assisting such persons in the administration of the electronic filing system, and to active members of the Virginia State Bar and their authorized agents, who have complied with the registration requirements to use the electronic filing system.

(6) If the court accepts payment of fees by credit card, debit card, debit account, or electronic funds transfer, registration for the user identity shall include submission of all information required to effect the payment of fees. Electronic submission of this information shall be deemed a signature by the cardholder sender, authorizing the payment of document filing fees. This information shall be kept confidential. There shall be an electronic confirmation from the clerk of any charge to or the debit from the user's account.

(7) No unauthorized person shall be permitted access to other court networks, data or applications unrelated to electronic filing. Administrative access to computer equipment and networks handling electronic filing will be restricted to designated court employees or authorized maintenance personnel.

(8) Electronic filing systems must reasonably protect filed documents against system and security failures and must provide, at a minimum, for daily backup, periodic off-site backup storage if feasible, and prudent disaster recovery mechanisms.

(d) *Electronic Service and Filing Practice and Procedures.*

(1) In an Electronically Filed Case, all pleadings, motions, notices and other material filed with the court shall be in the form of Electronic Documents except where otherwise expressly provided by statute or the Rules of Court, or where the court orders otherwise in an individual case for good cause shown.

(2) Each attorney admitted to practice in the Commonwealth shall be entitled to a registered User ID and password issued by the clerk, or access using any comparable identification system approved by the Supreme Court, for the electronic filing and retrieval of documents.

(3) The clerk shall provide a means, in the courthouse or other designated location, for the parties, counsel and the public to review and copy electronic records from the electronic file during normal business hours.

(4) The format for electronically filed material shall be the Portable Document Format (PDF). Notice will be provided if any other format is approved.

(5) (i) Subject to the provisions of subsections (d)(6) and (7) of this Rule, an electronic document shall be filed by following the procedures of the applicable E-Filing Portal, and shall be deemed filed on the date that it is received in the E-Filing Portal without regard to whether the filing occurred within or outside of standard business hours. If the electronic document is received in the E-Filing Portal on a Saturday, Sunday, legal holiday, or any day or part of a day on which the clerk's office is closed as authorized by an act of the General Assembly, then such document shall be deemed filed on the next day that is not a Saturday, Sunday, legal holiday, or day or part of a day on which the clerk's office is closed.

(ii) Upon electronic filing of a document, an electronic confirmation shall be transmitted to the filing party indicating that the document has been successfully filed through the E-Filing Portal. In addition, the court to which the document is directed shall promptly transmit an electronic acknowledgement of its receipt of the electronically filed document, specifying the identity of the receiving court, the date the document was received by the court, and a court-assigned document reference or docketing number.

(6) A person who files a document electronically shall have the same responsibility as a person filing a document in paper form to ensure that the document is properly filed, complete, and readable. However,

(i) if technical problems at the E-Filing Portal result in a failure to

timely file the electronic document, counsel shall provide to the clerk of the court on the next business day all documentation which exists demonstrating the attempt to file the document through the E-Filing Portal, any delivery failure notice received in response to the attempt, and a copy of the document, and

(ii) in the event that the E-Filing Portal was not available due to technical problems during the last filing hours of a business day, the office of the clerk of the court to which the document is directed shall be deemed to have been closed on that day solely with respect to that attempted filing and the provisions of Virginia Code § 1-210(B) and (C) shall apply to that particular attempted filing for purposes of computing the last day for performing any act in a judicial proceeding or the filing of any legal action.

(7) Clerk's notice of defects in a filing; striking documents; court orders.

(i) *Incorrect or missing fee.* If the clerk of court determines that an electronically filed document is defective because of an incorrect or missing filing fee, and

(A) if the clerk has been provided by the filing party with a credit or payment account through which to obtain payment of fees, the clerk shall immediately process payment of the correct fee through such credit or payment account; or

(B) if processing by the clerk of the proper payment through a credit or payment account authorized by the filing party is not feasible, notice shall be sent by the clerk electronically to the filing party, and all other parties who have appeared in the case.

(ii) *Document filed in the wrong case by counsel***.** If the clerk of court determines prior to acceptance that an electronic document has been filed by counsel under the wrong case or docket number, the clerk shall notify the filing party as soon as practicable, by notice through the E-Filing system, by telephone, or by other effective means.

(iii) A copy of all notices transmitted by the clerk under this subpart (d)(7) shall be retained in the permanent electronic case file maintained by the clerk. A copy of any document stricken shall be retained by the clerk with a designation clearly reflecting that it was stricken and the date of such striking, as a record of its content and disposition.

(8) The clerk's office must accommodate the submission of non-electronic documents in an Electronically Filed Case if filing in electronic form cannot, as a practical matter, be achieved. Such documents shall be imaged to facilitate the

creation of a single electronic case file to the extent reasonably possible. An outsized document that is capable of being imaged shall be retained in the form submitted.

(9) When an order is entered, the electronic record will be updated to identify the judge who directed entry of the order and the date it was entered, and a notification shall be sent to counsel of record that the order has been entered, along with a copy of the order or an electronic link providing access to such order. If the entry of an order is done on a paper copy of the order, a digital image of such order shall be made a part of the electronic record, and the endorsed original paper shall be retained for the record.

(10) Hyperlinks between two portions of a filed document or between two or more documents filed in the same case, are permissible, but hyperlinks to other documents, or to external websites, are prohibited. A hyperlink is not itself a part of the official filed document and each hyperlink must contain a text reference to the target of the link.

(e) *Application of, and Compliance with, Other Rules*. In an Electronically Filed Case:

(1) Unless otherwise agreed by all parties, or ordered by the court in an individual case for good cause shown, all documents required to be served – after the initial service of process shall be served by electronic transmission. Such service shall be effective as provided in Rule 1:12 .

(2) Annotation by the clerk as provided in Rule 1:4(h) is not required to be made physically upon the face of the pleading and – if it is made by a separate document – it shall specify the pleading to which such annotation pertains.

(3) An e-mail address of the counsel of record shall be included in the electronic documents filed as required by Rule 1:4(l).

(4) The approved electronic identification accompanying the document when filed shall constitute that person's signature on the document for purposes of Rule 1:5 and Virginia Code § 8.01-271.1.

(5) The provisions of Article 4.1 (§§ 17.1-258.2 et seq.) of Chapter 2 of Title 17.1 of the Code of Virginia shall be applicable where a document is to be notarized, sworn, attested, verified, or otherwise certified, or if any sworn signatures, stamps, seals or other authentications relating to the document are required by any statute or Rule, and an electronic or digitally imaged document with such accompanying entries shall be filed in the clerk's office. Electronic notarization in compliance with the Virginia Notary Act (§§ 47.1-1 et seq.) may also be employed with the filing.

(6) An acceptance of service or a certificate of counsel that electronic copies were served as this Rule requires, showing the date of delivery, shall electronically accompany the served papers and shall satisfy Rule 1:12.

(7) In compliance with Rule 1:13, drafts of orders, decrees and notices shall be served on each counsel of record. Such service may be by electronic transmission and shall make provision for electronic endorsement by multiple parties where applicable. Objections or other notations by the parties shall be entered upon the drafts so circulated, or appended to such drafts by specific cross-reference or other unambiguous association. Endorsed drafts shall be submitted electronically whenever possible, and shall be accompanied by proof of service or acceptance of service when required by the rules of court. If there is no practical means of submitting an electronic or digitally imaged endorsed draft, the manually endorsed document shall be filed in the clerk's office. The clerk shall accommodate the imaging of the document into electronic form and shall retain the original endorsed document.

Last amended by Order dated November 1, 2012; effective January 1, 2013.

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

Rule 1:18. Pretrial Scheduling Order.

A. In any civil case the parties, by counsel of record, may agree and submit for approval and entry by the court a pretrial scheduling order. If the court determines that the submitted order is not consistent with the efficient and orderly administration of justice, then the court shall notify counsel and provide an opportunity to be heard.

B. In any civil case in which a pretrial scheduling order has not otherwise been entered pursuant to the court's normal scheduling procedure, the court may, upon request of counsel of record for any party, or in its own discretion, enter the pretrial scheduling order contained in Section 3 of the Appendix of Forms at the end of Part I of these Rules (Uniform Pretrial Scheduling Order). The court shall cause copies of the order so entered to forthwith be transmitted to counsel for all parties. If any party objects to or requests modification of that order, the court shall (a) hold a hearing to rule upon the objection or request or (b) with the consent of all parties and the approval of the court, enter an amended pretrial scheduling order.

C. With the exception of domestic relations and eminent domain cases, a court may not enter a scheduling order which deviates from the terms of the Uniform Pretrial Scheduling Order unless either (1) counsel of record for all parties agree to different provisions, or (2) the court, after providing an opportunity for counsel of record to be heard, makes a finding that the scheduling order contained in the Appendix is not consistent with the efficient and orderly administration of justice under the specific circumstances of that case.

Last amended by Order dated May 31, 2017; effective August 1, 2017.

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

Rule 1:19. Pretrial Conferences.

In addition to the pretrial scheduling conferences provided for by Rule 4:13, each trial court may, upon request of counsel of record, or in its own discretion, schedule a final pretrial conference within an appropriate time before the commencement of trial. At the final pretrial conference, the court and counsel of record may consider any of the following:

(a) settlement;

(b) a determination of the issues remaining for trial and whether any amendments to the pleadings are necessary;

(c) the possibility of obtaining stipulations of fact, including, but not limited to, the admissibility of documents;

(d) a limitation of the number of expert and/or lay witnesses;

(e) any pending motions including motions *in limine*;

(f) issues relating to proposed jury instructions; and

(g) such other matters as may aid in the disposition of the action.

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

Rule 1:20. Scheduling Civil Cases for Trial.

The circuit courts of the Commonwealth shall adopt one or a combination of the following procedures for scheduling civil cases for trial.

(a) Counsel of record may agree to a trial date and may secure approval of the court by telephone call or other electronic communication to the designated court official.

(b) Counsel of record may agree to a trial date as a part of a written plan prepared and submitted to the court for approval pursuant to Rule 1:18.

(c) The court may, at the request of counsel of record, or may in its own discretion, direct counsel of record to appear, in person or by telephone, for a conference to set a trial date and consider other matters set forth in Rule 1:19 or Rule 4:13.

(d) The court may set civil cases for trial at a docket call held on a day as provided by § 17.1-517.

(e) Following the submission of a praecipe, the court may set civil cases for trial at a docket call held on a day as provided by § 17.1-517.

The Executive Secretary shall make accessible these procedures on the Internet. The clerk of each district and circuit court shall make their respective procedures available in the office of the clerk of that court.

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

Rule 1:21. Preliminary Voir Dire Information.

At the outset of jury selection in any civil or criminal case, the court shall deliver preliminary instructions that: (1) explain the purpose of the voir dire examination, (2) explain the difference between peremptory challenges and removals for cause, (3) summarize the nature of the case, (4) estimate how long the trial may last, and (5) indicate whether it is anticipated that the jury will be sequestered.

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

Rule 1:22. Exercise of Challenges to Prospective Jurors.

Counsel shall be afforded the opportunity to challenge jurors for cause out of the presence of the panel.

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

Rule 1:23. Note Taking by Jurors.

A. The court, in the exercise of its discretion, may permit jurors to take notes during the trial.

B. If notes are taken by any of the jurors, at the conclusion of each day of a trial, the court shall collect juror notes and provide for their security until the trial resumes. Upon conclusion of the trial, the court shall collect and destroy all juror notes.

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

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

The purposes of the statutory court collection process are (i) to facilitate the payment of fines, court costs, penalties, restitution and other financial responsibilities assessed against defendants convicted of a criminal offense or traffic infraction, (ii) to collect the monies due to the Commonwealth and localities as a result of these convictions, and (iii) to assure payment of court-ordered restitution to victims of crime. To achieve these purposes, this Rule is intended to ensure that all courts approve deferred and installment payment agreements consistent with §§ 19.2-354, 19.2-354.1, and the provisions of this Rule and to further the legal values of predictability, fairness, and similarity in the collection of fines, court costs, penalties, and restitution throughout the courts of the Commonwealth.

(a) *Definitions.* —

(1) "Fines and costs" shall mean all the fines, court costs, forfeitures, and penalties assessed in all cases by a single court against a defendant for the commission of crimes or traffic infractions. "Fines and costs" shall also include restitution unless the court orders a separate payment schedule for restitution.

(2) An "installment payment agreement" is an agreement in which the defendant agrees to make monthly or other periodic payments until the fines and costs are paid in full.

(3) A "deferred payment agreement" is an agreement in which the defendant agrees to pay the full amount of the fines and costs at the end of the agreement's stated term and no installment payments are required.

(4) A "modified deferred payment agreement" is a deferred payment agreement in which the defendant also agrees to use best efforts to make monthly or other periodic payments.

(b) *Access to payment alternatives.* — Any defendant who is unable to pay in full fines and costs for a particular offense within 30 days of conviction, or other disposition authorized by law, must be offered by the convicting court the opportunity to enter into a deferred payment agreement, a modified deferred payment agreement or an installment payment agreement to pay those fines and costs. The court shall not deny a defendant the opportunity to enter into a deferred, modified deferred, or installment payment agreement solely because (i) the defendant previously defaulted under the terms of a payment agreement, (ii) the fines and costs have been referred for collection pursuant to § 19.2-349, (iii) a defendant has not established a

payment history, (iv) of the category of offense for which the defendant was convicted or found not innocent, or (v) of the total amount of all fines and costs.

(c) *Notice of payment alternatives.* — The court shall give the defendant written notice of deferred, modified deferred, and installment payment agreements and, if a community service program has been established, the availability of earning credit toward discharge of fines and costs through the performance of community service work.

(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 shall 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 shall 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 shall 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. The court may require the defendant to present a compliance summary prepared by the Department of Motor Vehicles of the other courts in which the defendant also owes fines and costs.

The length of a payment agreement and the amount of the payments shall not be based solely on the amount of fines and costs and shall be reasonable in light of the defendant's financial resources and obligations.

If a down payment is required to enter into a payment agreement, it shall be a minimal amount to demonstrate the defendant's commitment to paying the fines and costs. In the case of an installment payment agreement, if the fines and costs owed are $500 or less, the required down payment may not exceed 10 percent of such amount owed or, if the fines and costs owed are more than $500, the required down payment may not exceed 5 percent of such amount owed or $50, whichever is greater. A defendant may choose to make a larger down payment.

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 shall 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 shall be considered timely made.

(f) *Combined payment agreements.* — The court may offer a payment agreement combining an appropriate initial period during which no payment of fines and costs is required, followed by a period of installment payments. Such a combined payment plan may be appropriate when the defendant is incarcerated, but should not be limited only to these circumstances.

(g) *Re-entry into a payment agreement after default.* — A court shall consider a request by a defendant who has defaulted on a payment agreement to enter into a subsequent payment agreement. In determining whether to approve the request for a subsequent payment agreement, the court shall consider any change in the defendant's circumstances.

A court shall require a down payment to enter into a subsequent payment agreement, provided that (i) if the fines and costs owed are $500 or less, the required down payment shall not exceed 10 percent of such amount or (ii) if the fines and costs owed are more than $500, the required down payment shall not exceed 5 percent of such amount or $50, whichever is greater.

Promulgated by Order dated November 1, 2016; effective February 1, 2017.

Last amended by Order dated June 7, 2019; effective August 15, 2019.

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

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.

(2) Types of court proceedings appropriate for grouping in a "specialty docket" are those which (i) require more than simply the adjudication of discrete legal issues, (ii) present a common dynamic underlying the legally cognizable behavior, (iii) require the coordination of services and treatment to address that underlying dynamic, and (iv) focus primarily on the remediation of the defendant in these dockets. The treatment, the services, and the disposition options are those which are otherwise available under law.

(3) Dockets which group cases together based simply on the area of the law at issue, e.g., a docket of unlawful detainer cases or child support cases, are not considered "specialty dockets."

(b) *Types of Specialty Dockets.* — The Supreme Court of Virginia currently recognizes only the following three types of specialty dockets: (i) drug treatment court dockets as provided for in the Drug Treatment Court Act, § 18.2-254.1, (ii) veterans dockets, and (iii) behavioral/mental health dockets. Drug treatment 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/mental 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.

(c) *Authorization Process.* — A circuit or district court which intends to establish one or more types of these recognized specialty dockets must petition the Supreme Court of Virginia for authorization before beginning operation of a specialty docket or, in the instance of an existing specialty docket, continuing its operation. A petitioning court must demonstrate sufficient local support for the establishment of this specialty docket, as well as adequate planning for its establishment and continuation.

(d) *Expansion of Types of Specialty Dockets.* — A circuit or district court seeking to establish a type of specialty docket not yet recognized under this rule must first demonstrate to the Supreme Court that a new specialty docket of the proposed type meets the criteria set forth in subsection (a) of this Rule. If this additional type of specialty docket receives recognition from the Supreme Court of Virginia, any local specialty docket of this type must then be authorized as established in subsection (c) of this Rule.

(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/Mental Health Docket Advisory Committee, and the committee for any other type of specialty docket recognized in the future by the Supreme Court shall be chosen by the Chief Justice. The State Drug Treatment Court Advisory Committee established pursuant to Virginia Code § 18.2-254.1 shall constitute the Drug Treatment Court Docket Advisory Committee.

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

(g) *Financing Specialty Dockets.* — Any funds necessary for the operation of a specialty docket shall be the responsibility of the locality and the local court, but may be provided via state appropriations and federal grants.

(h) *Evaluation.* — Any local court establishing a specialty docket shall provide to the

Specialty Docket Advisory Committee the information necessary for the continuing evaluation of the effectiveness and efficiency of all local specialty dockets.

Promulgated by Order date November 14, 2016; effective January 16, 2017.

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

Rule 1:26. File Format Requirements for Pleadings, Motions, Notices, Briefs and Exhibits Sought to be Filed or Admitted in Electronic or Digital Form.

All digital or electronic pleadings, motions, notices, briefs, exhibits or other material made part of any court record are public records unless sealed by court order or otherwise provided by law, and must be readily accessible in either an unencrypted, non-proprietary, and open-source format or must be accompanied by computer software which decrypts any encrypted or proprietary file format.

Promulgated by Order dated February 15, 2019; effective May 1, 2019.

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

Rule 1:27. Testimony by Audiovisual Means in Circuit Court Civil Cases.

(a) *Implementation of Statutory Authority; Specification of Conditions.* — In accordance with Code § 17.1-513.2, live (real-time) testimony by any party or witness in a civil action or proceeding in circuit court by any means of audiovisual technology that complies with Code § 19.2-3.1(B) is permitted upon order of the court in accord with the provisions of subparts (b) through (f) of this Rule. Use of remote testimony in Sexually Violent Predator Act cases under Chapter 9 of Title 37.2 of the Code – and other express statutory authorizations or mandates for use of such procedures – are not affected by this Rule 1:27.

(b) *Order for Audiovisual Testimony; Contents.* — The court may grant permission for the testimony of any witness to be presented using audiovisual means under subpart (d) of this Rule by entering an order implementing the oath and consent provisions of subpart (e) of this Rule and the responsibility/cost provisions of subpart (f). The court may consider, among other factors,

(1) the age of the witness, and whether the witness has any disabilities or special needs that would affect the taking of testimony;

(2) whether translation of the questions or answers may be required;

(3) procedures available for the handling of exhibits;

(4) mechanisms for making and ruling upon objections – both within and outside the hearing of the remote witness;

(5) procedures for sidebar conferences between counsel and the court;

(6) mechanisms for the witness to view counsel, the parties, the jury, and the judge;

(7) practical issues, such as the size, number and location of video display screens at the remote location and in the courtroom or facility where the trial or hearing will take place;

(8) whether there should be any requirements for camera angle or point of view, any picture-in-picture requirements, and/or camera movement;

(9) how the statutorily required encryption of signal transmission will be attained;

(10) creation of a record of such testimony; and

(11) any necessary limitations or conditions upon persons who may be present in the location where the witness testifies, and whether those persons must be identified prior to the testimony of the witness.

(c) *Leave of Court.* — The court should enter an order permitting live testimony by means of any audiovisual technology under subpart (b) of this Rule as follows:

(1) *Consent of All Parties.* Upon consent of all parties for live testimony of any party, lay witness, or expert witness by means of any audiovisual technology; or,

(2) *Distant and Other Specific Witnesses.* If (i) a lay witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the testimony, or if (ii) the witness is a superintendent of a hospital for the insane more than 30 miles from the place of trial, or is a physician, surgeon, dentist, chiropractor, registered nurse, physician's assistant or nurse practitioner who, in the regular course of his or her profession, treated or examined any party to the proceeding, or is in any public office or service the duties of which prevent his attending court; provided, however, that if the witness is subject to the jurisdiction of the court, the court may, upon a showing of good cause or sua sponte, order the witness to attend and to testify ore tenus.

(d) *Motion for Leave of Court to Present Testimony by Audiovisual Means.* — Where neither subparts (c)(1) or (c)(2) of this Rule apply, a party may move for leave to present the live testimony of one or more witnesses by audiovisual means. Unless the court in its discretion allows a motion on shorter notice, such motion must be filed at least 60 days in advance of the trial or hearing. Any party opposing such motion must file any objections in writing 10 days after service of such motion, unless a different schedule is set by the court. In the exercise of its discretion on such motion, the court should consider whether the ability to evaluate the credibility and demeanor of the person who would testify remotely is critical to the outcome of the proceeding and whether the non-moving party has demonstrated that face-to-face cross- examination is necessary because the issue(s) the witness may testify about may be determinative of the outcome. The court may enter an order under subpart (b) of this Rule permitting presentation of live testimony by a witness by audiovisual means as follows:

(1) *Non-Party Lay Witnesses.* Upon a finding that good cause exists for accepting testimony by audiovisual means for each witness who will so testify.

(2) *Party and Expert Witnesses.* Upon a finding that – with due regard for the importance of presenting testimony through witnesses physically present in the courtroom – exceptional circumstances warrant receiving the testimony of a party or expert witness by audiovisual means in the interests of justice.

(e) *Witness Oath; Consent of Nonresidents.* —

(1) *Remote Testimony Given in Virginia.* Any witness testifying from a remote location within Virginia must be placed under oath in the same fashion as any live witness present at the trial or hearing.

(2) *Remote Testimony Given Outside the Commonwealth.* Any witness testifying from a remote location outside the Commonwealth must sign before testifying a written consent:

(A) to provide testimony under an oath administered by court personnel located in the Virginia court or facility;

(B) expressly agreeing to be subject to the penalties of perjury under Virginia law and subject to court orders by the Virginia judge regarding the testimony, such as contempt of court powers, adjournment or rescheduling of testimony, and other orders relating to the testimony entered as though the witness was physically present in the Virginia courtroom;

(C) consenting to personal jurisdiction of the Virginia courts for enforcement of the perjury laws and orders relating to the testimony of the witness entered by the judge presiding over the trial.

The consent of each such witness must be signed before a notary or other person authorized to take oaths or sworn acknowledgments in the jurisdiction where the witness is located, and must be filed – on paper or in court-approved electronic form – among the papers of the Virginia action or proceeding before such testimony may be introduced.

(f) *Provision of Necessary Equipment; Allocation of Costs.* — Unless the courtroom or facility where the testimony will be presented has equipment meeting the standards of Code § 19.2-3.1(B) and complying with the court's order under subpart (b) of this Rule, the party offering testimony of a witness by audiovisual means is responsible for providing the necessary equipment, and all necessary logistical arrangements, at no cost to the court. All costs and arrangements for the location where the witness will give testimony are also the responsibility of the party offering the testimony. Failure to ensure that the courtroom or facility where the trial or hearing is to be held – and the location where the witness would testify – are properly set up for such testimony will preclude the offering of testimony by audiovisual means, and will not constitute grounds for a continuance sought by the party attempting to offer such testimony. Remedies and procedures to address the failure of the arrangements to function properly for some other reason, such as a power outage affecting the Virginia courtroom, are within the sound discretion of the presiding judge.

Adopted and promulgated by Order dated January 9, 2020; effective March 15, 2020.

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

1. Praecipe (Rule 1:15(b)).

VIRGINIA: IN THE CIRCUIT COURT OF THE

.....,

Plaintiff

v. CASE NO. …

.....,

Defendant

PRAECIPE

I certify that the above styled cause is matured for trial on its merits and request the Clerk to place it on the docket to be called on .....……
date of next docket call

to be set for trial *with* ( ) or *without* ( ) a jury.

Dated this .....day of ....., 20....

.....…….

Counsel for .....

CERTIFICATE OF SERVICE

I certify that on the ..... day of ....., 20...., I mailed or delivered a true copy of the foregoing praecipe to all counsel of record herein pursuant to the provisions of Rule 1:12 of the Rules of the Supreme Court of Virginia, and served a true copy upon parties not represented by counsel, if any.

.....……..

Counsel for .....

2. Instructions (Rule 1:15(c)).

Counsel for all parties, unless compliance is waived by the court, shall, two days before a civil jury trial date, submit to the court a copy of all instructions such counsel proposes to request – in electronic or paper form as directed by the court – and noting thereon the authority or authorities relied upon for such instructions. Counsel may be required to exchange copies of proposed instructions. This rule shall not preclude the offering of additional instructions at the trial.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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

3. Uniform Pretrial Scheduling Order (Rule 1:18B).

I. Trial

The trial date is ..... (with a jury) (without a jury).

The estimated length of trial is .....

II. Discovery

The parties shall complete discovery, including depositions, by 30 days before trial; however, depositions taken in lieu of live testimony at trial will be permitted until 15 days before trial. "Complete" means that all interrogatories, requests for production, requests for admissions and other discovery must be served sufficiently in advance of trial to allow a timely response at least 30 days before trial. Depositions may be taken after the specified time period by agreement of counsel of record or for good cause shown, provided however, that the taking of a deposition after the deadline established herein shall not provide a basis for continuance of the trial date or the scheduling of motions inconsistent with the normal procedures of the court. The parties have a duty to seasonably supplement and amend discovery responses pursuant to Rule 4:1(e) of the Rules of Supreme Court of Virginia. Seasonably means as soon as practical. No provision of this Order supersedes the Rules of Supreme Court of Virginia governing discovery. Any discovery motion filed shall contain a certification that counsel has made a good faith effort to resolve the matters set forth in the motion with opposing counsel.

III. Designation of Experts

If requested in discovery, plaintiff’s, counter-claimant's, third party plaintiff’s, and cross-claimant’s experts shall be identified on or before 90 days before trial. If requested in discovery, defendant’s and all other opposing experts shall be identified on or before 60 days before trial. If requested in discovery, experts or opinions responsive to new matters raised in the opposing parties, identification of experts shall be designated no later than 45 days before trial. If requested, all information discoverable under Rule 4:1(b)(4)(A)(i) of the Rules of Supreme Court of Virginia shall be provided or the expert will not ordinarily be permitted to express any nondisclosed opinions at trial. The foregoing deadlines shall not relieve a party of the obligation to respond to discovery requests within the time periods set forth in the Rules of Supreme Court of Virginia, including, in particular, the duty to supplement or amend prior responses pursuant to Rule 4:1(e).

IV. Dispositive Motions

All dispositive motions shall be presented to the court for hearing as far in advance of the trial date as practical. All counsel of record are encouraged to bring on for hearing all demurrers, special pleas, motions for summary judgment or other dispositive motions not more than 60 days after being filed.

V. Exhibit and Witness List

Counsel of record shall exchange 15 days before trial a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at trial. The lists of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith but the exhibits shall not then be filed. Any exhibit or witness not so identified and filed will not be received in evidence, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses shall state the legal reasons therefor except on relevancy grounds, and shall be filed with the Clerk of the Court and a copy delivered to opposing counsel at least five days before trial or the objections will be deemed waived absent leave of court for good cause shown.

VI. Pretrial Conferences

Pursuant to Rule 4:13 of the Rules of Supreme Court of Virginia, when requested by any party or upon its own motion, the court may order a pretrial conference wherein motions in limine, settlement discussions or other pretrial motions which may aid in the disposition of this action can be heard.

VII. Motions in Limine

Absent leave of court, any motion in limine which requires argument exceeding five minutes shall be duly noticed and heard before the day of trial.

VIII. Witness Subpoenas

Early filing of a request for witness subpoenas is encouraged so that such subpoenas may be served at least 10 days before trial.

IX. Continuances

Continuances will only be granted by the court for good cause shown.

X. Jury Instructions

Counsel of record, unless compliance is waived by the court, shall, two business days before a civil jury trial date, exchange proposed jury instructions. At the commencement of trial, counsel of record shall tender the court the originals of all agreed upon

instructions and copies of all contested instructions with appropriate citations. This requirement shall not preclude the offering of additional instructions at the trial.

XI. Deposition Transcripts to be Used at Trial

Counsel of record shall confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial at the earliest reasonable opportunity. Other than trial depositions taken after completion of discovery under Paragraph II, designations of portions of non-party depositions, other than for rebuttal or impeachment, shall be exchanged no later than 30 days before trial, except for good cause shown or by agreement of counsel. It becomes the obligation of the non-designating parties of any such designated deposition to file any objection or counter-designation within seven days after the proponent's designation. Further, it becomes the obligation of the non-designating parties to bring any objections or other unresolved issues to the court for hearing no later than 5 days before the day of trial.

XII. Waiver or Modification of Terms of Order

Upon motion, the time limits and prohibitions contained in this order may be waived or modified by leave of court for good cause shown.

Last amended by Order dated July 2, 2019; effective September 1, 2019.

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

3-A. Alternate Uniform Pretrial Scheduling Order For Use in Eminent Domain Proceedings (Rule 1:18B).

I. Trial

The trial date is scheduled for _____, commencing at _____ a.m., before ____ a freeholder jury, ____ panel of commissioners or ____ bench trial (select applicable option). The estimated length of trial is ____ days. If the case is set before a panel of commissioners, each party shall submit nominations of at least six (6) qualified persons on or before _____ so that at least nine (9) commissioners and two (2) alternates can be summoned for trial. Counsel for petitioner shall prepare and submit a sketch order for the court's use in appointing and summoning commissioners for trial.

II. Discovery

The parties shall complete discovery, including depositions, by 30 days before trial; however, depositions taken in lieu of live testimony at trial will be permitted until 15 days before trial. "Complete" means that all interrogatories, requests for production, requests for admissions and other discovery must be served sufficiently in advance of trial to allow a timely response at least 30 days before trial. Depositions may be taken after the specified time period by agreement of counsel of record or for good cause shown, provided however, that the taking of a deposition after the deadline established herein shall not provide a basis for continuance of the trial date or the scheduling of motions inconsistent with the normal procedures of the court. The parties have a duty to seasonably supplement and amend discovery responses pursuant to Rule 4:1(e) of the Rules of Supreme Court of Virginia. Seasonably means as soon as practical. No provision of this Order supersedes the Rules of Supreme Court of Virginia governing discovery. Any discovery motion filed shall contain a certification that counsel has made a good faith effort to resolve the matters set forth in the motion with opposing counsel.

III. Designation of Experts

If requested in discovery, petitioner's experts shall be identified on or before 120 days before trial. If requested in discovery, defendant's and all other opposing experts shall be identified on or before 90 days before trial. If requested in discovery, experts or opinions responsive to new matters raised in the opposing parties' identification of experts shall be designated no later than 60 days before trial. If requested, all information discoverable under Rule 4:1(b)(4)(A)(i) of the Rules of Supreme Court of Virginia shall be provided. An expert will not ordinarily be permitted to express any nondisclosed opinions at trial. The foregoing deadlines shall not relieve a party of the obligation to respond to discovery requests within the time periods set forth in the Rules of Supreme Court of Virginia, including, in particular, the duty to supplement or amend prior responses pursuant to Rule 4:1(e).

IV. Dispositive Motions

All dispositive motions shall be presented to the court for hearing as far in advance of the trial date as practical. All counsel of record are encouraged to bring on for hearing all demurrers, special pleas, motions for summary judgment or other dispositive motions not more than 60 days after being filed.

V. Exhibit and Witness List

Counsel of record shall exchange 15 days before trial a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at trial. The lists of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith but the exhibits shall not then be filed. Any exhibit or witness not so identified and filed will not be received in evidence, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses shall state the legal reasons therefor except on relevancy grounds, and shall be filed with the Clerk of the Court and a copy delivered to opposing counsel at least five days before trial or the objections will be deemed waived absent leave of court for good cause shown.

VI. Pretrial Conferences

Pursuant to Rule 4:13 of the Rules of Supreme Court of Virginia, when requested by any party or upon its own motion, the court may order a pretrial conference wherein motions in limine, settlement discussions or other pretrial motions which may aid in the disposition of this action can be heard.

VII. Motions in Limine

Absent leave of court, any motion in limine which requires argument exceeding five minutes shall be duly noticed and heard before the day of trial.

VIII. Witness Subpoenas

Early filing of a request for witness subpoenas is encouraged so that such subpoenas may be served at least 10 days before trial.

IX. Continuances

Continuances will only be granted by the court for good cause shown.

X. Instructions

Counsel of record shall, two business days before trial, exchange proposed instructions. Any instructions from VMJI may be identified by instruction number. Counsel for petitioner shall prepare and have available at the commencement of trial the originals of all agreed upon instructions. Each party may also submit originals and copies of all contested instructions with appropriate citations. This requirement shall not preclude the offering of additional instructions at the trial.

XI. Deposition Transcripts to be Used at Trial

Counsel of record shall confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial at the earliest reasonable opportunity. Other than trial depositions taken after completion of discovery under Paragraph II, designations of portions of non-party depositions, other than for rebuttal or impeachment, shall be exchanged no later than 15 days before trial, except for good cause shown or by agreement of counsel. It becomes the obligation of the opponent of any such deposition to bring any objection or other unresolved issues to the court for hearing before the day of trial, and to counter-designate any additional portions of designated depositions at least 5 days before such hearing.

XII. Transportation Arrangements

Counsel for petitioner shall be responsible for contacting the Sheriff's Department in advance of trial to assure that arrangements are in place to transport the commissioners/jury to and from the subject property.

XIII. Waiver or Modification of Terms of Order

Upon motion, the time limits and prohibitions contained in this order may be waived or modified by leave of court for good cause shown.

Adopted by Order dated May 31, 2017; effective August 1, 2017.

Regulations Governing Applications for Admission to Virginia Bar Pursuant to Rule of the Supreme Court of Virginia 1A:1, effective December 1, 2018.

INTRODUCTION

Each person who has met the educational requirements and has proved that he or she satisfies the character and fitness requirements as established by the law of Virginia may seek admission to the Virginia Bar by taking the Virginia Bar Examination. A primary purpose of the Virginia Bar Examination is to determine whether an applicant is able to demonstrate his or her current minimum competency to engage in the practice of law in Virginia.

In addition to admission to the Bar by examination, the Supreme Court of Virginia, in its discretion under Code § 54.1-3931, has determined that a person who has been admitted to practice law before the court of last resort of a state or territory of the United States or of the District of Columbia for a minimum of five years, who has been admitted to the bar of a Reciprocal Jurisdiction, hereinafter defined, and who has been engaged in the lawful practice of law on a full-time basis for at least three of the immediately preceding five years, may seek to demonstrate that he or she has made such progress in the practice of law that it would be unreasonable to require the person to take an examination to demonstrate current minimum competency. In other words, an applicant's experience in the practice of law may, at the discretion of the Court, be accepted as adequate evidence of current minimum competency in lieu of the bar examination. For purposes of admission without examination, “full-time” shall mean practicing law for a minimum of 32 hours per week.

The Supreme Court of Virginia has assigned to the Virginia Board of Bar Examiners (the "Board") the responsibility to assess the information furnished by an applicant for admission without examination and to determine, from the information so furnished, whether the applicant's experience in the practice of law is sufficient to demonstrate his or her current competence, good character, and fitness to practice law in Virginia.

In order to guide the Board in its determinations, the Court has adopted the following criteria to be applied by the Board in assessing applications for admission to the bar of Virginia without examination:

THRESHOLD REQUIREMENTS

1. Reciprocity. The Board shall consider an application for admission without examination

only from a person who has been admitted to practice before the court of last resort of a jurisdiction (*i.e.*, a state or territory of the United States, or the District of Columbia) that permits lawyers licensed in Virginia to be admitted to practice without examination in such jurisdiction (a "Reciprocal Jurisdiction"). The purpose of the reciprocity requirement is to encourage other jurisdictions to grant the same privilege to Virginia lawyers.

2. Minimum Period of Bar Admission. Before being eligible to apply for admission without examination, the applicant must have been admitted to practice law before the court of last resort of a state or territory of the United States, or of the District of Columbia, for at least five (5) years.

3. Requirement of Minimum Current Practice. An applicant may apply for admission without examination only if the applicant has been engaged in the full-time practice of law for at least three (3) of the last five (5) years immediately preceding his or her application for admission to the Virginia Bar. Except as provided in Threshold Requirement 4 below, the applicant must have been licensed to engage in the practice of law in the jurisdiction where such practice occurred. Practice from an office located in a foreign country shall not be accepted as qualifying practice. Persons holding a Virginia Corporate Counsel Certificate under Part I of Rule 1A:5 may receive credit as provided in such Rule.

4. Practice of law. For purposes of admission without examination, "practice of law" ordinarily shall mean (i) private practice as a sole practitioner or for a law firm, legal services office, legal clinic, or similar entity; (ii) practice as an attorney for a corporation, limited liability company, partnership, trust, individual or other entity, provided such practice involved the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law, and preparing, trying or presenting cases before courts or administrative agencies; (iii) practice as an attorney for the federal or a state or local government with the same primary duties as described above regarding attorneys for a corporation; (iv) employment as a judge for the federal or a state government; (v) service as a judicial law clerk for a state or federal court; or (vi) service on active duty in a branch of the armed forces of the United States as a judge advocate or law specialist, as those terms are defined in the Uniform Code of Military Justice, 10 U.S.C.
§ 801, as amended, provided that such position requires a valid license to practice law and involves the same primary duties as described above regarding attorneys for a corporation. With the exception of the positions described in (iv) and (v) above, qualifying law practice must have involved an

attorney-client relationship and, with the exception of the positions described in (iv), (v) and (vi) above, must have occurred subsequent to having been issued a license to engage in the practice of law in the jurisdiction where the law practice was conducted, unless the applicant establishes, by satisfactory evidence, that such practice is permitted by statute, rule, court order, or by written confirmation from the admitting or disciplinary authority of the jurisdiction where the practice occurred. The applicant must demonstrate that he or she meets the practice of law requirement to the satisfaction of the Board. The Board may require the applicant to produce substantiating evidence which may include, but is not limited to, a detailed description of legal services provided, letters from clients and/or opposing counsel, certification of a judge, samples of work product, and detailed time records. In addition, the Board may require the applicant to appear personally before the Board and furnish such additional information as may be required. For purposes of admission without examination, "practice of law" ordinarily shall not mean document review work.

5. Legal Education. The applicant must have received a J.D. degree from a law school that was approved by the American Bar Association at the time of such applicant's graduation.

6. Bar Examination History. The applicant must have failed no more than two bar examinations of any of the states or territories of the United States (including Virginia), or the District of Columbia, and must have failed no bar examination within the five years immediately preceding the application for admission to the Virginia Bar.

7. Instruction in Virginia Law. The applicant must have completed twelve (12) hours of instruction approved by the Virginia Continuing Legal Education Board on Virginia substantive and/or procedural law within six (6) months immediately prior to filing an application and must have read and be familiar with the Virginia Rules of Professional Conduct.

ASSESSMENT OF FITNESS AND PROGRESS

If an applicant provides satisfactory evidence that he or she meets all of the above threshold requirements, the Board shall thereafter determine from the evidence provided by the applicant and the results of any investigation conducted by the Board or its designee whether such applicant (i) is a person of honest demeanor and good moral character and possesses the requisite fitness to perform

the obligations and responsibilities of a practicing attorney, and (ii) has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination to demonstrate current minimum competency. The applicant has the burden to prove by clear and convincing evidence that he or she is a person of honest demeanor and good moral character and possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney and thus is a proper person to practice law in Virginia. If an applicant fails to answer any question on the Character and Fitness Questionnaire or which is otherwise propounded by the Board, or to supply any requested documentary material, the Board may find that the applicant has not met the burden of proving his or her good moral character.

The primary purposes of character and fitness screening before admission to the Virginia Bar are to assure the protection of the public and safeguard the system of justice. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of admission. The revelation or discovery of any of the following may be treated as cause for further inquiry before the Board decides whether the applicant possesses the character and fitness to practice law:

A. commission or conviction of a crime;

B. violation of the honor code of the applicant's college or university, law school, or other academic misconduct;

C. making of false statements or omissions, including failing to provide complete and accurate information concerning the applicant's past;

D. misconduct in employment;

E. other than an honorable discharge from any branch of the armed services;

F. acts involving dishonesty, fraud, deceit or misrepresentation;

G. abuse of legal process;

H. neglect of financial responsibilities;

I. neglect of professional obligations;

J. violation of an order of a court;

K. denial of admission to the bar in another jurisdiction on character and fitness grounds;

L. disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction, including pending, unresolved disciplinary complaints against the applicant;

M. commission of an act constituting the unauthorized practice of law, or unresolved complaints involving allegations of the unauthorized practice of law;

N. any other conduct which reflects adversely upon the character or fitness of an applicant.

The Board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission to the practice of law. In making this determination, the following factors will be considered in assigning weight and significance to the applicant's prior conduct:

i. age of the applicant at the time of the conduct;

ii. recency of the conduct;

iii. reliability of the information concerning the conduct;

iv. seriousness of the conduct;

v. factors underlying the conduct;

vi. cumulative effect of the conduct or information;

vii. evidence of rehabilitation;

viii. positive social contributions of the applicant since the conduct;

ix. candor of the applicant in the admissions process; and

x. materiality of any omissions or misrepresentations.

The Board's obligation to the public requires the Board to address recent mental health and chemical or psychological dependency matters, which may affect, or if untreated could affect, an applicant's ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent and professional manner. Accordingly, the Board will inquire concerning

i. mental or emotional instability, and

ii. existing and untreated drug or alcohol dependency.

The mere fact of treatment for mental health problems or chemical or psychological dependency is not, in itself, a basis on which an applicant is ordinarily denied admission in Virginia, and the Board of Bar Examiners regularly recommends the issuance of certificates to individuals who

have demonstrated personal responsibility and maturity in dealing with mental health and chemical or psychological dependency issues. The Board encourages applicants who may benefit from treatment or counseling to seek it. A license or certificate may be denied or deferred when an applicant's ability to function is impaired in a manner relevant to the practice of law at the time the admission decision is made, or when an applicant demonstrates a lack of candor by his or her responses.

In addition, an application will not be approved unless the applicant is a member in good standing of the bar of the Reciprocal Jurisdiction at the time the Board receives the character report and conducts its review of that report. If the applicant's license has ever been suspended or revoked in any jurisdiction, it must be fully reinstated and in good standing (no pending disciplinary charges).

In evaluating whether an applicant has demonstrated satisfactory progress in the practice of law for admission to the practice of law in Virginia without examination, the Board considers whether the following requirements are evident from the information supplied by the applicant and from the investigative report:

1. Knowledge of the fundamental principles of law and the ability to recall that knowledge, to reason, to analyze, and to apply one's knowledge to relevant facts;
2. The ability to communicate clearly, candidly and civilly with clients, attorneys, courts, and others;
3. The ability to exercise good judgment in conducting one's professional business;
4. The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
5. The ability to conduct oneself with respect for and in accordance with the law and the Rules of Professional Conduct;
6. The ability to avoid acts that exhibit disregard for the health, safety and welfare of others;
7. The ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;
8. The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
9. The ability to comply with deadlines and time constraints; and

10. The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.

RULES OF SUPREME COURT OF VIRGINIA
PART ONE A
FOREIGN ATTORNEYS

Rule 1A:1. Admission to Practice in This Commonwealth Without Examination

(a) *Reciprocity* — Any person who has been admitted to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia may file an application to be admitted to practice law in this Commonwealth without examination, if counsel licensed to practice law in this Commonwealth may be admitted in that jurisdiction without examination.

(b) *Application* — An applicant for admission to practice law without examination in this Commonwealth shall:

(1) File with the Secretary of the Virginia Board of Bar Examiners (the Board) an application under oath on a form furnished by the Board;

(2) Furnish a certificate, signed by the presiding judge of the court of last resort or other proper official for every jurisdiction in which the applicant is or has been licensed to practice law, stating:

(i) that the applicant is in good standing, and if not the reasons why;

(ii) the length of time the applicant has been or was licensed in that jurisdiction; and

(iii) any restriction or condition placed on the applicant's license to practice law in that jurisdiction.

(3) Certify in writing under oath that the applicant has completed 12 hours of instruction approved by the Virginia Continuing Legal Education Board on Virginia substantive and/or procedural law within the preceding six-month period;

(4) Certify in writing under oath that the applicant has read and is familiar with the Virginia Rules of Professional Conduct;

(5) Complete the Applicant's Character and Fitness Questionnaire and furnish a report of the National Conference of Bar Examiners, or such other report as the Board may require, concerning the applicant's past practice and record, and pay the fee for such report; and

(6) Pay such filing fee as may be fixed from time to time by the Board.

(c) *Board Review* — Upon receipt of a completed application, the Board will determine in accordance with the regulations issued by the Supreme Court of Virginia whether the applicant has established by satisfactory evidence that he or she:

(1) Is a proper person to practice law; and

(2) Pursuant to Code § 54.1-3931, has been admitted to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia for at least five years; and

(3) Has practiced law for at least three of the immediately preceding five years and has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination. The Board may require the applicant to appear personally before the Board, the Character and Fitness Committee (the Committee) of the Board, or a member of either the Board or the Committee, and furnish any such additional information as may be required. If the applicant's license to practice law in any other jurisdiction is subject to any restriction or condition, the Board shall determine whether the nature of such restriction or condition is inconsistent with the practice of law and, if so, shall deny the application. If the Board determines that the applicant is qualified to be admitted to the practice of law in this Commonwealth without examination, the Board shall approve the application and shall notify the applicant of its decision.

(d) *Admission* — Upon notification by the Board that the applicant's application has been approved, the applicant may be issued a certificate, pursuant to Code § 54.1-3931, to practice law in this Commonwealth if:

(1) A member of the Virginia State Bar who is qualified to practice before the Supreme Court moves the applicant's admission to practice law in this Commonwealth in open court;

(2) The motion is granted; and

(3) The applicant takes and subscribes to the oath~~s~~ required of attorneys at law.

(e) *Active Membership* — Upon payment of applicable dues~~,~~ and completion of other membership obligations set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia, the applicant shall become an active member of the Virginia State Bar. An attorney admitted pursuant to the Rule shall be deemed subject to the same membership obligations as other active members of the Virginia State Bar, and all legal services provided in Virginia by an attorney admitted pursuant to this Rule shall be deemed the practice of law and shall subject the attorney to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct. The rules set forth in Part 6, Section IV, governing how members may change their status to associate, judicial, disabled, retired or emeritus shall apply to attorneys admitted pursuant to this Rule.

(f) An attorney admitted to practice law in this Commonwealth without examination under prior versions of this Rule is no longer subject to the requirement that he or she intends to practice law full time as a member of the Virginia State Bar.

Last amended by Order dated September 14, 2018; effective December 1, 2018.

RULES OF SUPREME COURT OF VIRGINIA
PART ONE A
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Rule 1A:2. Foreign Patent and Trademark Attorneys - When Admitted to Practice in the Courts of This State Limited to Patent and Trademark Law Without Examination.

No lawyer admitted to practice limited to patent and trademark law as defined in § 54.1-3901(A) prior to July 1, 2000, pursuant to this Rule 1A:2 prior to July 1, 2000, shall hold himself or herself out as authorized to practice law generally in this Commonwealth.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 1A:3. Revocation of Certificates Issued to Attorneys Admitted Pursuant to Rule 1A:2.

Following receipt of evidence that a person who was admitted to practice pursuant to Rule 1A:2 prior to July 1, 2000, has been disbarred pursuant to Part Six of the Rules, the Supreme Court will revoke the certificate issued to that person.

Last amended by Order dated November 1, 2013; effective February 1, 2014.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 1A:4. Out-of-State Lawyers - When Allowed by Comity to Participate in a Case *Pro Hac Vice*.

1. *Introduction.* A lawyer who is not a member of the Virginia State Bar, but is currently licensed and authorized to practice law in another state, territory, or possession of the United States of America (hereinafter called an "out-of-state lawyer") may apply to appear as counsel *pro hac vice* in a particular case before any court, board or administrative agency (hereinafter called "tribunal") in the Commonwealth of Virginia upon compliance with this rule.

2. *Association of Local Counsel.* No out-of-state lawyer may appear *pro hac vice* before any tribunal in Virginia unless the out-of-state lawyer has first associated in that case with a lawyer who is an active member in good standing of the Virginia State Bar (hereinafter called "local counsel"). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the case. Local counsel shall personally appear and participate in pretrial conferences, hearings, trials, or other proceedings actually conducted before the tribunal. Local counsel associating with an out-of-state lawyer in a particular case shall accept joint responsibility with the out-of-state lawyer to the client, other parties, witnesses, other counsel and to the tribunal in that particular case. Any pleading or other paper required to be served (whether relating to discovery or otherwise) shall be invalid unless it is signed by local counsel. The tribunal in which such case is pending shall have full authority to deal with local counsel exclusively in all matters connected with the pending case. If it becomes necessary to serve notice or process in the case, any notice or process served upon local counsel shall be deemed valid as if served on the out-of-state lawyer.

3. *Procedure for applying.* Appearance *pro hac vice* in a case is subject to the discretion and approval of the tribunal where such case is pending. An out-of-state lawyer desiring to appear *pro hac vice* under this rule shall comply with the procedures set forth herein for each case in which *pro hac vice* status is requested. For good cause shown, a tribunal may permit an out-of-state lawyer to appear *pro hac vice* on a temporary basis prior to completion by the out-of-state lawyer of the application procedures set forth herein. At the time such temporary admission is granted, the tribunal shall specify a time limit within which the out-of-state lawyer must complete the application procedures, and any temporary *pro hac vice* admission shall be revoked in the event the out-of-state lawyer fails to complete the application procedure within the time limit.

(a) Notarized Application. In order to appear *pro hac vice* as counsel in any matter pending before a tribunal in the Commonwealth of Virginia, an out-of-state lawyer shall deliver to local counsel to file with the tribunal an original notarized application and a non-refundable application fee of $250.00 payable to the Clerk of the Supreme Court. *Pro hac vice* counsel must submit a notarized

application with the non-refundable application fee of $250.00 for each separate case before a tribunal. The fee shall be paid to the Clerk of the Supreme Court of Virginia. The tribunal shall file a copy of the notarized application, as well as its order granting *pro hac vice* admission in the case and the $250.00 fee, with the Clerk of the Supreme Court of Virginia. Original, notarized applications and orders granting, denying or revoking applications to appear *pro hac vice* shall be retained in a separate file containing all applications. The clerk of the tribunal shall maintain the application for a period of three years after completion of the case and all appeals.

(b) Motion to associate counsel *pro hac vice*. Local counsel shall file a motion to associate the out-of-state lawyer as counsel *pro hac vice* with the tribunal where the case is pending, together with proof of service on all parties in accordance with the Rules of the Supreme Court of Virginia. The motion of local counsel shall be accompanied by: (1) the original, notarized application of the out-of-state lawyer; (2) a proposed order granting or denying the motion; and (3) the required application fee.

(c) Entry of Order. The order granting or denying the motion to associate counsel *pro hac vice* shall be entered by the tribunal promptly and a copy of the order shall be forwarded to the Clerk of the Supreme Court. An out-of-state lawyer shall make no appearance in a case until the tribunal where the case is pending enters the order granting the motion to associate counsel *pro hac vice* unless temporary admission has been approved pursuant to this rule. The order granting *pro hac vice* status shall be valid until the case is concluded in the courts of this Commonwealth or a court revokes the *pro hac vice* admission.

4. *Notarized Application.* The notarized application required by this rule shall be on a form approved by the Supreme Court of Virginia and available at the office of the clerk of the tribunal where the case is pending.

5. *Discretion and Limitation on Number of Matters.* The grant or denial of a motion pursuant to this rule by the tribunal is discretionary. The tribunal shall deny the motion if the out-of-state lawyer has been previously admitted *pro hac vice* before any tribunal or tribunals in Virginia in twelve (12) cases within the last twelve (12) months preceding the date of the current application. In the enforcement of this limitation, the tribunal may consider whether the pending case is a related or consolidated matter for which the out-of-state lawyer has previously applied to appear *pro hac vice*. Before ruling on a *pro hac vice* motion, the tribunal shall verify with the Supreme Court of Virginia the number of cases during the preceding twelve (12) months in which the out-of-state lawyer was admitted in Virginia *pro hac vice*.

6. *Transfer of Venue and Appeal.* The out-of-state lawyer's *pro hac vice* admission shall be deemed to continue in the event the venue in the case or proceeding is transferred to another tribunal or is appealed; provided, however, that the tribunal having

jurisdiction over such transferred or appealed case shall have the discretion to revoke the authority of the out-of-state lawyer to appear *pro hac vice*.

7. *Duty to Report Status.* An out-of-state lawyer admitted *pro hac vice* shall have a continuing obligation during the period of such admission to advise the tribunal promptly of any disposition made of pending disciplinary charges or the institution of any new disciplinary proceedings or investigations. The tribunal shall advise the Clerk of the Supreme Court of Virginia if the tribunal denies or revokes the out-of-state lawyer's permission to appear *pro hac vice*.

8. *Record-keeping.* The Clerk of the Supreme Court of Virginia will maintain an electronic database necessary for the administration and enforcement of this rule.

9. *Disciplinary Jurisdiction of the Virginia State Bar.* An out-of-state lawyer admitted *pro hac vice* pursuant to this rule shall be subject to the jurisdiction of all tribunals and agencies of the Commonwealth of Virginia, and the Virginia State Bar, with respect to the laws and rules of Virginia governing the conduct and discipline of out-of-state lawyers to the same extent as an active member of the Virginia State Bar. An applicant or out-of-state lawyer admitted *pro hac vice* may be disciplined in the same manner as a member of the Virginia State Bar.

10. *In-State Services Related to Out-of-State Proceedings.* Subject to the requirements and limitations of Rule 5.5 of the Virginia Rules of Professional Conduct, an out-of-state lawyer may provide the following services without the entry of a *pro hac vice* order:

(a) In connection with a proceeding pending outside of Virginia, an out-of-state lawyer admitted to appear in that proceeding may render legal services in Virginia pertaining to or in aid of such proceeding.

(b) In connection with a case in which an out-of-state lawyer reasonably believes he is eligible for admission *pro hac vice* under this rule: (1) the out-of-state lawyer may consult in Virginia with a member of the Virginia State Bar concerning a pending or potential proceeding in Virginia; (2) the out-of-state lawyer may, at the request of a person in Virginia contemplating or involved in a proceeding in Virginia, consult with that person about that person's retention of the out-of-state lawyer in connection with that proceeding; and (3) on behalf of a client residing in Virginia or elsewhere, the out-of-state lawyer may render legal services in Virginia in preparation for a potential case to be filed in Virginia.

(c) An out-of-state lawyer may render legal services to prepare for and participate in an ADR process, regardless of where the ADR process or proceeding is expected to take place or actually takes place.

RULES OF SUPREME COURT OF VIRGINIA
PART ONE A
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Rule 1A:5. Virginia Corporate Counsel & Corporate Counsel Registrants.

Introduction

Notwithstanding any rule of this Court to the contrary, any person employed in Virginia as a lawyer exclusively for a for-profit or a non-profit corporation, association, or other business entity, including its subsidiaries and affiliates, that is not a government entity, and the business of which consists solely of lawful activities other than the practice of law or the provisions of legal services ("Employer"), for the primary purpose of providing legal services to such Employer, including one who holds himself or herself out as "in-house counsel," "corporate counsel," "general counsel," or other similar title indicating that he or she is serving as legal counsel to such Employer, shall either (i) be a regularly admitted active member of the Virginia State Bar; (ii) be issued a Corporate Counsel Certificate as provided in Part I of this rule and thereby become an active member of the Virginia State Bar with his or her practice limited as provided therein; or (iii) register with the Virginia State Bar as provided in Part II of this rule; provided, however, no person who is or has been a member of the Virginia State Bar, and whose Virginia License, at the time of application, is revoked or suspended, shall be issued a Corporate Counsel Certificate or permitted to register under this Rule.

Part I

Virginia Corporate Counsel

(a) A lawyer admitted to the practice of law in a state (other than Virginia), or territory of the United States, or the District of Columbia may apply to the Virginia Board of Bar Examiners ("Board") for a certificate as a Virginia Corporate Counsel ("Corporate Counsel Certificate") to practice law as in-house counsel in this state when he or she is employed by an Employer in Virginia.

(b) Required Evidence. Each applicant for a Corporate Counsel Certificate shall file with the Secretary of the Board an application under oath on a form furnished by the Board and shall submit evidence satisfactory to the Board that he or she:

(1) has been admitted by examination to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia;

(2) holds a Juris Doctor degree from a law school accredited by the American Bar Association at the time of the applicant's graduation;

(3) is currently an active member in good standing in at least one state or territory of the United States, or the District of Columbia, where the applicant is admitted to the practice of law, and is a member in good standing in all jurisdictions where the applicant has been admitted;

(4) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(5) possesses the good moral character and general fitness to practice law in Virginia, and has submitted all requested information, in a manner and to the extent established by the Board, including all required supporting documents;

(6) has read and is familiar with the Virginia Rules of Professional Conduct;

(7) has paid such fees as may be set by the Board to cover the costs of the character and fitness investigation and the processing of the application; and

(8) has filed an affidavit, upon a form furnished by the Board, from an officer of the applicant's Employer attesting to the fact that the applicant is employed as legal counsel to provide legal services exclusively to the Employer, including its subsidiaries and affiliates; that the nature of the applicant's employment conforms to the requirements of Part I of this rule; and that the Employer shall notify the Virginia State Bar immediately upon the termination of the applicant's employment.

(c) Provisional Certificate. During the period in which an application for a Corporate Counsel Certificate is pending with the Board until the applicant is notified that either (i) his or her application is rejected; or (ii) he or she is eligible to practice pursuant to Part I of this rule, the applicant may be employed in Virginia as Certified Corporate Counsel on a provisional basis by an Employer furnishing the affidavit required by Part I(b)(8) of this rule.

(d) Admission. Upon a finding by the Board that the applicant has complied with the requirements of Part I(b) of this rule, the Board shall notify the applicant that he or she is eligible to be issued a Corporate Counsel Certificate. After the applicant has taken and subscribed to the oath required of attorneys at law, the applicant shall be issued a Corporate Counsel Certificate, which shall permit the applicant to practice law in Virginia solely as provided in Part I(e) of this rule. The applicant may take the required oath by appearing before the Justices of the Supreme Court of Virginia in Richmond at an appointed date and time.

(e) Scope. The practice of a lawyer certified pursuant to Part I of this rule shall be limited to practice exclusively for the Employer furnishing the affidavit required by Part I(b)(8) of this rule, including its subsidiaries and affiliates, and may include appearing before a Virginia court or tribunal as counsel for the Employer. Except as specifically

authorized under Part I(f), no lawyer certified pursuant to Part I of this rule shall (i) undertake to represent any person other than his or her Employer before a Virginia court or tribunal; (ii) offer or provide legal services to any person other than his or her Employer; (iii) undertake to provide legal services to any other person through his or her Employer; or (iv) hold himself or herself out to be authorized to provide legal services or advice to any person other than his or her Employer.

(f) Pro Bono Service. Notwithstanding the restrictions set out in Part I(e) on the scope of practice, a lawyer certified pursuant to Part I of this rule may, and is encouraged to, provide voluntary *pro bono publico* services in accordance with Rule 6.1 of the Virginia Rules of Professional Conduct.

(g) Rights and Obligations. A lawyer issued a Corporate Counsel Certificate shall immediately become an active member of the Virginia State Bar, with his or her practice limited as provided in Part I(e) of this rule, and shall pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar.

(1) All legal services provided in Virginia by a lawyer certified pursuant to Part I of this rule shall be deemed the practice of law in Virginia and shall subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the Virginia State Bar shall continue whether or not the lawyer retains the Corporate Counsel Certificate and irrespective of the lawyer's presence in Virginia.

(2) A lawyer certified pursuant to Part I of this rule shall be subject to the same membership obligations as other active members of the Virginia State Bar, including Mandatory Continuing Legal Education requirements. A lawyer certified pursuant to Part I of this rule shall use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer furnishing the affidavit required by Part I(b)(~~3~~8) of this rule.

(3) A lawyer certified pursuant to Part I of this rule shall promptly report to the Virginia State Bar any change in employment, any change in bar membership status in any state, territory of the United States or the District of Columbia in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state, territory of the United States or the District of Columbia or by any federal court or agency before which the lawyer has been admitted to practice.

(4) The period of time a lawyer practices law under a Corporate Counsel Certificate issued pursuant to Part I of this rule shall be considered in determining whether the lawyer has fulfilled the active practice of law requirement for admission to practice law in Virginia without examination pursuant to Rule 1A:1 and any guidelines approved by the Supreme Court of Virginia for review of applications for admission without examination.

(h) Termination. A lawyer's authority to practice law which may be permitted pursuant to Part I of this rule shall be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part I(b)(8) of this rule is terminated, (ii) the lawyer fails to comply with any provision of Part I of this rule, or (iii) when the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States or the District of Columbia or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above shall be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of Part I of this rule, which evidence shall include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. Any lawyer whose authority to practice is suspended or terminated under (iii) above shall petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13-25. of the Rules of the Supreme Court of Virginia.

(i) The Board and the Virginia State Bar may adopt regulations as needed to implement the requirements of Part I of this rule.

Part II

Corporate Counsel Registrants

(a) Notwithstanding the requirements of Part I of this rule, any lawyer as defined in the Introduction and Part I(a) of this rule may register with the Virginia State Bar as a "Corporate Counsel Registrant." A person admitted to the practice of law only in a country other than the United States, and who is a member in good standing of a recognized legal profession in that country, the members of which are admitted to practice law as lawyers, counselors at law, or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or public authority, may also register under Part II of this rule.

(b) A registrant shall:

(1) Register with the Virginia State Bar upon a form, under oath, furnished by the Virginia State Bar, which shall include affirmations that (i) he or she will at no time undertake to represent his or her Employer or any other person, organization or business entity before a Virginia court or tribunal except as permitted pursuant to Rule 1A:4 of this Court, (ii) his or her work is limited to business and legal services related to issues confronting his or her Employer at a regional, national or international level with no specific nexus to Virginia, and (iii) he or she will not provide legal advice or services to any person other than his or her Employer.

(2) Furnish a certificate, signed by the presiding judge of the court of last resort of a jurisdiction in which the registrant is admitted to practice law, stating that the registrant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction.

(3) File an affidavit, upon a form furnished by the Virginia State Bar, from an officer of the registrant's Employer attesting to the fact that the registrant is employed as legal counsel to provide legal services exclusively to the Employer, including its subsidiaries and affiliates; that the nature of the registrant's employment conforms to the requirements of Part II of this rule; and that the Employer shall notify the Virginia State Bar immediately upon the termination of the registrant's employment.

(4) Certify that the registrant has read and is familiar with the Virginia Rules of Professional Conduct.

(5) Pay a registration fee of one hundred and fifty dollars.

(c) During the period in which a corporate counsel registration is pending with the Virginia State Bar until the registrant is notified that either (i) his or her registration is rejected; or (ii) he or she is eligible to practice pursuant to Part II of this rule, the registrant may be employed in Virginia as a Corporate Counsel Registrant on a provisional basis by the Employer furnishing the affidavit required by Part II(b)(3) of this rule.

(d) Upon completion of the requirements of Part II(b) of this rule, the registrant shall immediately be recorded by the Virginia State Bar as a Corporate Counsel Registrant. Each registrant shall pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar. No lawyer registered pursuant to Part II of this rule shall (i) undertake to represent his or her Employer or any other person or entity before a Virginia court or tribunal except as permitted for lawyers licensed and in good standing in another United States jurisdiction pursuant to Rule 1A:4 of this Court; (ii) offer or provide legal services to any person other than his or her Employer; (iii) undertake to provide legal services to another through his or her Employer; or (iv) hold himself or herself out to be authorized to provide legal services or advice to any person other than his or her Employer.

(e) The provision of legal services to his or her Employer by a lawyer registered pursuant to Part II of this rule shall be deemed the practice of law in Virginia only for purposes of subjecting the lawyer to the Virginia Rules of Professional Conduct; the jurisdiction of the disciplinary system of the Virginia State Bar; and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the Virginia State Bar shall continue whether or not the lawyer maintains the registration and irrespective of the lawyer's presence in Virginia.

(f) A lawyer registered pursuant to Part II of this rule shall use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer furnishing the affidavit required by Part II(b)(3) of this rule.

(g) A lawyer registered pursuant to Part II of this rule shall promptly report to the Virginia State Bar any change in employment, any change in bar membership status in any state, territory of the United States, the District of Columbia, or other country in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state, territory of the United States, the District of Columbia, or other country, or by any federal court or agency before which the lawyer has been admitted to practice.

(h) A lawyer's authority to provide legal services which may be permitted pursuant to Part II of this rule shall be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part II(b)(3) of this rule is terminated, (ii) the lawyer fails to comply with any provision of Part II of this rule, or (iii) the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States, the District of Columbia, other country, or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above shall be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of Part II of this rule, which shall include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. Any lawyer whose authority to practice is suspended or terminated pursuant to (iii) above, shall petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13-25. of the Rules of the Supreme Court of Virginia.

(i) No time spent as Corporate Counsel Registrant shall be considered in determining eligibility for admission to the Virginia Bar without examination.

(j) The Virginia State Bar may adopt regulations as needed to implement the requirements of Part II of this rule.

Last amended by Order dated November 1, 2019; effective January 1, 2020.

RULES OF SUPREME COURT OF VIRGINIA
PART ONE A
FOREIGN ATTORNEYS

Rule 1A:6. Foreign Attorneys - Registered Military Legal Assistance Attorneys.

(a) A lawyer admitted to the practice of law in a state or territory of the United States, other than Virginia, who is serving in or employed by the armed services and is authorized to provide legal assistance pursuant to 10 U.S. Code § 1044, may apply to the Board of Bar Examiners for a certificate as a Registered Military Legal Assistance Attorney in Virginia ("Military Legal Assistance Attorney Certificate") to represent clients eligible for legal assistance in the courts and tribunals of this Commonwealth while the lawyer is employed, stationed, or assigned within Virginia.

(b) Each applicant for a Military Legal Assistance Attorney Certificate shall:

(1) File with the secretary of the Virginia Board of Bar Examiners an application, under oath, upon a form furnished by the Board.

(2) Furnish a certificate, signed by the presiding judge of the court of last resort, or other appropriate official of the jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction.

(3) File an affidavit, upon a form furnished by the Board, from commanding officer, staff judge advocate or chief legal officer of the military base in Virginia where the applicant is employed, stationed, or assigned, attesting to the fact that the applicant is serving as a lawyer to provide legal services exclusively for the military, that the nature of the applicant's employment or service conforms to the requirements of this rule, and that the commanding officer, staff judge advocate or chief legal officer, or his or her successor, shall notify the Virginia State Bar immediately upon the termination of the applicant's employment or service at the military base.

(c) Upon a finding by the Board of Bar Examiners that the applicant has produced evidence sufficient to satisfy the Board that the applicant is a person of honest demeanor and good moral character who possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law and satisfies all other requirements of this rule, the Board shall notify the applicant that he or she is eligible to be issued a Military Legal Assistance Attorney Certificate. After the applicant has taken and subscribed to the oaths required of attorneys at law, the Board shall issue to the applicant a Military Legal Assistance Attorney Certificate, which shall entitle the applicant to represent clients eligible for legal assistance in the courts and tribunals of this Commonwealth solely as provided in this rule.

(d) Each lawyer issued a Military Legal Assistance Attorney Certificate shall immediately register as an active member of the Virginia State Bar, with his or her practice limited as provided in this rule, and pay to the Virginia State Bar the same dues required of regularly admitted active members. (The requirement to pay dues shall be waived for a lawyer during the first two years immediately following the initial issue of a Military Legal Assistance Attorney Certificate to that lawyer.)

(e) The practice of a lawyer registered under this rule shall be limited within this Commonwealth to practice exclusively pursuant to the laws, rules, and regulations governing the military services, and may include appearing before a court or tribunal of this Commonwealth as counsel for a client eligible for legal assistance on:

(1) Adoptions,

(2) Guardianships,

(3) Name changes,

(4) Divorces,

(5) Paternity,

(6) Child custody and visitation, and child and spousal support,

(7) Landlord-tenant disputes on behalf of tenants,

(8) Consumer advocacy cases involving alleged breaches of contracts or warranties, repossession, or fraud,

(9) Garnishment defense,

(10) Probate,

(11) Enforcement of rights under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S. Code App. §§ 501-548, 560-593),

(12) Enforcement of rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S. Code §§ 4301-4333), and

(13) Such other cases within the discretion of the court or tribunal before which the matter is pending.

(f) Representation in proceedings before courts or tribunals of this Commonwealth shall be limited to low-income legal assistance clients for whom hiring a lawyer in private practice would entail a substantial financial hardship to themselves or their families. All pleadings filed by a legal assistance attorney will cite this rule, include

the name, complete address, and telephone number of the military legal office representing the client and the name, rank or grade, and armed service of the lawyer registered under this rule providing representation.

(g) No lawyer registered under this rule shall (i) undertake to represent any person other than an eligible legal assistance client before a court or tribunal of this Commonwealth, (ii) offer to provide legal services in this Commonwealth to any person other than as authorized by his or her military service, (iii) undertake to provide legal services in this Commonwealth to any person other than as authorized by his or her military service, or (iv) hold himself or herself out in this Commonwealth to be authorized to provide legal services to any person other than as authorized by his or her military service.

(h) Representing clients eligible for legal assistance in the courts or tribunals of this Commonwealth under this rule shall be deemed the practice of law and shall subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and the Rules of Procedure for Disciplining Lawyers (Rules of Court, Pt. 6, Section IV, Paragraph 13). Jurisdiction of the Virginia State Bar shall continue whether or not the lawyer retains the Military Legal Assistance Attorney Certificate and irrespective of the lawyer's presence in Virginia.

(i) Each person registered with the Virginia State Bar as an active member on the basis of a Military Legal Assistance Attorney Certificate shall be subject to the same membership obligations as other active members, including completion of the required Professionalism Course and annual Mandatory Continuing Education requirements. A lawyer registered under this rule shall use as his or her address of record with the Virginia State Bar the military address in Virginia of the commanding officer, staff judge advocate or chief legal officer which filed the affidavit on the lawyer's behalf.

(j) Each person issued a Military Legal Assistance Attorney Certificate shall promptly report to the Virginia State Bar any change in employment or military service, any change in bar membership status in any state or territory of the United States, or the District of Columbia where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or the District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.

(k) The limited authority to practice law which may be granted under this rule shall be automatically terminated when (i) the lawyer is no longer employed, stationed, or assigned at the military base in Virginia from which affidavit required by this rule was filed, (ii) the lawyer has been admitted to the practice of law in this state by examination or pursuant to any other provision of part 1A of these Rules, (iii) the lawyer fails to comply with any provision of this rule, (iv) the lawyer fails to maintain current good standing as an active member of a bar in at least one state or territory of the United States, other than Virginia, or the District of Columbia, or (v) when suspended or disbarred for disciplinary reasons in any state or territory of the United States or the

District of Columbia or by any federal court or agency where the lawyer has been admitted to the practice of law. If a lawyer is no longer employed, stationed, or assigned at the military base in Virginia from which affidavit required by this rule was filed, but the lawyer, within six months after the last day of employment or service, is re-employed by, or militarily reassigned to, the same military base or by another military base in Virginia filing the affidavit required by this rule, the Military Legal Assistance Attorney Certificate shall be reinstated upon evidence satisfactory to the Board that the lawyer remains in full compliance with all requirements of this rule.

The period of time a lawyer practices law full time on the basis of a Military Legal Assistance Attorney Certificate issued pursuant to this rule shall be considered in determining whether such lawyer has fulfilled the requirements for admission to practice law in this Commonwealth without examination under Rule 1A:1 and any guidelines approved by the Supreme Court of Virginia for review of applications for admission without examination.

RULES OF SUPREME COURT OF VIRGINIA
PART ONE A
FOREIGN ATTORNEYS

Rule 1A:7. Certification of Foreign Legal Consultants.

(a) *General Requirements*. A person admitted to practice law by the duly constituted and authorized professional body or governmental authority of any foreign nation may apply to the Virginia Board of Bar Examiners ("Board") for a certificate as a foreign legal consultant, provided the applicant:

(1) is a member in good standing of a recognized legal profession in a foreign nation, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a governmental authority;

(2) for at least five of the seven years immediately preceding his or her application has been a member in good standing of such legal profession and has actually been engaged in the authorized practice of law, substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the said foreign nation;

(3) possesses the good moral character and general fitness requisite for a member of the bar of this Commonwealth;

(4) is at least twenty-six years of age; and

(5) intends to practice as a foreign legal consultant in this Commonwealth and maintain an office in this Commonwealth for that purpose.

(b) *Proof Required.* An applicant under this rule shall file with the secretary of the Board:

(1) an application for a foreign legal consultant certificate, on a form furnished by the Board,

(2) a certificate, for each foreign nation in which the applicant is admitted to practice, from the professional body or governmental authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to his or her good standing as an attorney or counselor at law or the equivalent;

(3) a letter of recommendation, for each foreign nation in which the applicant is admitted to practice, from one of the members of the executive body of such professional body or governmental authority or from one of the judges of the highest law court or court of original jurisdiction of such foreign country;

(4) a duly authenticated English translation of each certificate and letter if, in either case, it is not in English;

(5) a copy or summary of the law, regulations, and customs of the foreign country that describes the opportunity afforded to a member of the Virginia State Bar ("the Bar") to establish an office to provide legal services to clients in such foreign country, together with an authenticated English translation if it is not in English;

(6) the requisite documentation establishing the applicant's compliance with the immigration laws of the United States; and

(7) such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of paragraph (a) of this rule as the Board may require.

(c) *Reciprocal Treatment of Members of the Bar of this Commonwealth.* In considering whether to certify an applicant to practice as a foreign legal consultant, the Board may in its discretion take into account whether a member of the Bar would have a reasonable and practical opportunity to establish an office and give legal advice to clients in the applicant's country of admission. Any member of the Bar who is seeking or has sought to establish an office or give advice in that country may request the Board to consider the matter, or the Board may do so sua sponte.

(d) *Scope of Practice.* A person certified to practice as foreign legal consultant under this Rule may render legal services in the Commonwealth only with regard to matters involving the law of foreign nation(s) in which the person is admitted to practice or international law. For purposes of this paragraph, the term "international law" means a body of laws, rules or legal principles that are based on custom, treaties or legislation and that control or affect (1) the rights and duties of nations in relation to other nations or their citizens, or (2) the rights and obligations pertaining to international transactions.

The practice permitted under this rule does not authorize the foreign legal consultant to appear in court.

(e) *Rights and Obligations.* Subject to the scope of practice limitations set forth in paragraph (d) of this rule, a person certified as a foreign legal consultant under this rule shall be entitled and subject to:

(1) the rights and obligations contained in the Virginia Rules of Professional Conduct as set forth in Part 6, Section II of the Rules of the Supreme Court of Virginia; and the procedure for disciplining attorneys as set forth in Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia

(2) the rights and obligations of a member of the Bar with respect to:

(i) affiliation in the same law firm with one or more members of the bar of this Commonwealth, including by:

(A) employing one or more members of the Bar;

(B) being employed by one or more members of the Bar or by any partnership or other limited liability entity authorized to practice law pursuant to Part 6, Section IV, Paragraph 14 of the Rules of the Supreme Court of Virginia, which such entity includes an active member of the Bar or which maintains an office in this Commonwealth;

(C) being a director, partner, member, manager or shareholder in any partnership or other professional limited liability entity authorized by Part 6, Section IV, Paragraph 14 to practice law in this Commonwealth which includes an active member of the Bar or which maintains an office in this Commonwealth;

(ii) employment as in-house counsel under Part II of Rule 1A:5; and

(iii) attorney-client privilege, work-product privilege and similar professional privileges.

(3) No time spent practicing as a foreign legal consultant shall be considered in determining eligibility for admission to the Virginia bar without examination.

(f) *Disciplinary Provisions.* A person certified to practice as a foreign legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as any member of the Bar and to this end:

(1) Every person certified to practice as a foreign legal consultant under these Rules:

(i) shall be subject to regulation by the Bar and to admonition, reprimand, suspension, removal or revocation of his or her certificate to practice in accordance with the rules of procedure for disciplinary proceedings set forth in Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia; and

(ii) shall execute and file with the Bar, in such form and manner as the Bar may prescribe:

(A) his or her commitment to observe the Virginia Rules of Professional Conduct and any other rules of court governing members of the bar to the extent they may be applicable to the legal services authorized under paragraph (d) of this Rule;

(B) a written undertaking to notify the Bar of any change in such person's good standing as a member of any foreign legal profession referred to in paragraph (a)(1) of this rule and of any final action of any professional body or governmental authority referred to in paragraph (b)(2) of this rule imposing any disciplinary censure, suspension, or other sanction upon such person; and

(C) a duly acknowledged instrument, in writing, setting forth his or her address in this Commonwealth which shall be both his or her address of record with the Bar and such person's actual place of business for rendering services authorized by this rule. Such address shall be one where process can be served and the foreign legal consultant shall have a duty to promptly notify the Membership Department of the Bar in writing of any changes in his or her address of record.

(g) *Application and Renewal Fees.* An applicant for a certificate as a foreign legal consultant under this rule shall pay to the Virginia Board of Bar Examiners the application fee and costs as may be fixed from time to time by the Board. A person certified as a foreign legal consultant shall pay an annual fee to the Virginia State Bar which shall also be fixed by the Supreme Court of Virginia. A person certified as a foreign legal consultant who fails to complete and file the renewal form supplied by the Bar or pay the annual fee shall have his or her certificate as a foreign legal consultant administratively suspended in accordance with the procedures set out in Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia.

(h) *Revocation of Certificate for Non-Compliance.* In the event that the Bar determines that a person certified as a foreign legal consultant under this rule no longer meets the requirements under this rule, it shall revoke the certificate granted to such person hereunder.

(i) *Reinstatement.* Any foreign legal consultant whose authority to practice is suspended shall be reinstated upon evidence satisfactory to the Bar that such person is in full compliance with this rule; however, a reinstatement of a foreign legal consultant's certificate following a suspension for non-compliance with paragraph (g) of this rule shall be governed by Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia; and reinstatement of a foreign legal consultant's certificate following a disciplinary suspension or revocation shall be governed by Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia.

(j) *Admission to Bar*. In the event that a person certified as a foreign legal consultant under this rule is subsequently admitted as a member of the Bar under the provisions of the rules governing such admission, the certificate granted to such person hereunder shall be deemed superseded by the admission of such person to the Bar.

(k) *Regulations.* The Bar and the Board may adopt regulations as needed to implement their respective responsibilities under this rule.

(l) *Effective Date*. This rule shall become effective on January 1, 2009.

RULES OF SUPREME COURT OF VIRGINIA
PART ONE A
FOREIGN ATTORNEYS

Rule 1A:8. Military Spouse Provisional Admission.

1. Requirements. A person who meets all requirements of subparagraphs (a) through (m) of paragraph 2 of this Rule 1A:8 may, upon motion, be provisionally admitted to the practice of law in Virginia.

2. Required Evidence. The applicant for provisional admission shall submit evidence satisfactory to the Virginia Board of Bar Examiners (the "Board") that he or she:

(a) has been admitted by examination to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia;

(b) holds a Juris Doctor degree from a law school accredited by the American Bar Association at the time of such applicant's graduation;

(c) has achieved a passing score on the Multistate Professional Responsibility Examination as it is established in Virginia at the time of application;

(d) is currently an active member in good standing in at least one state or territory of the United States, or the District of Columbia, where the applicant is admitted to the unrestricted practice of law, and is a member in good standing in all jurisdictions where the applicant has been admitted;

(e) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(f) possesses the good character and fitness to practice law in Virginia;

(g) is the dependent spouse of an active duty service member of the United States Uniformed Services as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) and that the service member is on military

orders stationed in the Commonwealth of Virginia or the National Capitol region, as defined by the Department of Defense;

(h) is physically residing in Virginia;

(i) has submitted all requested character investigation information, in a manner and to the extent established by the Board, including all required supporting documents;

(j) has never failed the Virginia Bar Examination;

(k) has completed twelve (12) hours of instruction approved by the Virginia Continuing Legal Education Board on Virginia substantive and/or procedural law, including four (4) hours of ethics, within the six-month period immediately preceding or following the filing of the applicant's application;

(l) certifies that he or she has read and is familiar with the Virginia Rules of Professional Conduct; and

(m) has paid such fees as may be set by the Board to cover the costs of the character and fitness investigation and the processing of the application.

3. Issuance, Admission, Duration and Renewal.

(a) *Issuance.* - The Board having certified that all prerequisites have been complied with, the applicant for provisional admission shall, upon payment of applicable dues and completion of the other membership obligations set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia, become an active member of the Virginia State Bar. An attorney provisionally admitted pursuant to this Rule shall be subject to the same membership obligations as other active members of the Virginia State Bar, and all legal services provided in Virginia by a lawyer admitted pursuant to this Rule shall be deemed the practice of law and shall subject the attorney to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct.

(b) *Admission*. - Upon notification by the Board that the applicant's application has been approved, the applicant shall take and subscribe to the oath required of attorneys at law. The applicant may take the required oath by appearing before the Justices of the Supreme Court of Virginia in Richmond at an

appointed date and time or by appearing before a judge of a court of record in Virginia. Once the attorney has taken the oath, it shall remain effective until the attorney's provisional admission is terminated pursuant to paragraph 5 of this Rule.

(c) *Duration*. - A provisional admission may be renewed by July 31 of each year, upon filing with the Virginia State Bar (i) a written request for renewal, (ii) an affidavit by supervising Local Counsel, who certifies to the provisionally admitted attorney's continuing employment by or association with Local Counsel and to Local Counsel's adherence to the supervision requirements as provided under this Rule, and (iii) compliance with the membership obligations of Part 6, Section IV of the Rules of the Supreme Court of Virginia applicable to active members of the Virginia State Bar.

(d) *Renewal.* - When the active duty service member is assigned to an unaccompanied or remote follow-on assignment and the attorney continues to physically reside in Virginia, the provisional admission may be renewed until that unaccompanied or remote assignment ends, provided that the attorney complies with the other requirements for renewal.

4. Supervision of Local Counsel. A person provisionally admitted to practice under this Rule may engage in the practice of law in this jurisdiction only under the supervision and direction of Local Counsel.

(a) As used in this Rule, Local Counsel means an active member in good standing of the Virginia State Bar, whose office is in Virginia.

(b) Local Counsel must provide to the Virginia State Bar his or her Virginia State Bar number, physical office address, mailing address, email address, telephone number, and written consent to serve as Local Counsel, on the form provided by the Board.

(c) Unless specifically excused from attendance by the trial judge, Local Counsel shall personally appear with the provisionally admitted attorney on all matters before the court.

(d) Local Counsel will be responsible to the courts, the Virginia State

Bar, the Supreme Court of Virginia, and the client for all services provided by the provisionally admitted attorney pursuant to this Rule.

(e) Local Counsel is obligated to notify the Executive Director of the Virginia State Bar when the supervising relationship between the provisionally admitted attorney and Local Counsel is terminated.

5. Events of Termination. An attorney's provisional admission to practice law pursuant to this Rule shall immediately terminate and the attorney shall immediately cease all activities under this Rule upon the occurrence of any of the following:

(a) The spouse's discharge, separation or retirement from active duty in the United States Uniformed Services, or the spouse's no longer being on military orders stationed in the Commonwealth of Virginia or the National Capitol region as defined by the Department of Defense, except as provided in section 3(c) of this Rule;

(b) Failure to meet the annual licensing requirements of an active member of the Virginia State Bar;

(c) The absence of supervision by Local Counsel;

(d) The attorney no longer physically residing within the Commonwealth of Virginia;

(e) The attorney ceasing to be a dependent as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) on the spouse's official military orders;

(f) The attorney being admitted to practice law in this Commonwealth under an admissions rule other than that of Provisional Admission;

(g) The attorney receiving a failing score on the Virginia Bar Examination;

(h) The attorney being suspended from the practice of law in Virginia; or

(i) Request by the attorney.

6. Notices Required.

(a) An attorney provisionally admitted under this Rule shall provide written notice to the Virginia State Bar of any Event of Termination within thirty (30) days of the occurrence thereof.

(b) Within thirty (30) days of the occurrence of any Event of Termination, the attorney shall:

(i) provide written notice to all his or her clients that he or she can no longer represent such clients and furnish proof to the Executive Director of the Virginia State Bar within sixty (60) days of such notification; and

(ii) file in each matter pending before any court or tribunal in this Commonwealth a notice that the attorney will no longer be involved in the matter, which shall include the substitution of the Local Counsel, or such other attorney licensed to practice law in Virginia selected by the client, as counsel in the place of the provisionally admitted attorney.

7. Benefits and Responsibilities. An attorney provisionally admitted under this Rule shall be entitled to the benefits and be subject to all responsibilities and obligations of active members of the Virginia State Bar, and shall be subject to the jurisdiction of the courts and agencies of the Commonwealth of Virginia and to the Virginia State Bar with respect to the laws and rules of this Commonwealth governing the conduct and discipline of attorneys to the same extent as an active member of the Virginia State Bar.

Promulgated by Order dated May 16, 2014; last amended by Order dated February 27, 2015, effective immediately.

RULES OF SUPREME COURT OF VIRGINIA
PART ONE A
FOREIGN ATTORNEYS
APPENDIX

1. Application to Appear Pro Hac Vice Before A Virginia Tribunal.

[Note: *the following form may be submitted electronically pursuant to Rule 1:17 and related provisions of Virginia law*.]

I, ..., the undersigned attorney, hereby apply
NAME OF APPLICANT
to this tribunal of the Commonwealth of Virginia, ..., to appear as
NAME OF TRIBUNAL
Counsel pro hac vice pursuant to Rule 1A:4 of the Rules of the Supreme Court of Virginia.
I further state the following:

1. The case in which I seek to appear pro hac vice is styled

....., has docket number ..... and is pending in .....

This case [ ] is [ ] is not a related or consolidated matter for which I have

previously applied to appear pro hac vice.

2. .....
APPLICANT'S RESIDENCE ADDRESS

.....
APPLICANT'S OFFICE ADDRESS

3. .....
NAME OF LOCAL COUNSEL VSB NUMBER

.....
STREET ADDRESS

.....

.....
FAX NUMBER EMAIL ADDRESS TELEPHONE NUMBER

4. .....
NAME OF PARTY TO CASE

.....
NAME AND ADDRESS OF COUNSEL FOR PARTY

.....
NAME OF PARTY TO CASE

.....
NAME AND ADDRESS OF COUNSEL FOR PARTY

.....
NAME OF PARTY TO CASE

.....
NAME AND ADDRESS OF COUNSEL FOR PARTY

[ ] Additional Sheet attached.

5. .....

COURT TO WHICH APPLICANT IS ADMITTED DATE OF ADMISSION

.....

COURT TO WHICH APPLICANT IS ADMITTED DATE OF ADMISSION

[ ] Additional Sheet attached.

6. I am a member in good standing and authorized to appear in the courts identified in paragraph 5.

7. I am not currently disbarred or suspended in any state, territory, United States possession or tribunal.

8. I [ ] am not [ ] am subject to a pending disciplinary investigation or proceeding by any court, agency or organization authorized to discipline me as a lawyer. (If such an investigation or proceeding is pending, attach to this application and incorporate by reference a statement specifying the jurisdiction, the nature of the matter under investigation or being prosecuted, and the name and address of the disciplinary authority investigating or prosecuting the matter.)

9. Within the past three (3) years, I [ ] have not [ ] have been disciplined by any court, agency or organization authorized to discipline me as a lawyer. (If so, attach to this application and incorporate by reference a statement specifying the name of the court, agency or organization imposing discipline, the date(s) of such discipline, the nature of the complaint or charge on which discipline was imposed, and the sanction.)

10. Within the last twelve (12) months preceding this application, I [ ] have not [ ] have sought admission pro hac vice under this rule. (If so, attach to this application and incorporate by reference a copy of the order of the tribunal granting or denying your previous application. Such order(s) must include the name of the tribunal, the style of case and the docket number for the case(s) in which you filed an application and whether the application was granted or denied.)

[ ] Order(s) attached and incorporated by reference.

11. I hereby consent to the jurisdiction of the courts and agencies of the Commonwealth of Virginia and of the Virginia State Bar and I further consent to service of process at any address(es) required by this Rule.

12. I agree to review and comply with appropriate rules of procedure as required in the case for which I am applying to appear pro hac vice.

13. I understand and I agree to comply with the rules and standards of professional conduct required of members of the Virginia State Bar.

....

DATE SIGNATURE OF APPLICANT

Commonwealth/State of .....

[ ] City [ ] County of .....

Subscribed and sworn to/affirmed before me on this date by the above-named person.

....

DATE NOTARY PUBLIC

My commission expires: .....

Last amended by Order dated March 1, 2011; effective May 2, 2011.

This Form added to the Rules by Order dated June 10, 2011; effective June 10, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART ONE A
FOREIGN ATTORNEYS
APPENDIX

2. Motion and Oath for Admission as Corporate Counsel.

ADMISSION ON MOTION
(CORPORATE COUNSEL)

MAY IT PLEASE THE COURT, I WISH TO PRESENT

_____,

A MEMBER OF THE BAR OF THE STATE OF _____

(OR THE DISTRICT OF COLUMBIA), WHO HAS FILED AN

APPLICATION TO BE ADMITTED TO PRACTICE LAW IN THE

COMMONWEALTH OF VIRGINIA AS CORPORATE COUNSEL.

_____ HAS BEEN

NOTIFIED THAT HIS/HER APPLICATION HAS BEEN APPROVED,

AND I NOW MOVE HIS/HER ADMISSION AS A CORPORATE

COUNSEL TO THE BAR OF THE SUPREME COURT OF VIRGINIA.

_____
Signature of Sponsor

_____ #_____
Printed Name of Sponsor Virginia Bar Number

ATTORNEY OATH (CORPORATE COUNSEL)

I do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the Commonwealth of Virginia, and that I will faithfully, honestly, professionally, and courteously demean myself in the practice of law and execute my office of attorney at law to the best of my ability, so help me God.

(Print Full Name)_____

(Signature)_____

(Phone and email)_____

_____
Signature of Judge Administering Oath

_____
Printed Name of Judge Administering Oath

_____
Name of Court

_____
Date

A Copy,

Teste:

Clerk

RULES OF SUPREME COURT OF VIRGINIA
PART TWO

VIRGINIA RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 2:101 TITLE

These Rules shall be known as Virginia Rules of Evidence.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO

VIRGINIA RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 2:102 SCOPE AND CONSTRUCTION OF THESE RULES

These Rules state the law of evidence in Virginia. They are adopted to implement established principles under the common law and not to change any established case law rendered prior to the adoption of the Rules. Common law case authority, whether decided before or after the effective date of the Rules of Evidence, may be argued to the courts and considered in interpreting and applying the Rules of Evidence. As to matters not covered by these Rules, the existing law remains in effect. Where no rule is set out on a particular topic, adoption of the Rules shall have no effect on current law or practice on that topic.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO

VIRGINIA RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 2:103 OBJECTIONS AND PROFFERS

(a) *Admission or exclusion of evidence*. Error may not be predicated upon admission or exclusion of evidence, unless:

(1) As to evidence admitted, a contemporaneous objection is stated with reasonable certainty as required in Rule 5:25 and 5A:18 or in any continuing objection on the record to a related series of questions, answers or exhibits if permitted by the trial court in order to avoid the necessity of repetitious objections; or

(2) As to evidence excluded, the substance of the evidence was made known to the court by proffer.

(b) *Hearing of jury*. In jury cases, proceedings shall be conducted so as to prevent inadmissible evidence from being made known to the jury.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 2:104 PRELIMINARY DETERMINATIONS

(a) *Determinations made by the court*. The qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be decided by the court, subject to the provisions of subdivision (b).

(b) *Relevancy conditioned on proof of connecting facts*. Whenever the relevancy of evidence depends upon proof of connecting facts, the court may admit the evidence upon or, in the court's discretion, subject to, the introduction of proof sufficient to support a finding of the connecting facts.

(c) *Hearing of jury***.** Hearings on the admissibility of confessions in all criminal cases shall be conducted out of the hearing of the jury. Hearings on other preliminary matters in all cases shall be so conducted whenever a statute, rule, case law or the interests of justice require, or when an accused is a witness and so requests.

(d) *Testimony by accused***.** The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) *Evidence of weight or credibility***.** This rule does not limit the right of any party to introduce before the jury evidence relevant to weight or credibility.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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VIRGINIA RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 2:105 PROOF ADMITTED FOR LIMITED PURPOSES

When evidence is admissible as to one party or for one purpose but not admissible as to another party or for another purpose, the court upon motion shall restrict such evidence to its proper scope and instruct the jury accordingly. The court may give such limiting instructions sua sponte, to which any party may object.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 2:106 REMAINDER OF A WRITING OR RECORDED STATEMENT (Rule 2:106(b) derived from Code § 8.01-417.1)

(a) *Related Portions of a Writing in Civil and Criminal Cases*. When part of a writing or recorded statement is introduced by a party, upon motion by another party the court may require the offering party to introduce any other part of the writing or recorded statement which ought in fairness to be considered contemporaneously with it, unless such additional portions are inadmissible under the Rules of Evidence.

(b) *Lengthy Documents in Civil cases*. To expedite trials in civil cases, upon timely motion, the court may permit the reading to the jury, or the introduction into evidence, of relevant portions of lengthy and complex documents without the necessity of having the jury hear or receive the entire document. The court, in its discretion, may permit the entire document to be received by the jury, or may order the parties to edit from any such document admitted into evidence information that is irrelevant to the proceedings.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE II. JUDICIAL NOTICE

Rule 2:201 JUDICIAL NOTICE OF ADJUDICATIVE FACTS

(a) *Notice*. A court may take judicial notice of a factual matter not subject to reasonable dispute in that it is either (1) common knowledge or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(b) *Time of taking notice*. Judicial notice may be taken at any stage of the proceeding.

(c) *Opportunity to be heard*. A party is entitled upon timely motion to an opportunity to be heard as to the propriety of taking judicial notice.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE II. JUDICIAL NOTICE

Rule 2:202 JUDICIAL NOTICE OF LAW (derived from Code §§ 8.01-386 and 19.2-265.2)

(a) *Notice To Be Taken*. Whenever, in any civil or criminal case it becomes necessary to ascertain what the law, statutory, administrative, or otherwise, of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same, or under an applicable treaty or international convention is, or was, at any time, the court shall take judicial notice thereof whether specially pleaded or not.

(b) *Sources of Information*. The court, in taking such notice, shall in a criminal case and may in a civil case consult any book, record, register, journal, or other official document or publication purporting to contain, state, or explain such law, and may consider any evidence or other information or argument that is offered on the subject.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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VIRGINIA RULES OF EVIDENCE

ARTICLE II. JUDICIAL NOTICE

Rule 2:203 JUDICIAL NOTICE OF OFFICIAL PUBLICATIONS (derived from Code § 8.01-388)

The court shall take judicial notice of the contents of all official publications of the Commonwealth and its political subdivisions and agencies required to be published pursuant to the laws thereof, and of all such official publications of other states, of the United States, of other countries, and of the political subdivisions and agencies of each published within those jurisdictions pursuant to the laws thereof.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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VIRGINIA RULES OF EVIDENCE

ARTICLE III. PRESUMPTIONS

Rule 2:301 PRESUMPTIONS IN GENERAL IN CIVIL ACTIONS AND PROCEEDINGS

Unless otherwise provided by Virginia common law or statute, in a civil action a rebuttable presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof, which remains throughout the trial upon the party on whom it originally rested.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE III. PRESUMPTIONS

Rule 2:302 APPLICABILITY OF FEDERAL LAW IN CIVIL ACTIONS AND PROCEEDINGS

The effect of a presumption is determined by federal law in any civil action or proceeding as to which federal law supplies the rule of decision.

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RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:401 DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact in issue more probable or less probable than it would be without the evidence.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:402 RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

(a) *General Principle*. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of Virginia, statute, Rules of the Supreme Court of Virginia, or other evidentiary principles. Evidence that is not relevant is not admissible.

(b) *Results of Polygraph Examinations*. The results of polygraph examinations are not admissible.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:403 EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, MISLEADING THE JURY, OR NEEDLESS PRESENTATION OF CUMULATIVE EVIDENCE

Relevant evidence may be excluded if:

(a) the probative value of the evidence is substantially outweighed by (i) the danger of unfair prejudice, or (ii) its likelihood of confusing or misleading the trier of fact; or

(b) the evidence is needlessly cumulative.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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VIRGINIA RULES OF EVIDENCE

ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:404 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) *Character evidence generally*. Evidence of a person's character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character trait of accused. Evidence of a pertinent character trait of the accused offered by the accused, or by the prosecution to rebut the same;

(2) Character trait of victim. Except as provided in Rule 2:412, evidence of a pertinent character trait or acts of violence by the victim of the crime offered by an accused who has adduced evidence of self defense, or by the prosecution (i) to rebut defense evidence, or (ii) in a criminal case when relevant as circumstantial evidence to establish the death of the victim when other evidence is unavailable; or

(3) Character trait of witness. Evidence of the character trait of a witness, as provided in Rules 2:607, 2:608, and 2:609.

(b) *Other crimes, wrongs, or acts*. Except as provided in Rule 2:413 or by statute, evidence of other crimes, wrongs, or acts is generally not admissible to prove the character trait of a person in order to show that the person acted in conformity therewith. However, if the legitimate probative value of such proof outweighs its incidental prejudice, such evidence is admissible if it tends to prove any relevant fact pertaining to the offense charged, such as where it is relevant to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, accident, or if they are part of a common scheme or plan.

Adopted and promulgated by Order dated June 1, 2012; last amended July 1, 2014.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:405 METHODS OF PROVING CHARACTER TRAITS

(a) *Reputation proof.* Where evidence of a person's character trait is admissible under these Rules, proof may be made by testimony as to reputation; but a witness may not give reputation testimony except upon personal knowledge of the reputation. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) *Specific instances of conduct*. In cases in which a character trait of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of conduct of such person on direct or cross-examination.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:406 HABIT AND ROUTINE PRACTICE IN CIVIL CASES (derived from Code § 8.01-397.1)

(a) *Admissibility*. In a civil case, evidence of a person's habit or of an organization's routine practice, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion conformed with the habit or routine practice. Evidence of prior conduct may be relevant to rebut evidence of habit or routine practice.

(b) *Habit and routine practice defined*. A "habit" is a person's regular response to repeated specific situations. A "routine practice" is a regular course of conduct of a group of persons or an organization in response to repeated specific situations.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:407 SUBSEQUENT REMEDIAL MEASURES (derived from Code § 8.01-418.1)

When, after the occurrence of an event, measures are taken which, if taken prior to the event, would have made the event less likely to occur, evidence of such subsequent measures is not admissible to prove negligence or culpable conduct as a cause of the occurrence of the event; provided that evidence of subsequent measures shall not be required to be excluded when offered for another purpose for which it may be admissible, including, but not limited to, proof of ownership, control, feasibility of precautionary measures if controverted, or for impeachment.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:408 COMPROMISE OFFERS AND CONDUCT OR STATEMENTS DURING NEGOTIATIONS.

(a) *Prohibited Uses.* Evidence of the following is not admissible on behalf of any party in a civil case – either to prove or disprove the validity or amount of a disputed claim, or to impeach by a prior inconsistent statement or by contradiction:

(1) furnishing, promising, or offering – or accepting, promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or any statements made during compromise negotiations about the claim.

(b) *Exceptions.* The court may admit such evidence for another purpose, such as proving a witness's bias or prejudice or negating a contention of undue delay.

(c) *Pre-existing documents or physical evidence.* Otherwise admissible evidence that existed prior to the commencement of compromise negotiations, including pre-existing documents or electronic communications, is not excludable under this Rule merely because such evidence was disclosed, produced, or discussed by a party during such negotiations.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.
Last updated by Order dated October 30, 2015; effective July 1, 2016.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:409 EVIDENCE OF ABUSE ADMISSIBLE IN CERTAIN CRIMINAL TRIALS
(derived from Code § 19.2-270.6)

In any criminal prosecution alleging personal injury or death, or the attempt to cause personal injury or death, relevant evidence of repeated physical and psychological abuse of the accused by the victim shall be admissible, subject to the general rules of evidence.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:410 WITHDRAWN PLEAS, OFFERS TO PLEAD, AND RELATED STATEMENTS

Admission of evidence concerning withdrawn pleas in criminal cases, offers to plead, and related statements shall be governed by Rule 3A:8(c)(5) of the Rules of Supreme Court of Virginia and by applicable provisions of the Code of Virginia.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:411 INSURANCE

Evidence that a person was or was not insured is not admissible on the question whether the person acted negligently or otherwise wrongfully, and not admissible on the issue of damages. But exclusion of evidence of insurance is not required when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:412 ADMISSIBILITY OF COMPLAINING WITNESS' PRIOR SEXUAL CONDUCT; CRIMINAL SEXUAL ASSAULT CASES; RELEVANCE OF PAST BEHAVIOR (derived from Code § 18.2-67.7)

(a) In prosecutions under Article 7, Chapter 4 of Title 18.2 of the Code of Virginia, under clause (iii) or (iv) of § 18.2-48, or under §§ 18.2-370, 18.2-370.01, or 18.2-370.1, general reputation or opinion evidence of the complaining witness' unchaste character or prior sexual conduct shall not be admitted. Unless the complaining witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct shall be admitted only if it is relevant and is:

1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness' intimate parts; or

2. Evidence of sexual conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness' mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case; or

3. Evidence offered to rebut evidence of the complaining witness' prior sexual conduct introduced by the prosecution.

(b) Nothing contained in this Rule shall prohibit the accused from presenting evidence relevant to show that the complaining witness had a motive to fabricate the charge against the accused. If such evidence relates to the past sexual conduct of the complaining witness with a person other than the accused, it shall not be admitted and may not be referred to at any preliminary hearing or trial unless the party offering same files a written notice generally describing the evidence prior to the introduction of any evidence, or the opening statement of either counsel, whichever first occurs, at the preliminary hearing or trial at which the admission of the evidence may be sought.

(c) Evidence described in subdivisions (a) and (b) of this Rule shall not be admitted and may not be referred to at any preliminary hearing or trial until the court first determines the admissibility of that evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary hearing or trial. The court shall exclude from the evidentiary hearing all persons except the accused, the complaining witness, other necessary witnesses, and required court personnel. If the court determines that the evidence meets the requirements of

subdivisions (a) and (b) of this Rule, it shall be admissible before the judge or jury trying the case in the ordinary course of the preliminary hearing or trial. If the court initially determines that the evidence is inadmissible, but new information is discovered during the course of the preliminary hearing or trial which may make such evidence admissible, the court shall determine in an evidentiary hearing whether such evidence is admissible.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

Rule 2:413. Evidence of similar crimes in child sexual offense cases (derived from Code § 18.2-67.7:1)

(a) In a criminal case in which the defendant is accused of a felony sexual offense involving a child victim, evidence of the defendant's conviction of another sexual offense or offenses is admissible and may be considered for its bearing on any matter to which it is relevant.

(b) The Commonwealth shall provide to the defendant 14 days prior to trial notice of its intention to introduce copies of final orders evidencing the defendant's qualifying prior criminal convictions. Such notice shall include (i) the date of each prior conviction, (ii) the name and jurisdiction of the court where each prior conviction was obtained, and (iii) each offense of which the defendant was convicted. Prior to commencement of the trial, the Commonwealth shall provide to the defendant photocopies of certified copies of the final orders that it intends to introduce.

(c) This Rule shall not be construed to limit the admission or consideration of evidence under any other rule of court or statute.

(d) For purposes of this Rule, "sexual offense" means any offense or any attempt or conspiracy to engage in any offense described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 or § 18.2-370, 18.2-370.01, or 18.2-370.1 or any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

(e) Evidence offered in a criminal case pursuant to the provisions of this Rule shall be subject to exclusion in accordance with the Virginia Rules of Evidence, including but not limited to Rule 2:403.

Adopted and promulgated by Order dated July 1, 2014; effective July 1, 2014.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE V. PRIVILEGES

Rule 2:501 PRIVILEGED COMMUNICATIONS

Except as otherwise required by the Constitutions of the United States or the Commonwealth of Virginia or provided by statute or these Rules, the privilege of a witness, person, government, State, or political subdivision thereof, shall be governed by the principles of common law as they may be interpreted by the courts of the Commonwealth in the light of reason and experience.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE V. PRIVILEGES

Rule 2:502 ATTORNEY-CLIENT PRIVILEGE

Except as may be provided by statute, the existence and application of the attorney-client privilege in Virginia, and the exceptions thereto, shall be governed by the principles of common law as interpreted by the courts of the Commonwealth in the light of reason and experience.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE V. PRIVILEGES

Rule 2:503 CLERGY AND COMMUNICANT PRIVILEGE (derived from Code §§ 8.01-400 and 19.2-271.3)

A *clergy member* means any regular minister, priest, rabbi, or accredited practitioner over the age of 18 years, of any religious organization or denomination usually referred to as a church. A clergy member shall not be required:

(a) in any civil action, to give testimony as a witness or to disclose in discovery proceedings the contents of notes, records or any written documentation made by the clergy member, where such testimony or disclosure would reveal any information communicated in a confidential manner, properly entrusted to such clergy member in a professional capacity and necessary to enable discharge of the functions of office according to the usual course of the clergy member's practice or discipline, wherein the person so communicating such information about himself or herself, or another, was seeking spiritual counsel and advice relating to and growing out of the information so imparted; and

(b) in any criminal action, in giving testimony as a witness to disclose any information communicated by the accused in a confidential manner, properly entrusted to the clergy member in a professional capacity and necessary to enable discharge of the functions of office according to the usual course of the clergy member's practice or discipline, where the person so communicating such information about himself or herself, or another, was seeking spiritual counsel and advice relating to and growing out of the information so imparted.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE V. PRIVILEGES

Rule 2:504 SPOUSAL TESTIMONY AND MARITAL COMMUNICATIONS PRIVILEGES (Rule 2:504(a) derived from Code § 8.01-398; and Rule 2:504(b) derived from Code § 19.2-271.2)

(a) *Privileged Marital Communications in Civil Cases.*

1. Husband and wife shall be competent witnesses to testify for or against each other in all civil actions.

2. In any civil proceeding, a person has a privilege to refuse to disclose, and to prevent anyone else from disclosing, any confidential communication between such person and his or her spouse during their marriage, regardless of whether such person is married to that spouse at the time he or she objects to disclosure. This privilege may not be asserted in any proceeding in which the spouses are adverse parties, or in which either spouse is charged with a crime or tort against the person or property of the other or against the minor child of either spouse. For the purposes of this Rule, "confidential communication" means a communication made privately by a person to his or her spouse that is not intended for disclosure to any other person.

(b) *Testimony of Husband and Wife in Criminal Cases*.

1. In criminal cases husband and wife shall be allowed, and, subject to the Rules of Evidence governing other witnesses, may be compelled to testify in behalf of each other, but neither shall be compelled to be called as a witness against the other, except (i) in the case of a prosecution for an offense committed by one against the other, against a minor child of either, or against the property of either; (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other; or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371). The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by any attorney.

2. Except in the prosecution for a criminal offense as set forth in subsections (b)(1)(i), (ii) and (iii) above, in any criminal proceeding, a person has a privilege to refuse to disclose, and to prevent anyone else from disclosing, any confidential communication between such person and his or her spouse during their marriage, regardless of whether the person is married to that spouse at the time the person objects to disclosure. For the purposes of this Rule, "confidential communication" means a communication made privately by a person to his or her spouse that is not intended for disclosure to any other person.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE V. PRIVILEGES

Rule 2:505 HEALING ARTS PRACTITIONER AND PATIENT PRIVILEGE (derived from Code § 8.01-399)

The scope and application of the privilege between a patient and a physician or practitioner of the healing arts in a civil case shall be as set forth in any specific statutory provisions, including Code § 8.01-399, as amended from time to time, which presently provides:

A. Except at the request or with the consent of the patient, or as provided in this section, no duly licensed practitioner of any branch of the healing arts shall be permitted to testify in any civil action, respecting any information that he may have acquired in attending, examining or treating the patient in a professional capacity.

B. If the physical or mental condition of the patient is at issue in a civil action, the diagnoses, signs and symptoms, observations, evaluations, histories, or treatment plan of the practitioner, obtained or formulated as contemporaneously documented during the course of the practitioner's treatment, together with the facts communicated to, or otherwise learned by, such practitioner in connection with such attendance, examination or treatment shall be disclosed but only in discovery pursuant to the Rules of Court or through testimony at the trial of the action. In addition, disclosure may be ordered when a court, in the exercise of sound discretion, deems it necessary to the proper administration of justice. However, no order shall be entered compelling a party to sign a release for medical records from a health care provider unless the health care provider is not located in the Commonwealth or is a federal facility. If an order is issued pursuant to this section, it shall be restricted to the medical records that relate to the physical or mental conditions at issue in the case. No disclosure of diagnosis or treatment plan facts communicated to, or otherwise learned by, such practitioner shall occur if the court determines, upon the request of the patient, that such facts are not relevant to the subject matter involved in the pending action or do not appear to be reasonably calculated to lead to the discovery of admissible evidence. Only diagnosis offered to a reasonable degree of medical probability shall be admissible at trial.

C. This section shall not (i) be construed to repeal or otherwise affect the provisions of § 65.2-607 relating to privileged communications between physicians and surgeons and employees under the Workers' Compensation Act; (ii) apply to information communicated to any such practitioner in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug; or (iii) prohibit a duly licensed practitioner of the healing arts, or his agents, from disclosing information as required by state or federal law.

D. Neither a lawyer nor anyone acting on the lawyer's behalf shall obtain, in connection with pending or threatened litigation, information concerning a patient from a practitioner of any branch of the healing arts without the consent of the patient, except through discovery

pursuant to the Rules of Supreme Court as herein provided. However, the prohibition of this subsection shall not apply to:

1. Communication between a lawyer retained to represent a practitioner of the healing arts, or that lawyer's agent, and that practitioner's employers, partners, agents, servants, employees, co-employees or others for whom, at law, the practitioner is or may be liable or who, at law, are or may be liable for the practitioner's acts or omissions;

2. Information about a patient provided to a lawyer or his agent by a practitioner of the healing arts employed by that lawyer to examine or evaluate the patient in accordance with Rule 4:10 of the Rules of Supreme Court; or

3. Contact between a lawyer or his agent and a nonphysician employee or agent of a practitioner of healing arts for any of the following purposes: (i) scheduling appearances, (ii) requesting a written recitation by the practitioner of handwritten records obtained by the lawyer or his agent from the practitioner, provided the request is made in writing and, if litigation is pending, a copy of the request and the practitioner's response is provided simultaneously to the patient or his attorney, (iii) obtaining information necessary to obtain service upon the practitioner in pending litigation, (iv) determining when records summoned will be provided by the practitioner or his agent, (v) determining what patient records the practitioner possesses in order to summons records in pending litigation, (vi) explaining any summons that the lawyer or his agent caused to be issued and served on the practitioner, (vii) verifying dates the practitioner treated the patient, provided that if litigation is pending the information obtained by the lawyer or his agent is promptly given, in writing, to the patient or his attorney, (viii) determining charges by the practitioner for appearance at a deposition or to testify before any tribunal or administrative body, or (ix) providing to or obtaining from the practitioner directions to a place to which he is or will be summoned to give testimony.

E. A clinical psychologist duly licensed under the provisions of Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 shall be considered a practitioner of a branch of the healing arts within the meaning of this section.

F. Nothing herein shall prevent a duly licensed practitioner of the healing arts, or his agents, from disclosing any information that he may have acquired in attending, examining or treating a patient in a professional capacity where such disclosure is necessary in connection with the care of the patient, the protection or enforcement of a practitioner's legal rights including such rights with respect to medical malpractice actions, or the operations of a health care facility or health maintenance organization or in order to comply with state or federal law.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE V. PRIVILEGES

Rule 2:506 MENTAL HEALTH PROFESSIONAL AND CLIENT PRIVILEGE (derived from Code § 8.01-400.2)

Except at the request of or with the consent of the client, no licensed professional counselor, as defined in Code § 54.1-3500; licensed clinical social worker, as defined in Code § 54.1-3700; licensed psychologist, as defined in Code § 54.1-3600; or licensed marriage and family therapist, as defined in Code § 54.1-3500, shall be required in giving testimony as a witness in any civil action to disclose any information communicated in a confidential manner, properly entrusted to such person in a professional capacity and necessary to enable discharge of professional or occupational services according to the usual course of his or her practice or discipline, wherein the person so communicating such information about himself or herself, or another, is seeking professional counseling or treatment and advice relating to and growing out of the information so imparted; provided, however, that when the physical or mental condition of the client is at issue in such action, or when a court, in the exercise of sound discretion, deems such disclosure necessary to the proper administration of justice, no fact communicated to, or otherwise learned by, such practitioner in connection with such counseling, treatment or advice shall be privileged, and disclosure may be required. The privileges conferred by this Rule shall not extend to testimony in matters relating to child abuse and neglect nor serve to relieve any person from the reporting requirements set forth in § 63.2-1509.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE V. PRIVILEGES

Rule 2:507 PRIVILEGED COMMUNICATIONS INVOLVING INTERPRETERS
(derived from Code §§ 8.01-400.1, 19.2-164, and 19.2-164.1)

Whenever a deaf or non-English-speaking person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, the privilege shall also apply to the interpreter.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:601 GENERAL RULE OF COMPETENCY

(a) *Generally*. Every person is competent to be a witness except as otherwise provided in other evidentiary principles, Rules of Court, Virginia statutes, or common law.

(b) *Rulings*. A court may declare a person incompetent to testify if the court finds that the person does not have sufficient physical or mental capacity to testify truthfully, accurately, or understandably.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:602 LACK OF PERSONAL KNOWLEDGE

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This Rule does not bar testimony admissible under Rules 2:701, 2-702 and 2:703.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:603 OATH OR AFFIRMATION

Before testifying, every witness shall be required to declare that he or she will testify truthfully, by oath or affirmation administered in a form calculated to awaken the conscience and impress the mind of the witness with the duty to do so.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:604 INTERPRETERS (derived from Code § 8.01-406)

An interpreter shall be qualified as competent and shall be placed under oath or affirmation to make a true translation.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:605 COMPETENCY OF COURT PERSONNEL AS WITNESSES (derived from Code § 19.2-271)

(a) No judge shall be competent to testify in any criminal or civil proceeding as to any matter which came before the judge in the course of official duties.

(b) Except as otherwise provided in this Rule, no clerk of any court, magistrate, or other person having the power to issue warrants, shall be competent to testify in any criminal or civil proceeding, as to any matter which came before him or her in the course of official duties. Such person shall be competent to testify in any criminal proceeding wherein the defendant is charged with perjury or pursuant to the provisions of § 18.2-460 or in any proceeding authorized pursuant to § 19.2-353.3. Notwithstanding any other provision of this section, any judge, clerk of any court, magistrate, or other person having the power to issue warrants, who is the victim of a crime, shall not be incompetent solely because of his or her office to testify in any criminal or civil proceeding arising out of the crime. Nothing in this subpart (b) shall preclude otherwise proper testimony by a clerk or deputy clerk concerning documents filed in the official records.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.
Last amended by Order dated July 10, 2015; effective July 1, 2015.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:606 JUROR'S COMPETENCY AS A WITNESS

(a) *At the trial.* - A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) *During an Inquiry into the Validity of a Verdict or Indictment.* -

(i) *Prohibited testimony or other evidence.* During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(ii) *Exceptions for extraneous information; outside influence; mistake; racial/national origin bias.* A juror may testify and a juror's affidavit may be considered - about whether:

(a) extraneous prejudicial information was improperly brought to the jury's attention;

(b) an outside influence was improperly brought to bear on any juror;

(c) a mistake was made in entering the verdict on the verdict form; or

(d) during the trial a juror made one or more statements exhibiting overt racial/national origin bias - tending to show that a racial/national origin stereotype or animus was a significant motivating factor in the juror's vote and casting serious doubt on the fairness and impartiality of the jury's deliberations or the verdict.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.
Last amended by Order dated October 20, 2017; effective July 1, 2018.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:607 IMPEACHMENT OF WITNESSES (Rule 2:607(b) derived from Code § 8.01-401(A); and Rule 2:607(c) derived from Code § 8.01-403)

(a) *In general*. Subject to the provisions of Rule 2:403, the credibility of a witness may be impeached by any party other than the one calling the witness, with any proof that is relevant to the witness's credibility. Impeachment may be undertaken, among other means, by:

(i) introduction of evidence of the witness's bad general reputation for the traits of truth and veracity, as provided in Rule 2:608(a) and (b);

(ii) evidence of prior conviction, as provided in Rule 2:609;

(iii) evidence of prior unadjudicated perjury, as provided in Rule 2:608(d);

(iv) evidence of prior false accusations of sexual misconduct, as provided in Rule 2:608(e);

(v) evidence of bias as provided in Rule 2:610;

(vi) prior inconsistent statements as provided in 2:613;

(vii) contradiction by other evidence; and

(viii) any other evidence which is probative on the issue of credibility because of a logical tendency to convince the trier of fact that the witness's perception, memory, or narration is defective or impaired, or that the sincerity or veracity of the witness is questionable.

Impeachment pursuant to subdivisions (a)(i) and (ii) of this Rule may not be undertaken by a party who has called an adverse witness.

(b) *Witness with adverse interest*. A witness having an adverse interest may be examined with leading questions by the party calling the witness. After such an adverse direct examination, the witness is subject to cross-examination.

(c) *Witness proving adverse*.

(i) If a witness proves adverse, the party who called the witness may, subject to the discretion of the court, prove that the witness has made at other times a statement inconsistent with the present testimony as provided in Rule 2:613.

(ii) In a jury case, if impeachment has been conducted pursuant to this subdivision (c), the court, on motion by either party, shall instruct the jury to consider the evidence of such inconsistent statements solely for the purpose of contradicting the witness.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:608 IMPEACHMENT BY EVIDENCE OF REPUTATION FOR TRUTHTELLING AND CONDUCT OF WITNESS

(a) *Reputation evidence of the character trait for truthfulness or untruthfulness*. The credibility of a witness may be attacked or supported by evidence in the form of reputation, subject to these limitations: (1) the evidence may relate only to character trait for truthfulness or untruthfulness; (2) evidence of truthful character is admissible only after the character trait of the witness for truthfulness has been attacked by reputation evidence or otherwise; and (3) evidence is introduced that the person testifying has sufficient familiarity with the reputation to make the testimony probative.

(b) *Specific instances of conduct; extrinsic proof*. Except as otherwise provided in this Rule, by other principles of evidence, or by statute, (1) specific instances of the conduct of a witness may not be used to attack or support credibility; and (2) specific instances of the conduct of a witness may not be proved by extrinsic evidence.

(c) *Cross-examination of character witness*. Specific instances of conduct may, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of a character witness concerning the character trait for truthfulness or untruthfulness of another witness as to whose character trait the witness being cross-examined has testified.

(d) *Unadjudicated perjury*. If the trial judge makes a threshold determination that a reasonable probability of falsity exists, any witness may be questioned about prior specific instances of unadjudicated perjury. Extrinsic proof of the unadjudicated perjury may not be shown.

(e) *Prior false accusations in sexual assault cases*. Except as otherwise provided by other evidentiary principles, statutes or Rules of Court, a complaining witness in a sexual assault case may be cross-examined about prior false accusations of sexual misconduct.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:609 IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME (derived from Code § 19.2-269)

Evidence that a witness has been convicted of a crime may be admitted to impeach the credibility of that witness subject to the following limitations:

(a) *Party in a civil case or criminal defendant.*

(i) The fact that a party in a civil case or an accused who testifies has previously been convicted of a felony, or a misdemeanor involving moral turpitude, and the number of such convictions may be elicited during examination of the party or accused.

(ii) If a conviction raised under subdivision (a)(i) is denied, it may be proved by extrinsic evidence.

(iii) In any examination pursuant to this subdivision (a), the name or nature of any crime of which the party or accused was convicted, except for perjury, may not be shown, nor may the details of prior convictions be elicited, unless offered to rebut other evidence concerning prior convictions.

(b) *Other witnesses.* The fact that any other witness has previously been convicted of a felony, or a misdemeanor involving moral turpitude, the number, and the name and nature, but not the details, of such convictions may be elicited during examination of the witness or, if denied, proved by extrinsic evidence.

(c) *Juvenile adjudications.* Juvenile adjudications may not be used for impeachment of a witness on the subject of general credibility, but may be used to show bias of the witness if constitutionally required.

(d) *Adverse Witnesses*. A party who calls an adverse witness may not impeach that adverse witness with a prior conviction**.**

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:610 BIAS OR PREJUDICE OF A WITNESS

A witness may be impeached by a showing that the witness is biased for or prejudiced against a party. Extrinsic evidence of such bias or prejudice may be admitted.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:611 MODE AND ORDER OF INTERROGATION AND PRESENTATION (Rule 2:611(c) derived from Code § 8.01-401(A))

(a) *Presentation of evidence*. The mode and order of interrogating witnesses and presenting evidence may be determined by the court so as to (1) facilitate the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of cross-examination*.

(i) Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(ii) In a criminal case, if a defendant testifies on his or her own behalf and denies guilt as to an offense charged, cross-examination of the defendant may be permitted in the discretion of the court into any matter relevant to the issue of guilt or innocence.

(c) *Leading questions*. Leading questions should not be used on the direct examination of a witness except as may be permitted by the court in its discretion to allow a party to develop the testimony. Leading questions should be permitted on cross-examination. Whenever a party calls a hostile witness, an adverse party, a witness having an adverse interest, or a witness proving adverse, interrogation may be by leading questions.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:612 WRITING OR OBJECT USED TO REFRESH MEMORY

If while testifying, a witness uses a writing or object to refresh his memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:613 PRIOR STATEMENTS OF WITNESS (Rule 2:613(a)(i) derived from Code § 8.01-403; Rule 2:613(b)(i) derived from Code §§ 8.01-404 and 19.2-268.1; and Rule 2:613(b)(ii) derived from Code § 8.01-404)

(a) *Examining witness concerning prior oral statement*.

(i) Prior oral statements of witnesses. In examining a witness in any civil or criminal case concerning a prior oral statement, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and the witness must be asked whether the statement was made.

(ii) Extrinsic evidence of prior inconsistent oral statement of witness. Extrinsic evidence of a prior inconsistent oral statement by a witness is not admissible unless the witness is first given an opportunity to explain or deny the statement and the opposing party is given an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party opponent.

Extrinsic evidence of a witness' prior inconsistent statement is not admissible unless the witness denies or does not remember the prior inconsistent statement. Extrinsic evidence of collateral statements is not admissible.

(b) *Contradiction by prior inconsistent writing*.

(i) General rule. In any civil or criminal case, a witness may be cross-examined as to previous statements made by the witness in writing or reduced to writing, relating to the subject matter of the action, without such writing being shown to the witness; but if the intent is to contradict such witness by the writing, his or her attention must, before such contradictory proof can be given, be called to the particular occasion on which the writing is supposed to have been made; the witness may be asked whether he or she made a writing of the purport of the one to be offered, and if the witness denies making it, or does not admit its execution, it shall then be shown to the witness, and if the witness admits its genuineness, the witness shall be allowed to make an explanation of it; but the court may, at any time during the trial, require the production of the writing for its inspection, and the court may then make such use of it for the purpose of the trial as it may think best.

(ii) Personal Injury or Wrongful Death Cases. Notwithstanding the general principles stated in this subpart (b), in an action to recover for personal injury or wrongful death, no ex parte affidavit or statement in writing other than a deposition, after due notice, of a witness and no extrajudicial recording made at any time other than simultaneously with the wrongful act or negligence at issue of the voice of such witness, or reproduction or transcript thereof, as to the facts or circumstances attending the wrongful act or neglect complained of, shall be

used to contradict such witness in the case. Nothing in this subdivision shall be construed to prohibit the use of any such ex parte affidavit or statement in an action on an insurance policy based upon a judgment recovered in a personal injury or wrongful death case.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:614 CALLING AND INTERROGATION OF WITNESSES BY COURT

(a) *Calling by the court in civil cases*. The court, on motion of a party or on its own motion, may call witnesses, and all parties are entitled to cross-examine. The calling of a witness by the court is a matter resting in the trial judge's sound discretion and should be exercised with great care.

(b) *Interrogation by the court*. In a civil or criminal case, the court may question witnesses, whether called by itself or a party, subject to the applicable Rules of Evidence.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VI. WITNESS EXAMINATION

Rule 2:615 EXCLUSION OF WITNESSES (Rule 2:615(a) derived from Code §§ 8.01-375, 19.2-184, and 19.2-265.1; Rule 2:615(b) derived from Code § 8.01-375; and Rule 2:615(c) derived from Code § 19.2-265.1)

(a) The court, in a civil or criminal case, may on its own motion and shall on the motion of any party, require the exclusion of every witness including, but not limited to, police officers or other investigators. The court may also order that each excluded witness be kept separate from all other witnesses. But each named party who is an individual, one officer or agent of each party which is a corporation, limited liability entity or association, an attorney alleged in a habeas corpus proceeding to have acted ineffectively, and in an unlawful detainer action filed in general district court, a managing agent as defined in § 55.1-1200 shall be exempt from the exclusion as a matter of right.

(b) Where expert witnesses are to testify in the case, the court may, at the request of all parties, allow one expert witness for each party to remain in the courtroom; however, in cases pertaining to the distribution of marital property pursuant to § 20-107.3 or the determination of child or spousal support pursuant to § 20-108.1, the court may, upon motion of any party, allow one expert witness for each party to remain in the courtroom throughout the hearing.

(c) Any victim as defined in Code § 19.2-11.01 who is to be called as a witness may remain in the courtroom and shall not be excluded unless pursuant to Code § 19.2-265.01 the court determines, in its discretion, that the presence of the victim would impair the conduct of a fair trial.

Adopted and promulgated by Order dated June 1, 2012; last amended by Order dated November 1, 2019, effective January 1, 2020.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 2:701 OPINION TESTIMONY BY LAY WITNESSES (derived from Code § 8.01-401.3(B))

Opinion testimony by a lay witness is admissible if it is reasonably based upon the personal experience or observations of the witness and will aid the trier of fact in understanding the witness' perceptions. Lay opinion may relate to any matter, such as – but not limited to – sanity, capacity, physical condition or disability, speed of a vehicle, the value of property, identity, causation, time, the meaning of words, similarity of objects, handwriting, visibility or the general physical situation at a particular location. However, lay witness testimony that amounts only to an opinion of law is inadmissible.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 2:702 TESTIMONY BY EXPERTS (Rule 2:702(a)(i) derived from Code § 8.01-401.3(A))

(a) *Use of Expert Testimony*.

(i) In a civil proceeding, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

(ii) In a criminal proceeding, expert testimony is admissible if the standards set forth in subdivision (a)(i) of this Rule are met and, in addition, the court finds that the subject matter is beyond the knowledge and experience of ordinary persons, such that the jury needs expert opinion in order to comprehend the subject matter, form an intelligent opinion, and draw its conclusions.

(b) *Form of opinion*. Expert testimony may include opinions of the witness established with a reasonable degree of probability, or it may address empirical data from which such probability may be established in the mind of the finder of fact. Testimony that is speculative, or which opines on the credibility of another witness, is not admissible.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 2:703 BASIS OF EXPERT TESTIMONY (Rule 2:703(a) derived from Code § 8.01-401.1)

(a) *Civil cases*. In a civil action an expert witness may give testimony and render an opinion or draw inferences from facts, circumstances, or data made known to or perceived by such witness at or before the hearing or trial during which the witness is called upon to testify. The facts, circumstances, or data relied upon by such witness in forming an opinion or drawing inferences, if of a type normally relied upon by others in the particular field of expertise in forming opinions and drawing inferences, need not be admissible in evidence.

(b) *Criminal cases*. In criminal cases, the opinion of an expert is generally admissible if it is based upon facts personally known or observed by the expert, or based upon facts in evidence.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 2:704 OPINION ON ULTIMATE ISSUE (Rule 2:704(a) derived from Code § 8.01-401.3(B) and (C))

(a) *Civil cases*. In civil cases, no expert or lay witness shall be prohibited from expressing an otherwise admissible opinion or conclusion as to any matter of fact solely because that fact is the ultimate issue or critical to the resolution of the case. But in no event shall such witness be permitted to express any opinion which constitutes a conclusion of law. Any other exceptions to the "ultimate fact in issue" rule recognized in the Commonwealth remain in full force.

(b) *Criminal cases*. In criminal proceedings, opinion testimony on the ultimate issues of fact is not admissible. This Rule does not require exclusion of otherwise proper expert testimony concerning a witness' or the defendant's mental disorder and the hypothetical effect of that disorder on a person in the witness' or the defendant's situation.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 2:705 FACTS OR DATA USED IN TESTIMONY (Rule 2:705(a) derived from Code § 8.01-401.1)

(a) *Civil cases*. In civil cases, an expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(b) *Criminal cases*. In criminal cases, the facts on which an expert may give an opinion shall be disclosed in the expert's testimony, or set forth in a hypothetical question.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 2:706 USE OF LEARNED TREATISES WITH EXPERTS (Rule 2:706(a) derived from Code § 8.01-401.1)

(a) *Civil cases*. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by testimony or by stipulation shall not be excluded as hearsay. If admitted, the statements may be read into evidence but may not be received as exhibits. If the statements are to be introduced through an expert witness upon direct examination, copies of the specific statements shall be designated as literature to be introduced during direct examination and provided to opposing parties 30 days prior to trial unless otherwise ordered by the court. If a statement has been designated by a party in accordance with and satisfies the requirements of this rule, the expert witness called by that party need not have relied on the statement at the time of forming his opinion in order to read the statement into evidence during direct examination at trial.

(b) *Criminal cases*. Where an expert witness acknowledges on cross-examination that a published work is a standard authority in the field, an opposing party may ask whether the witness agrees or disagrees with statements in the work acknowledged. Such proof shall be received solely for impeachment purposes with respect to the expert's credibility.

Amended by Order dated June 21, 2013; effective July 1, 2013.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE VIII. HEARSAY

Rule 2:801 DEFINITIONS

The following definitions apply under this article:

(a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended as an assertion.

(b) *Declarant*. A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) *Prior statements.* When a party or non-party witness testifies either live or by deposition, a prior statement (whether under oath or not) is hearsay if offered in evidence to prove the truth of the matters it asserts, but may be received in evidence for all purposes if the statement is admissible under any hearsay exception provided in Rules 2:803 or 2:804. In addition, if not excluded under another Rule of Evidence or a statute, a prior hearsay statement may also be admitted as follows:

(1) *Prior inconsistent statements*. A prior statement that is inconsistent with the hearing testimony of the witness is admissible for impeachment of the witness's credibility when offered in compliance with Rule 2:613.

(2) *Prior consistent statements.* A prior statement that is consistent with the hearing testimony of the witness is admissible for purposes of rehabilitating the witness's credibility, but only if

(A) the witness has been impeached using a prior inconsistent statement as provided in Rule 2:607, Rule 2:613 and/or subpart (d)(l) of this Rule 801, or

(B) (i) the witness has been impeached based on alleged improper influence, or a motive to falsify testimony, such as bias, interest, corruption or relationship to a party or a cause, or by an express or implied charge that the in-court testimony is a recent fabrication; and

(ii) the proponent of the prior statement shows that it was made before any litigation motive arose for the witness to make a false statement.

Adopted and promulgated by Order dated June 1, 2012.
Last modified by Order dated November 12, 2014, effective July 1, 2015.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE VIII. HEARSAY

Rule 2:802 HEARSAY RULE

Hearsay is not admissible except as provided by these Rules, other Rules of the Supreme Court of Virginia, or by Virginia statutes or case law.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE VIII. HEARSAY

Rule 2:803 Hearsay Exceptions Applicable Regardless of Availability of the Declarant
(Rule 2:803(10)(a) derived from Code § 8.01-390(C); Rule 2:803(10)(b) derived from Code § 19.2-188.3; Rule 2:803(17) derived from Code § 8.2-724; and Rule 2:803(23) is derived from Code § 19.2-268.2)

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(0) *Admission by party-opponent*. A statement offered against a party that is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or employee, made during the term of the agency or employment, concerning a matter within the scope of such agency or employment, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

(1) *Present sense impression*. A spontaneous statement describing or explaining an event or condition made contemporaneously with, or while, the declarant was perceiving the event or condition.

(2) *Excited utterance*. A spontaneous or impulsive statement prompted by a startling event or condition and made by a declarant with firsthand knowledge at a time and under circumstances negating deliberation.

(3) *Then existing mental, emotional, or physical condition*. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of the declarant's will.

(4) *Statements for purposes of medical treatment*. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) *Recorded recollection*. Except as provided by statute, a memorandum or record concerning a matter about which a witness once had firsthand knowledge made or adopted by the witness at or near the time of the event and while the witness had a clear and accurate memory of it, if the witness lacks a present recollection of the event, and the witness vouches for the accuracy of the written memorandum. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) *Records of a Regularly Conducted Activity.* A record of acts, events, calculations, or conditions if:

(A) the record was made at or near the time of the acts, events, calculations, or conditions by--or from information transmitted by-- someone with knowledge;

(B) the record was made and kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making and keeping the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 2:902(6) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(7) *Reserved*.

(8) *Public records and reports*. In addition to categories of government records made admissible by statute, records, reports, statements, or data compilations, in any form, prepared by public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed within the scope of the office or agency's duties, as to which the source of the recorded information could testify if called as a witness; generally excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel when offered against a criminal defendant.

(9) *Records of vital statistics*. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report was made to a public office pursuant to requirements of law.

(10) *Absence of entries in public records and reports*.

(a) Civil Cases. An affidavit signed by an officer, or the deputy thereof, deemed to have custody of records of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same, other than those located in a clerk's office of a court, stating that after a diligent search, no record or entry of such record is found to exist among the records in such office is admissible as evidence that the office has no such record or entry.

(b) Criminal Cases. In any criminal hearing or trial, an affidavit signed by a government official who is competent to testify, deemed to have custody of an official record, or signed by such official's designee, stating that after a diligent search, no record or entry of such record is found to exist among the records in such official's custody, is admissible as evidence that the office has no such record or entry, provided that if the hearing or trial is a proceeding other than a preliminary hearing the procedures set forth in subsection G of § 18.2-472.1 for admission of an affidavit have been satisfied, mutatis mutandis, and the accused has not objected to the admission of the affidavit pursuant to the procedures set forth in subsection H of § 18.2-472.1, mutatis mutandis. Nothing in this subsection (b) shall be construed to affect the admissibility of affidavits in civil cases under subsection (a) of this Rule.

(11) *Records of religious organizations*. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Marriage, baptismal, and similar certificates*. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a

religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family records*. Statements of fact concerning personal or family history contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) *Records of documents affecting an interest in property*. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution, and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) *Statements in documents affecting an interest in property*. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in ancient documents*. Statements generally acted upon as true by persons having an interest in the matter, and contained in a document in existence 30 years or more, the authenticity of which is established.

(17) *Market quotations*. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown.

(18) *Learned treatises*. *See* Rule 2:706.

(19) *Reputation concerning boundaries*. Reputation in a community, arising before the controversy, as to boundaries of lands in the community, where the reputation refers to monuments or other delineations on the ground and some evidence of title exists.

(20) *Reputation as to a character trait*. Reputation of a person's character trait among his or her associates or in the community.

(21) *Judgment as to personal, family, or general history, or boundaries*. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(22) *Statement of identification by witness*. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is one of identification of a person.

(23) *Recent complaint of sexual assault*. In any prosecution for criminal sexual assault under Article 7 (§ 18.2-61 *et seq.*) of Chapter 4 of Title 18.2, a violation of §§ 18.2-361, 18.2-366, 18.2-370 or § 18.2-370.1, the fact that the person injured made complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.

(24) *Price of goods*. In shoplifting cases, price tags regularly affixed to items of personalty offered for sale, or testimony concerning the amounts shown on such tags.

Adopted and promulgated by Order dated June 1, 2012.

Last modified by Order dated November 12, 2014, effective July 1, 2015.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE VIII. HEARSAY

Rule 2:803.1. Statements by Child Describing Acts Relating to Offense Against Children (Derived from Code § 19.2-268.3).

(a) Proof of an out-of-court statement made by a child who is under 13 years of age at the time of trial or hearing, and who is the alleged victim of an offense against children as provided in Code § 19.2-268.3(A), which statement describes any act directed against the child relating to such alleged offense, shall not be excluded as hearsay under Rule 2:802 if both of the following apply:

(1) The court finds, in a hearing conducted prior to a trial, that the time, content, and totality of circumstances surrounding the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors:

(i) The child's personal knowledge of the event;

(ii) The age, maturity, and mental state of the child;

(iii) The credibility of the person testifying about the statement;

(iv) Any apparent motive the child may have to falsify or distort the event, including bias or coercion;

(v) Whether the child was suffering pain or distress when making the statement; and

(vi) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act; and

(2) The child:

(i) Testifies; or

(ii) Is declared by the court to be unavailable as a witness; provided, however, that if the child has been declared unavailable, such statement may be admitted pursuant to this section only if there is corroborative evidence of the act relating to an alleged offense against children.

(b) At least 14 days prior to the commencement of the proceeding in which a statement

will be offered as evidence, the party intending to offer the statement shall notify the opposing party, in writing, of the intent to offer the statement and shall provide or make available copies of the statement to be introduced.

(c) This provision shall not be construed to limit the admission of any statement offered under any other hearsay exception or applicable rule of evidence.

Adopted and promulgated by Order dated September 30, 2016.

RULES OF SUPREME COURT OF VIRGINIA
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VIRGINIA RULES OF EVIDENCE

ARTICLE VIII. HEARSAY

Rule 2:804 HEARSAY EXCEPTIONS APPLICABLE WHERE THE DECLARANT IS UNAVAILABLE (Rule 2:804(b)(5) derived from Code § 8.01-397)

(a) *Applicability*. The hearsay exceptions set forth in subpart (b) hereof are applicable where the declarant is dead or otherwise unavailable as a witness.

(b) *Hearsay exceptions*. The following are not excluded by the hearsay rule:

(1) Former testimony. Testimony given under oath or otherwise subject to penalties for perjury at a prior hearing, or in a deposition, if it is offered in reasonably accurate form and, if given in a different proceeding, the party against whom the evidence is now offered, or in a civil case a privy, was a party in that proceeding who examined the witness by direct examination or had the opportunity to cross-examine the witness, and the issue on which the testimony is offered is substantially the same in the two cases.

(2) Statement under belief of impending death. In a prosecution for homicide, a statement made by a declarant who believed when the statement was made that death was imminent and who had given up all hope of survival, concerning the cause or circumstances of declarant's impending death.

(3) Statement against interest. (A) A statement which the declarant knew at the time of its making to be contrary to the declarant's pecuniary or proprietary interest, or to tend to subject the declarant to civil liability. (B) A statement which the declarant knew at the time of its making would tend to subject the declarant to criminal liability, if the statement is shown to be reliable.

(4) Statement of personal or family history. If no better evidence is available, a statement made before the existence of the controversy, concerning family relationships or pedigree of a person, made by a member of the family or relative.

(5) Statement by party incapable of testifying. Code § 8.01-397, entitled "Corroboration required and evidence receivable when one party incapable of testifying," presently provides:

> In an action by or against a person who, from any cause, is incapable of testifying, or by or against the committee, trustee, executor, administrator, heir, or other representative of the person so incapable of testifying, no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony. In any such action, whether such adverse party testifies or not, all entries, memoranda, and declarations by the party so incapable of testifying made while he was capable, relevant to the matter in issue, may be received as evidence in all proceedings including without limitation those to which a person under a disability is a party. The

phrase "from any cause" as used in this section shall not include situations in which the party who is incapable of testifying has rendered himself unable to testify by an intentional self-inflicted injury.

For the purposes of this section, and in addition to corroboration by any other competent evidence, an entry authored by an adverse or interested party contained in a business record may be competent evidence for corroboration of the testimony of an adverse or interested party. If authentication of the business record is not admitted in a request for admission, such business record shall be authenticated by a person other than the author of the entry who is not an adverse or interested party whose conduct is at issue in the allegations of the complaint.

Amended by Order dated June 21, 2013; effective July 1, 2013.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VIII. HEARSAY

Rule 2:805 HEARSAY WITHIN HEARSAY

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE VIII. HEARSAY

Rule 2:806 ATTACKING AND SUPPORTING CREDIBILITY OF HEARSAY DECLARANT

When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant had testified as a witness.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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VIRGINIA RULES OF EVIDENCE

ARTICLE IX. AUTHENTICATION

Rule 2:901 REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the thing in question is what its proponent claims.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE IX. AUTHENTICATION

Rule 2:902 Self-Authentication (Rule 2:902(6) derived from Code § 8.01-390.3 and Code § 8.01-391(D))

Additional proof of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic public records offered in compliance with statute*. Public records authenticated or certified as provided under a statute of the Commonwealth.

(2) *Foreign public documents*. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the executing or attesting person, or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certification of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may for good cause shown order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(3) *Presumptions created by law*. Any signature, document, or other matter declared by any law of the United States or of this Commonwealth, to be presumptively or prima facie genuine or authentic.

(4) *Medical records and medical bills in particular actions*. Where authorized by statute, medical records and medical bills, offered upon the forms of authentication specified in the Code of Virginia.

(5) *Specific certificates of analysis and reports*. Certificates of analysis and official reports prepared by designated persons or facilities, when authenticated in accordance with applicable statute.

(6) *Certified Records of a Regularly Conducted Activity*.

(a) In any proceeding where a business record is material and otherwise admissible, authentication of the record and the foundation required by subdivision (6) of Rule 2:803 may be laid by (i) witness testimony, (ii) a certification of the authenticity of and foundation for the record made by the custodian of such record or other qualified witness either by affidavit or by

declaration pursuant to Code § 8.01-4.3, or (iii) a combination of witness testimony and a certification.

(b) The proponent of a business record shall (i) give written notice to all other parties if a certification under this section will be relied upon in whole or in part in authenticating and laying the foundation for admission of such record and (ii) provide a copy of the record and the certification to all other parties, so that all parties have a fair opportunity to challenge the record and certification. The notice and copy of the record and certification shall be provided no later than 15 days in advance of the trial or hearing, unless an order of the court specifies a different time. Objections shall be made within five days thereafter, unless an order of the court specifies a different time. If any party timely objects to reliance upon the certification, the authentication and foundation required by subdivision (6) of Rule 2:803 shall be made by witness testimony unless the objection is withdrawn.

(c) A certified business record that satisfies the requirements of this section shall be self-authenticating and requires no extrinsic evidence of authenticity.

(d) A copy of a business record may be offered in lieu of an original upon satisfaction of the requirements of Code § 8.01-391(D) by witness testimony, a certification, or a combination of testimony and a certification.

Adopted and promulgated by Order dated June 1, 2012.
Last amended by Order dated May 31, 2017; effective July 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
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VIRGINIA RULES OF EVIDENCE

ARTICLE IX. AUTHENTICATION

Rule 2:903 SUBSCRIBING WITNESS TESTIMONY NOT NECESSARY

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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VIRGINIA RULES OF EVIDENCE

ARTICLE X. BEST EVIDENCE

Rule 2:1001 DEFINITIONS

For purposes of this Article, the following definitions are applicable.

(1) *Writings*. "Writings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation or preservation.

(2) *Original*. An "original" of a writing is the writing itself or any other writing intended to have the same effect by a person executing or issuing it.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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VIRGINIA RULES OF EVIDENCE

ARTICLE X. BEST EVIDENCE

Rule 2:1002 REQUIREMENT OF PRODUCTION OF ORIGINAL

To prove the content of a writing, the original writing is required, except as otherwise provided in these Rules, other Rules of the Supreme Court of Virginia, or in a Virginia statute.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
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ARTICLE X. BEST EVIDENCE

Rule 2:1003 USE OF SUBSTITUTE CHECKS (derived from Code § 8.01-391.1(A) and (B))

(a) *Admissibility generally*. A substitute check created pursuant to the federal Check Clearing for the 21st Century Evidence Act, 12 U.S.C. § 5001 et seq., shall be admissible in evidence in any Virginia legal proceeding, civil or criminal, to the same extent the original check would be.

(b) *Presumption from designation and legend*. A document received from a banking institution that is designated as a "substitute check" and that bears the legend "This is a legal copy of your check. You can use it the same way you would use the original check" shall be presumed to be a substitute check created pursuant to the Act applicable under subdivision (a) of this Rule.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE X. BEST EVIDENCE

Rule 2:1004 ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

The original is not required, and other evidence of the contents of a writing is admissible if:

(a) *Originals lost or destroyed*. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(b) *Original not obtainable*. No original can be obtained by any available judicial process or procedure, unless the proponent acted in bad faith to render the original unavailable; or

(c) *Original in possession of opponent*. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(d) *Collateral matters*. The writing is not closely related to a controlling issue.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE X. BEST EVIDENCE

Rule 2:1005 ADMISSIBILITY OF COPIES (derived from Code § 8.01-391)

In addition to admissibility of copies of documents as provided in Rules 2:1002 and 2:1004, and by statute, copies may be used in lieu of original documents as follows:

(a) Whenever the original of any official publication or other record has been filed in an action or introduced as evidence, the court may order the original to be returned to its custodian, retaining in its stead a copy thereof. The court may make any order to prevent the improper use of the original.

(b) If any department, division, institution, agency, board, or commission of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, acting pursuant to the law of the respective jurisdiction or other proper authority, has copied any record made in the performance of its official duties, such copy shall be as admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy either by the custodian of said record or by the person to whom said custodian reports, if they are different, and is accompanied by a certificate that such person does in fact have the custody.

(c) If any court or clerk's office of a court of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, has copied any record made in the performance of its official duties, such copy shall be admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy by a clerk or deputy clerk of such court.

(d) If any business or member of a profession or calling in the regular course of business or activity has made any record or received or transmitted any document, and again in the regular course of business has caused any or all of such record or document to be copied, the copy shall be as admissible in evidence as the original, whether the original exists or not, provided that such copy is satisfactorily identified and authenticated as a true copy by a custodian of such record or by the person to whom said custodian reports, if they be different, and is accompanied by a certificate that said person does in fact have the custody. Copies in the regular course of business shall be deemed to include reproduction at a later time, if done in good faith and without intent to defraud. Copies in the regular course of business shall include items such as checks which are regularly copied before transmission to another person or bank, or records which are acted upon without receipt of the original when the original is retained by another party.

(e) The original of which a copy has been made may be destroyed unless its preservation is required by law, or its validity has been questioned.

(f) The introduction in an action of a copy under this Rule precludes neither the introduction or admission of the original nor the introduction of a copy or the original in another action.

(g) Copy, as used in these Rules, shall include photographs, microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE X. BEST EVIDENCE

Rule 2:1006 SUMMARIES

The contents of voluminous writings that, although admissible, cannot conveniently be examined in court may be represented in the form of a chart, summary, or calculation. Reasonably in advance of the offer of such chart, summary, or calculation, the originals or duplicates shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE X. BEST EVIDENCE

Rule 2:1007 TESTIMONY OR WRITTEN ADMISSION OF A PARTY

Contents of writings may be proved by the admission of the party against whom offered without accounting for the nonproduction of the original.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE X. BEST EVIDENCE

Rule 2:1008 FUNCTIONS OF COURT AND JURY

Whenever the admissibility of other evidence of contents or writings under these provisions depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine. However, when an issue is raised whether (1) the asserted writing ever existed, or (2) another writing produced at the trial is the original, or (3) other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE XI. APPLICABILITY

Rule 2:1101 APPLICABILITY OF EVIDENTIARY RULES

(a) *Proceedings to which applicable generally*. Evidentiary rules apply generally to (1) all civil actions and (2) proceedings in a criminal case (including preliminary hearings in criminal cases), and to contempt proceedings (except contempt proceedings in which the court may act summarily), in the Supreme Court of Virginia, the Court of Appeals of Virginia, the State Corporation Commission (when acting as a court of record), the circuit courts, the general district courts (except when acting as a small claims court as provided by statute), and the juvenile and domestic relations district courts.

(b) *Law of privilege*. The law with respect to privileges applies at all stages of all actions, cases, and proceedings.

(c) *Permissive application*. Except as otherwise provided by statute or rule, adherence to the Rules of Evidence (other than with respect to privileges) is permissive, not mandatory, in the following situations:

(1) Criminal proceedings other than (i) trial, (ii) preliminary hearings, (iii) sentencing proceedings before a jury, and (iv) capital murder sentencing hearings.

(2) Administrative proceedings.

Adopted and promulgated by Order dated June 1, 2012; effective July 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
EQUITY PRACTICE AND PROCEDURE

Rules 2:1 through 2:21. (Repealed).

By Order dated June 14, 2005, and effective January 1, 2006, the Supreme Court repealed Part Two of the Rules of Court and reserved for future use the Part Two nomenclature.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO A
APPEALS PURSUANT TO THE
ADMINISTRATIVE PROCESS ACT

Rule 2A:1. Authorization; Definitions; Application.

(a) These rules are promulgated pursuant to § 2.2-4026 of the Code of Virginia. They shall apply to the review of, by way of direct appeal from, the adoption of a regulation or the decision of a case by an agency.

(b) All terms used in this part that are defined in Chapter 40, Article 1 of Title 2.2 are used with the definitions therein contained. Every agency may designate some individual to perform the function of "agency secretary." If there is no designated "agency secretary," that term shall mean the executive officer of the agency.

(c) The term "party" means any person affected by and claiming the unlawfulness of a regulation, or a party aggrieved who asserts a case decision is unlawful or any other affected person or aggrieved person who appeared in person or by counsel at a hearing, as defined in § 2.2-4001, with respect to the regulation or case decision as well as the agency itself. Whenever a case decision disposes of an application for a license, permit or other benefit, the applicant, licensee or permittee shall be a necessary party to any proceeding under this part.

Last amended by Order dated Friday, February 26, 2010; effective May 3, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART TWO A
APPEALS PURSUANT TO THE
ADMINISTRATIVE PROCESS ACT

Rule 2A:2. Notice of Appeal.

(a) Any party appealing from a regulation or case decision shall file with the agency secretary, within 30 days after adoption of the regulation or after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel. With respect to appeal from a regulation, the date of adoption or readoption shall be the date of publication in the Register of Regulations. In the event that a case decision is required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days shall be added to the 30-day period for that party. Service under this Rule shall be sufficient if sent by registered or certified mail to the party's last address known to the agency.

(b) The notice of appeal shall identify the regulation or case decision appealed from, shall state the names and addresses of the appellant and of all other parties and their counsel, if any, shall specify the circuit court to which the appeal is taken, and shall conclude with a certificate that a copy of the notice of appeal has been mailed to each of the parties. Any copy of a notice of appeal that is sent to a party's counsel or to a party's registered agent, if the party is a corporation, shall be deemed adequate and shall not be a cause for dismissal of the appeal; provided, however, sending a notice of appeal to an agency's counsel shall not satisfy the requirement that a notice of appeal be filed with the agency secretary. The omission of a party whose name and address cannot, after due diligence, be ascertained shall not be cause for dismissal of the appeal.

(c) Any final agency case decision as described in § 2.2-4023 shall advise the party of the time for filing a notice of appeal under this Rule.

Last amended July 1, 2014; effective July 1, 2014.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 2A:3. Record on Appeal.

(a) If a formal hearing was held before the agency, the appellant shall deliver to the agency secretary with his notice of appeal, or within 30 days thereafter, a transcript of the testimony if it was taken down in writing, or if it was not taken down in writing, a statement of the testimony in narrative form. If the agency secretary deems the statement inaccurate, he may append a further statement specifying the inaccuracies.

(b) The agency secretary shall prepare and certify the record as soon as possible after the notice of appeal and transcript or statement of testimony is filed and served. Once the court has entered an order overruling any motions, demurrers and other pleas filed by the agency, or if none have been filed within the time provided by Rule 3:8 for the filing of a response to the process served under Rule 2A:4, the agency secretary shall, as soon as practicable or within such time as the court may order, transmit the record to the clerk of the court named in the notice of appeal. In the event of multiple appeals in the same proceeding, only one record need be prepared and it shall be transmitted to the clerk of the court named in the first notice of appeal filed. If there are multiple appeals to different courts from the same regulation or case decision, all such appeals shall be transferred to and heard by the court having jurisdiction that is named in the notice of appeal that is the first to be filed. The agency secretary shall notify all parties in writing when the record is transmitted, naming the court to which it is transmitted. Papers filed in any other clerk's office shall be forwarded by such clerk to the proper clerk's office.

(c) The record on appeal from an agency proceeding shall consist of all notices of appeal, any application or petition, all orders or regulations promulgated in the proceeding by the agency, the opinions, the transcript or statement of the testimony filed by appellant, and all exhibits accepted or rejected, together with such other material as may be certified by the agency secretary to be a part of the record.

(d) Upon the adoption of standards for the preparation of electronic or digital records for use in appeals, records under this Rule shall comply with such standards.

(e) In the event the agency secretary determines that the record is so voluminous that its certification and filing pursuant to part (b) of this Rule would be unduly burdensome upon the agency or upon the clerk of the court, the agency may, prior to and in lieu of filing the entire record, move the court for leave to file an index to such record. A party shall have the opportunity to respond to the agency’s motion within 10 days of filing the motion. Thereafter, if the court grants the agency’s motion, the record, or such parts thereof as the parties may agree upon or as the court may determine, shall be filed in the form of a joint appendix or in such other form as the court may direct. The agency

shall nevertheless retain the entire record and make it available to the parties on reasonable request during the pendency of the appeal.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 2A:4. Petition for Appeal.

(a) Within 30 days after the filing of the notice of appeal, the appellant shall file a petition for appeal with the clerk of the circuit court named in the first notice of appeal to be filed. Such filing shall include within such 30-day period both the payment of all fees and the taking of all steps provided in Rules 3:2, 3:3 and 3:4 to cause a copy of the petition for appeal to be served (as in a civil action) on the agency secretary and on every other party. The petition may be filed electronically as provided under Rule 1:17.

(b) The petition for appeal shall designate the regulation or case decision appealed from, specify the errors assigned, state the reasons why the regulation or case decision is deemed to be unlawful and conclude with a specific statement of the relief requested.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 2A:5. Further Proceedings.

Further proceedings in an appeal under this Part Two-A shall be governed by the rules contained in Part Three, where not in conflict with the Code of Virginia or this part, subject to the following:

(1) No appeal or issue under this Part Two-A shall be referred to a commissioner in chancery.

(2) Except for Rule 4:15 where applicable under this Rule, the provisions of Part Four shall not apply to appeals under this part and, unless ordered by the court, depositions shall not be taken.

(3) Once any motions, demurrers or other pleas filed by the agency have been overruled, or if none have been filed within the time provided by Rule 3:8 for the filing of a response to the process served under Rule 2A:4, the appeal shall be deemed submitted and no answer or further pleadings shall be required except as provided herein or by order of the court.

(4) When the case is submitted and the record has been filed as provided in Rule 2A:3, the court shall establish by order a schedule for briefing and argument of the issues raised in the petition for appeal.

(5) The court shall dispose of the appeal by an order consistent with its authority set forth in §§ 2.2-4029 and 2.2-4030 of the Code of Virginia.

Last amended by Order dated Friday, February 26, 2010; effective May 3, 2010.

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Rule 2A:6. Small Business Challenges

(a) In addition to the other remedies established in this Part Two-A, as provided by § 2.2-4027 of the Code of Virginia, a "small business" as defined in § 2.2-4007.1(A) of the Code of Virginia that is adversely affected or aggrieved by final agency regulatory action as described therein may seek judicial review for the limited purpose of appealing the issue of compliance with the requirements of §§ 2.2-4007.04 and 2.2-4007.1. Such appeal shall be initiated by filing a notice of appeal as described in Rule 2A:2 within one year of the date of such final agency action.

(b) In all other respects, the provisions of this Part Two-A shall apply to such appeals.

Promulgated by Order dated Friday, February 26, 2010; effective May 3, 2010.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3:1. Scope.

There shall be one form of civil case, known as a civil action. These Rules apply to all civil actions, in the circuit courts, whether the claims involved arise under legal or equitable causes of action, unless otherwise provided by law. These rules apply in cases appealed or removed to such courts from inferior courts whenever applicable to such cases. These Rules shall not apply in petitions for a writ of habeas corpus. In matters not covered by these Rules, the established practices and procedures are continued. Whenever in this Part Three the words "action" or "suit" appear they shall refer to a civil action, which may include legal and equitable claims.

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Rule 3:2. Commencement of Civil Actions.

(a) *Commencement.* A civil action shall be commenced by filing a complaint in the clerk's office. When a statute or established practice requires, a proceeding may be commenced by a pleading styled "Petition." Upon filing of the pleading, the action is then instituted and pending as to all parties defendant thereto. The statutory writ tax and clerk's fees shall be paid before the summons is issued.

(b) *Caption.* The complaint shall be captioned with the name of the court and the full style of the action, which shall include the names of all the parties. The requirements of Code § 8.01-290 may be met by giving the address or other data after the name of each defendant.

(c) *Form and Content of the Complaint.*

(i) It shall be sufficient for the complaint to ask for the specific relief sought. Without more it will be understood that all defendants mentioned in the caption are made parties defendant and required to answer the complaint; that proper process against them is requested; that answers under oath are waived, except when required by law, and that all relief authorized by law and demanded in the complaint may be granted. No formal conclusion is necessary.

(ii) Every complaint requesting an award of money damages shall contain an ad damnum clause stating the amount of damages sought. Leave to amend the ad damnum clause shall be available under Rule 1:8.

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Rule 3:3. Filing of Pleadings; Return of Certain Writs.

(a) *Filing Generally.* The clerk shall receive and file all pleadings when tendered, without order of the court. The clerk shall note and attest the date of filing thereon. In an Electronically Filed Case, the procedures of Rule 1:17 shall be applicable to the notation by the clerk of the date of filing. Any controversy over whether a party who has filed a pleading has a right to file it shall be decided by the court.

(b) *Electronic Filing.* In any circuit court which has established an electronic filing system pursuant to Rule 1:17:

(1) Any civil action for which electronic filing is available in the circuit court may be designated as an Electronically Filed Case upon consent of all parties in the case. Such designation shall be made promptly, complying with all filing and procedural requirements for making such designations as may be prescribed by such circuit court.

(2) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other filings in an Electronically Filed Case shall be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.

(i) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(d)(5).
(ii) Any last will and testament or other testamentary document, whether or not it is holographic.
(iii) Any contract or deed.
(iv) Any prenuptial agreement or written settlement agreement, including any property settlement agreement.
(v) Any check or other negotiable instrument.
(vi) Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.
(vii) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.
(viii) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.

(c) *Return of writs.* No writ shall be returnable more than 90 days after its date unless a longer period is provided by statute.

Last amended by Order dated November 1, 2012; effective January 1, 2013.

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Rule 3:4. Copies of Complaint.

(a) *Copies for Service.* Except in cases where service is waived pursuant to Code § 8.01-286.1, the plaintiff shall furnish the clerk when the complaint is filed with as many paper copies thereof as there are defendants upon whom it is to be served. In an Electronically Filed Case, the plaintiff shall file the complaint electronically and furnish paper copies to the clerk as provided in this Rule.

(b) *Exhibits.* It is not required that physical copies of exhibits filed with the complaint be furnished or served. Unless an individual case is exempted by order of the court for good cause shown, an electronic or digitally imaged copy of all exhibits that are incorporated by reference in the pleading shall be filed with the complaint. Upon the adoption of standards for the preparation of electronic or digital records for use in appeals, exhibits under this Rule shall comply with such standards.

(c) *Additional copies.* A deficiency in the number of copies of the complaint shall not affect the pendency of the action.

(1) If the plaintiff fails to furnish the required number of copies, the clerk shall request that additional copies be furnished by the plaintiff as needed, and if the plaintiff fails to do so promptly, the clerk shall bring the fact to the attention of the judge, who shall notify the plaintiff's counsel, or the plaintiff personally if no counsel has appeared for plaintiff, to furnish them by a specified date. If the required copies are not furnished on or before that date, the court may enter an order dismissing the suit.

(2) Additionally, in an Electronically Filed Case, if the clerk has been provided by the plaintiff with a credit or payment account through which to obtain payment of fees for duplication of required copies of filings, the clerk shall promptly prepare additional copies of the pleading as needed, and process payment through such credit or payment account; or, if processing by the clerk of the proper payment for duplication of additional copies of the pleading through a credit or payment account authorized by the filing party is not feasible, the clerk shall proceed as provided in subpart (c)(1) of this Rule.

Last amended by Order dated November 1, 2012; effective January 1, 2013.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3:5. The Summons.

(a) *Form of process.* The process of the courts in civil actions shall be a summons in substantially this form:

Commonwealth of Virginia

In the ..... Court of the ..... of .....

SUMMONS

Civil Action No. . . .

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia, this ..... day of ..... 20.....

....., Clerk.

(b) *Affixing summons for service; voluntary appearance.* Upon the commencement of a civil action defendants may appear voluntarily and file responsive pleadings and may appear voluntarily and waive process, but in cases of divorce or annulment of marriage only in accordance with the provisions of the controlling statutes. With respect to defendants who do not appear voluntarily or file responsive pleadings or waive service of process, the clerk shall issue summonses and securely attach one to and upon the front of each copy of the complaint to be served. The copies of the complaint, with a summons so attached, shall be delivered by the clerk for service together as the plaintiff may direct.

(c) *Defendant under a disability.* Except when sued for divorce or annulment of marriage, or a judgment in personam is sought, a summons need not be issued for or served upon a defendant who is a person under a disability (except as otherwise provided in § 8.01-297), the procedure described in Code § 8.01-9 constituting due process as to such defendants.

(d) *Additional summonses.* The clerk shall on request issue additional summonses, dating them as of the day of issuance.

(e) *Service more than one year after commencement of the action.* No order, judgment or decree shall be entered against a defendant who was served with process more than one year after the institution of the action against that defendant unless the court finds as a fact that the plaintiff exercised due diligence to have timely service on that defendant.

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Rule 3:6. Proof of Service.

Returns shall be made on a paper styled "Proof of Service" which shall be substantially in this form:

Virginia:

In the ..... Court of the ..... of ..... :

.....)

v. (short style)) Proof of Service

.....)

Returns shall be made hereon, showing service of the summons issued

....., 20 ....., with copy of the complaint filed ....., 20 ....., attached.

The clerk shall prepare as many as may be needed and deliver them with the summons and copies of the complaint.

The summons with copy of the complaint attached shall constitute and be served as one paper.

It shall be the duty of all persons eligible to serve process to make service within five days after receipt, and make return as to those served within 72 hours after the earliest service upon any party shown on each Proof of Service; but failure to make timely service and return shall not prejudice the rights of any party except as provided in Rule 3:5.

Additional copies of the Proof of Service may be obtained from the clerk and returns thereon made in similar manner.

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Rule 3:7. Bills of Particulars.

(a) *Timing and Grounds.* On motion made promptly, a bill of particulars may be ordered to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case.

(b) *Striking of Insufficient Bills of Particulars.* A bill of particulars that fails to inform the opposing party fairly of the true nature of the claim or defense may, on motion made promptly, be stricken and an amended bill of particulars ordered. If the amended bill of particulars fails to inform the opposite party fairly of the true nature of the claim or defense, the pleading not so amplified and the bills of particulars may be stricken.

(c) *Date for Filing Bill of Particulars.* An order requiring or permitting a bill of particulars or amended bill of particulars shall fix the time within which it must be filed.

(d) *Date for Responding to Amplified Pleading.* If the bill of particulars amplifies a complaint, a defendant shall respond to the amplified pleading within 21 days after the filing thereof, unless the defendant relies on pleadings already filed. If the bill of particulars amplifies any other pleading, any required response shall be filed within 21 days after the filing of the bill of particulars, or within such shorter or longer time as the court may prescribe.

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

(a) *Response Requirement.* A defendant shall 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. A demurrer, plea, motion to dismiss, and motion for a bill of particulars shall each be deemed a pleading in response for the count or counts addressed therein. If a defendant files no other pleading than the answer, it shall be filed within said time. An answer shall respond to the paragraphs of the complaint. A general denial of the entire complaint or plea of the general issue shall not be permitted.

(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, such defendant shall, unless the defendant has already done so, file an answer within 21 days after the entry of such order, or within such shorter or longer time as the court may prescribe.

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Rule 3:9. Counterclaims.

(a) *Scope.* A defendant may, at that defendant's option, plead as a counterclaim any cause of action that the defendant has against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the complaint, whether or not it is for liquidated damages, whether it is in tort or contract, and whether or not the amount demanded in the counterclaim is greater than the amount demanded in the complaint.

(b) *Time for initiation.*

(i) A counterclaim shall, subject to the provisions of Rule 1:9, be filed within 21 days after service of the summons and complaint upon the defendant asserting the counterclaim, 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.

(ii) If a demurrer, plea, motion to dismiss, or motion for a bill of particulars is filed within the period provided in subsection (b)(i) of this Rule, the defendant may file any counterclaim at any time up to 21 days after the entry of the court's order ruling upon all such motions, demurrers and other pleas, or within such shorter or longer time as the court may prescribe.

(c) *Response to counterclaim.* The plaintiff shall file pleadings in response to such counterclaim within 21 days after it is served.

(d) *Separate trials.* The court in its discretion may order a separate trial of any cause of action asserted in a counterclaim.

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Rule 3:10. Cross-Claims.

(a) *Scope.* A defendant may, at that defendant's option, plead as a cross-claim any cause of action that such defendant has or may have against one or more other defendants growing out of any matter pled in the complaint. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(b) *Time for initiation.* A cross-claim shall, subject to the provisions of Rule 1:9, be filed within 21 days after service of the summons and complaint on the defendant asserting the cross-claim, 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.

(c) *Response to cross-claim.* The cross-claim defendant shall file pleadings in response to such cross-claim within 21 days after it is served.

(d) *Separate trials.* The court in its discretion may order a separate trial of any cause of action asserted in a cross-claim.

Rule 3:11. Reply.

Responding to new matter. If a pleading, motion or affirmative defense sets up new matter and contains words expressly requesting a reply, the adverse party shall within 21 days file a reply admitting or denying such new matter. If it does not contain such words, the allegation of new matter shall be taken as denied or avoided without further pleading. All allegations contained in a reply shall be taken as denied or avoided without further pleading.

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Rule 3:12. Joinder of Additional Parties.

(a) *Persons to Be Joined if Feasible.* A person who is subject to service of process may be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest of the person to be joined. If such a person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) *Method of Joinder.* A motion to join an additional party shall, subject to the provisions of Rule 1:9, be filed with the clerk within 21 days after service of the complaint and shall be served on the party sought to be joined who shall thereafter be subject to all provisions of these Rules, except the provisions requiring payment of writ tax and clerk's fees.

(c) *Determination by Court Whenever Joinder Not Feasible.* If a person as described in subdivision (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the absent person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(d) *Pleading Reasons for Nonjoinder.* A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) hereof who are not joined, and the reasons why they are not joined.

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Rule 3:13. Third-Party Practice.

(a) *When Defendant May Bring in Third Party.* At any time after commencement of the action a defending party, as a third-party plaintiff, may file and serve a third-party complaint upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave therefore if the third-party complaint is filed not later than 21 days after the third-party plaintiff serves an original pleading in response. Otherwise the third-party plaintiff must obtain leave therefore on motion after notice to all parties to the action. The person served with the third-party complaint, hereinafter called the third-party defendant, shall make defenses to the third-party plaintiff's claim as provided in Rules 3:7 and 3:8. The third-party defendant may plead counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rules 3:9 and 3:10. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may, at plaintiff's option, within 21 days after service of the third-party complaint upon the third-party defendant, assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert defenses as provided in Rules 3:7 and 3:8 and any counterclaims and cross-claims, including claims against the plaintiff, as provided in Rules 3:9 and 3:10. Any party may move to strike the third-party complaint, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) *When Plaintiff May Bring in Third Party.* When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances that under this rule would entitle a defendant to do so.

Rule 3:14. Intervention.

A new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding.

All provisions of these Rules applicable to civil cases, except those provisions requiring payment of writ tax and clerk's fees, shall apply to such pleadings. The parties on whom such pleadings are served shall respond thereto as provided in these Rules.

Rule 3:15. Statutory Interpleader.

Proceedings brought pursuant to statutory provisions relating to interpleader shall, to the extent not inconsistent with the governing statutes, be conducted in accordance with the Rules contained in this Part Three.

Rule 3:16. New Parties.

A new party may be added, on motion of the plaintiff by order of the court at any stage of the case as the ends of justice may require. The motion, accompanied by a properly executed proposed amended complaint, shall be served on the existing parties as required by Rule 1:12. If the motion is granted, the amended pleading accompanying the motion shall be deemed filed in the clerk's office as of the date of the court's order permitting such amendment and all the provisions of Rule 3:4 shall apply as to the new parties, but no writ tax, clerk's fee or deposit for costs is required. All defendants shall file pleadings in response thereto as required by these Rules unless otherwise ordered by the court.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 3:17. Substitution of Parties.

(a) *Substitution of a successor.* If a person becomes incapable of prosecuting or defending because of death, disability, conviction of felony, removal from office, or other cause, a successor in interest may be substituted as a party in such person's place.

(b) *Motion, Consent, Procedure.* Substitution shall be made on motion of the successor or of any party to the suit. If the successor does not make or consent to the motion, the party making the motion shall file the motion and a proposed amended pleading effecting the substitution in the clerk's office and serve a copy of the motion and the proposed amended pleading upon the party to be substituted in the manner prescribed by the Code of Virginia for serving original process upon such party. Unless the movant and the party to be substituted agree otherwise, or the court orders a different schedule, the party sought to be substituted shall file a written response to the motion for substitution within 21 days after service of the motion and proposed amended pleading upon the party sought to be substituted.

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Rule 3:18. General Provisions as to Pleadings.

(a) *Pleadings.* All motions in writing, including a motion for a bill of particulars and a motion to dismiss, whether filed in paper document format or as electronic or digitally imaged filings, are pleadings.

(b) *Allegation of negligence.* An allegation of negligence or contributory negligence is sufficient without specifying the particulars of the negligence.

(c) *Contributory negligence as a defense.* Contributory negligence shall not constitute a defense unless pleaded or shown by the plaintiff's evidence.

(d) *Pleading the statute of limitations.* An allegation that an action is barred by the statute of limitations is sufficient without specifying the particular statute relied on.

(e) *Separate or combined filings.* Answers, counterclaims, cross-claims, pleas, demurrers, affirmative defenses and motions may all be included in the same filingif they are separately identified in both the caption and the body of the filing.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 3:19. Default.

(a) *Failure Timely to Respond.* A defendant who fails timely to file a responsive pleading as prescribed in Rule 3:8 is in default. A defendant in default is not entitled to notice of any further proceedings in the case, including notice to take depositions, except that written notice of any further proceedings shall be given to counsel of record, if any. The defendant in default is deemed to have waived any right to trial of issues by jury.

(b) *Relief from Default.* Prior to the entry of judgment, for good cause shown the court may grant leave to a defendant who is in default to file a late responsive pleading. Relief from default may be conditioned by the court upon such defendant reimbursing any extra costs and fees, including attorney's fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

(c) *Default Judgment and Damages*.

(1) Except in suits for divorce or annulling a marriage, the court shall, on motion of the plaintiff, enter judgment for the relief appearing to the court to be due. When service of process is effected by posting, no judgment by default shall be entered until the requirements of Code § 8.01-296(2)(b) have been satisfied.

(2) If the relief demanded is unliquidated damages, the court shall hear evidence and fix the amount thereof, unless the plaintiff demands trial by jury, in which event, a jury shall be impaneled to fix the amount of damages.

(3) If a defendant participates in the hearing to determine the amount of damages such defendant may not offer proof or argument on the issues of liability, but may (i) object to the plaintiff's evidence regarding damages, (ii) offer evidence regarding the quantum of damages, (iii) participate in jury selection if a jury will hear the damage inquiry, (iv) submit proposed jury instructions regarding damages, and (v) make oral argument on the issues of damages.

(d) *Relief from Default Judgment.*

(1) *Within 21 Days.* - During the period provided by Rule 1:1 for the modification, vacation or suspension of a judgment, the court may by written order relieve a defendant of a default judgment after consideration of the extent and causes of the defendant's delay in tendering a responsive pleading, whether service of process and actual notice of the claim were timely provided to the defendant, and the effect of the delay upon the plaintiff. Relief from default may be conditioned by the court upon the defendant reimbursing any extra costs and

fees, including attorney's fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

(2) *After 21 Days.* - A final judgment no longer within the jurisdiction of the trial court under Rule 1:1 may not be vacated by that court except as provided in Virginia Code §§ 8.01-428 and 8.01-623.

RULES OF SUPREME COURT OF VIRGINIA
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PRACTICE AND PROCEDURE IN CIVIL ACTIONS

Rule 3:20. Motion for Summary Judgment.

Any party may make a motion for summary judgment at any time after the parties are at issue, except in an action for divorce or for annulment of marriage. If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, that the moving party is entitled to judgment, the court shall grant the motion. Summary judgment, interlocutory in nature, may be entered as to the undisputed portion of a contested claim or on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment shall not be entered if any material fact is genuinely in dispute. No motion for summary judgment or motion to strike the evidence shall be sustained when based in whole or in part upon any discovery depositions under Rule 4:5, unless all parties to the action shall agree that such deposition may be so used, or unless the motion is brought in accordance with the provisions of subsection B of § 8.01-420. As further provided in subsection C of § 8.01-420, depositions and affidavits may be used to support or oppose a motion for summary judgment in any action where the only parties to the action are business entities and the amount at issue is $50,000 or more.

Last amended by Order dated July 2, 2019; effective September 1, 2019.

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Rule 3:21. Jury Trial of Right.

(a) *Jury Trial Situations Unchanged.* The right of trial by jury as declared by the Constitution of Virginia, or as given by an applicable statute or other authority, is unchanged by these rules, and shall be implemented as established law provides. Established practice for the trial and decision of equitable claims by the judge alone shall be continued.

(b) *Demand*. Any party may demand a trial by jury of any issue triable of right by a jury in the complaint or by (1) serving upon other parties a demand therefore in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to the issue, and (2) filing the demand with the trial court. Such demand may be endorsed upon a pleading of the party. In an Electronically Filed Case, endorsement of such demand may be made as provided in Rule 1:17. The court may set a final date for service of jury demands. Leave to file amended pleadings shall not extend the time for serving and filing a jury demand unless the order granting leave to amend expressly so states.

(c) *Specification of Issues.* In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) *Waiver.* Absent leave of court for good cause shown, the failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 3:22. Trial by Jury or by the Court.

(a) *By Jury.* When trial by jury has been demanded as provided in Rule 3:21, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury; or (2) the court upon motion or of its own initiative finds that a right of trial by jury on some or all of those issues does not exist under applicable law.

(b) *By the Court.* Except as otherwise provided in this Rule, issues not demanded for trial by jury as provided in Rule 3:21, and issues as to which a right of trial by jury does not exist, shall be tried by the court.

(c) *Statutory Jury Rights in Certain Equitable Claims.*

(1) In an equitable claim where no right to a jury trial otherwise exists, where impaneling of an advisory jury pursuant to Code § 8.01-336(E) to hear an issue will be helpful to the court concerning disputed fact issues, such a jury may be seated. Decision on such claims and issues shall be made by the judge.

(2) Where a jury trial on a defendant's plea in an equitable claim is authorized under Code § 8.01-336(D), trial of the issues presented by the plea shall be by a jury whose verdict on those issues has the same effect as if trial by jury had been a matter of right.

(d) *Party Consent to Jury.* As to any claim not triable of right by a jury, the court, with the consent of the parties, may (i) order trial of any claim or issue with an advisory jury or, (ii) a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(e) *Trial by Mixed Jury and Non-Jury Claims.* In any case when there are both jury and non-jury issues to be tried, the court shall adopt trial procedures and a sequence of proceedings to assure that all issues properly heard by the jury are decided by it, and applicable factual determinations by the jury shall be used by the judge in resolving the non-jury issues in the case.

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Rule 3:22A. Examination of Prospective Trial Jurors (Voir Dire).

(a) *Examination.* After the prospective jurors are sworn on the voir dire, the court shall question them individually or collectively to determine whether anyone:

(1) Is related by blood, adoption, or marriage to the accused or to the Plaintiff or Defendant;

(2) Is an officer, director, agent or employee of the Plaintiff or Defendant;

(3) Has any interest in the trial or the outcome of the case;

(4) Has acquired any information about the case or the parties from the news media or other sources and, if so, whether such information would affect the juror's impartiality in the case;

(5) Has expressed or formed any opinion about the case;

(6) Has a bias or prejudice against the Plaintiff or Defendant; or

(7) Has any reason to believe the juror might not give a fair and impartial trial to the Plaintiff and Defendant based solely on the law and the evidence.

Thereafter, the court, and counsel as of right, may examine on oath the venire, and any prospective juror, and ask questions relevant to the qualifications as an impartial juror. A party objecting to a juror may introduce competent evidence in support of the objection.

(b) *Challenge for Cause.* The court, on its own motion or following a challenge for cause, may excuse a prospective juror if it appears the juror is not qualified, and another shall be drawn or called and placed in the juror's stead for the trial of that case.

Promulgated by Order dated November 1, 2012; effective January 1, 2013.

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Rule 3:23. Use of and Proceedings Before a Commissioner in Chancery.

(a) Commissioners in chancery may be appointed in cases in circuit court, including uncontested divorce cases, only when (1) there is agreement by the parties with concurrence of the court or (2) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case.

(b) Upon entry of a decree by the court referring any matter to a commissioner in chancery, the clerk shall mail or deliver to the commissioner a copy of the decree of reference. Unless the decree prescribes otherwise, the commissioner shall promptly set a time and place for the first meeting of the parties or their attorneys, and shall notify the parties or their attorneys of the time and place so set. It shall be the duty of the commissioner to proceed with all reasonable diligence to execute the decree of reference.

(c) A commissioner may require the production of evidence upon all matters embraced in the decree of reference including the production of all books, papers, vouchers, documents and writings applicable thereto. The commissioner shall have the authority to call witnesses or the parties to the action to testify and may examine them upon oath. The commissioner may rule upon the admissibility of evidence unless otherwise directed by the decree of reference; but when a party so requests, the commissioner shall cause a record to be made of all proffered evidence which is excluded by the commissioner as inadmissible.

(d) The commissioner shall prepare a report stating his findings of fact and conclusions of law with respect to the matters submitted by the decree of reference. The commissioner shall file the report, together with all exhibits admitted in evidence and a transcript of the proceedings and of the testimony, with the clerk of the court. In an Electronically Filed Case, filing as required in this Rule shall be in accord with the requirements of Rule 1:17. The commissioner shall mail or deliver to counsel of record and to parties not represented by counsel, using the last address shown in the record, written notice of the filing of the report. Provided, however, that in divorce cases a copy of the report shall accompany the notice. Provided, further, that no such notice or copy shall be given parties who have not appeared in the proceeding.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 3:24. Appeal of Orders of Quarantine or Isolation regarding Communicable Diseases of Public Health Threat.

A. Where an order of quarantine has been issued relating to a communicable disease of public health threat pursuant to § 32.1-48.09, the provisions of § 32.1-48.010, and related sections of Article 3.02 of Title 32.1 of the Code of Virginia, shall govern any appeal of such order to the appropriate circuit court.

B. Where an order of isolation has been issued relating to a communicable disease of public health threat pursuant to § 32.1-48.012, the provisions of § 32.1-48.013 and related sections of Article 3.02 of Title 32.1 of the Code of Virginia shall govern any appeal of such order to the appropriate circuit court.

C. The circuit court shall hold hearings under this rule in a manner to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, witnesses, and the general public. To this end, the circuit court may take measures including, but not limited to, ordering the hearing to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE
PRACTICE AND PROCEDURE IN CIVIL ACTIONS

Rule 3:25. Claims for Attorney's Fees.

A. *Scope of Rule.* This rule applies to claims for attorney's fees, excluding (i) attorney's fees under § 8.01-271.1 of the Code of Virginia, and (ii) attorney's fees in domestic relations cases.

B. *Demand.* A party seeking to recover attorney's fees shall include a demand therefor in the complaint filed pursuant to Rule 3:2, in a counterclaim filed pursuant to Rule 3:9, in a cross-claim filed pursuant to Rule 3:10, in a third-party pleading filed pursuant to Rule 3:13, or in a responsive pleading filed pursuant to Rule 3:8. The demand must identify the basis upon which the party relies in requesting attorney's fees.

C. *Waiver.* The failure of a party to file a demand as required by this rule constitutes a waiver by the party of the claim for attorney's fees, unless leave to file an amended pleading seeking attorney's fees is granted under Rule 1:8.

D. *Procedure.* Upon the motion of any party, the court shall, or upon its own motion, the court may, in advance of trial, establish a procedure to adjudicate any claim for attorney's fees.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE A
CRIMINAL PRACTICE AND PROCEDURE

Rule 3A:1. Scope.

These Rules govern criminal proceedings in circuit courts and juvenile and domestic relations district courts (except proceedings concerning a child in a juvenile and domestic relations district court) and before the magistrates defined in Rule 3A:2 except for cases which have been returned to the general district court. Special statutes applicable to practices and procedures in juvenile and domestic relations district courts are incorporated herein by this reference and in such cases shall prevail over the general rule set forth in Part 3A.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE A
CRIMINAL PRACTICE AND PROCEDURE

Rule 3A:2. Purpose and Interpretation; Definitions.

(a) *Purpose and Interpretation.* These Rules are intended to provide for the just determination of criminal proceedings. They shall be interpreted so as to promote uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. Errors, defects, irregularities or variances that do not affect substantive rights shall not constitute reversible error.

(b) *Definitions.* Except as otherwise expressly provided in this Part Three A or unless the context otherwise requires:

(1) "Clerk" includes deputy clerk.

(2) "Commonwealth's attorney" includes assistant or acting Commonwealth's attorney.

(3) "Continuance" includes adjournment or recess.

(4) "Indictment" includes presentment and information filed upon presentment.

(5) "Magistrate" means a judicial or quasi-judicial officer authorized to issue arrest and search warrants, commit arrested persons to jail or admit them to bail, or conduct preliminary hearings.

(6) "Recognizance" means an undertaking, with or without surety or other security, made before a magistrate to perform one or more acts - for example, to appear in court. A recognizance may be written or oral but, if oral, shall be evidenced by a memorandum signed by the magistrate.

(7) Writings or memoranda under these Rules, and any required signatures or sworn verifications, shall be valid in the form of electronic files or digital images as provided in Rule 1:17.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:2.1. Venue in Criminal Cases.

In criminal cases, questions of venue must be raised in the trial court and before the verdict in cases tried by a jury and before the finding of guilty in cases tried by a court.

Last amended by Order dated December 22, 2011; effective Match 1, 2012.

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Rule 3A:3. The Complaint.

The complaint shall consist of sworn statements of a person or persons of facts relating to the commission of an alleged offense. The statements shall be made upon oath before a magistrate empowered to issue arrest warrants. The magistrate may require the sworn statements to be reduced to writing and signed if the complainant is a law-enforcement officer, but shall require the sworn statements to be reduced to writing if the complainant is not a law enforcement officer.

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Rule 3A:4. Arrest Warrant or Summons.

(a) *Issuance.* More than one warrant or summons may issue on the same complaint. A warrant may be issued by a judicial officer if the accused fails to appear in response to a summons.

(b) *Form of Summons.* A summons, whether issued by a magistrate or a law-enforcement officer, shall command the accused to appear at a stated time and place before a court of appropriate jurisdiction in the county, city or town in which the summons is issued. It shall (i) state the name of the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (ii) describe the offense charged and state whether the offense is a violation of state, county, city or town law, and (iii) be signed by the magistrate or the law-enforcement office, as the case may be.

(c) *Execution and Return.* If a warrant has been issued but the officer does not have the warrant in his possession at the time of the arrest, he shall (i) inform the accused of the offense charged and that a warrant has been issued, and (ii) deliver a copy of the warrant to the accused as soon thereafter as practicable.

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Rule 3A:5. The Grand Jury.

(a) *Who May Be Present.* Only the grand jurors and the witness under examination and, if directed by the court, an interpreter shall be present during the hearing of evidence by a grand jury. Only the grand jurors shall be present during their deliberations and voting.

(b) *Secrecy.* No obligation of secrecy may be imposed upon any person except in accordance with law.

(c) *Finding and Return of Indictment.* The indictment shall be endorsed "A True Bill" or "Not a True Bill" and signed by the foreman. The indictment shall be returned by the grand jury in open court.

(d) *Motion to Dismiss.* A motion to dismiss the indictment may be based on constitutional objections to the array or on the lack of legal qualification of an individual juror.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:6. The Indictment and the Information.

(a) *Contents.* The indictment or information, in describing the offense charged, shall cite the statute or ordinance that defines the offense or, if there is no defining statute or ordinance, prescribes the punishment for the offense. Error in the citation of the statute or ordinance that defines the offense or prescribes the punishments therefor, or omission of the citation, shall not be grounds for dismissal of an indictment or information, or for reversal of a conviction, unless the court finds that the error or omission prejudiced the accused in preparing his defense.

(b) *Joinder of Offenses.* Two or more offenses, any of which may be a felony or misdemeanor, may be charged in separate counts of an indictment or information if the offenses are based on the same act or transaction, or on two or more acts or transactions that are connected or constitute parts of a common scheme or plan.

(c) *Joinder of Defendants.* Two or more accused may be charged with a count(s) of an indictment, if they are charged with participating in contemporaneous and related acts or occurrences or in a series of acts or occurrences constituting an offense or offenses.

(d) *Form.* The indictment or information need not contain a formal commencement or conclusion. The return of an indictment shall be signed by the foreman of the grand jury, and the information shall be signed by the Commonwealth's attorney.

Rule 3A:7. Capias or Summons Upon Indictment or Information.

(a) *Form.*

(1) Capias. The form of the capias shall be the same as that provided for a warrant except that it shall be signed by the clerk and shall state that an indictment or information has been filed against the accused.

(2) Summons. The summons shall be in the same form as the capias except that it shall summons the accused to appear before the court at a stated time and place.

(b) *Execution and Return.*

(1) Execution. The capias shall be executed as provided in Rule 3A:4(c).

(2) Return. The officer executing a capias or summons shall endorse the date of execution thereon and make return thereof to the court that issued the capias or summons. At the request of the Commonwealth's attorney made at any time while the indictment or information is pending, a capias returned unexecuted and not cancelled or a summons returned unexecuted or a duplicate thereof may be delivered by the clerk to any authorized person for execution.

RULES OF SUPREME COURT OF VIRGINIA
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CRIMINAL PRACTICE AND PROCEDURE

Rule 3A:8. Pleas.

(a) *Pleas by a Corporation.* A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

(b) *Determining Voluntariness of Pleas of Guilty or Nolo Contendere.*

(1) A circuit court shall not accept a plea of guilty or nolo contendere to a felony charge without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea.

(2) A circuit court shall not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

(c) *Plea Agreement Procedure.*

(1) The attorney for the Commonwealth and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon entry by the defendant of a plea of guilty, or a plea of nolo contendere, to a charged offense, or to a lesser or related offense, the attorney for the Commonwealth will do any of the following:

(A) Move for nolle prosequi or dismissal of other charges;

(B) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding on the court;

(C) Agree that a specific sentence is the appropriate disposition of the case.

In any such discussions under this Rule, the court shall not participate.

(2) If a plea agreement has been reached by the parties, it shall, in every felony case, be reduced to writing, signed by the attorney for the Commonwealth, the defendant, and, in every case, his attorney, if any, and presented to the court. The court shall require the disclosure of the agreement in open court or, upon a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (c) (1) (A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report. If the agreement is of the type specified in subdivision (c) (1) (B), the court shall advise

the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw his plea, unless the Commonwealth fails to perform its part of the agreement. In that event, the defendant shall have the right to withdraw his plea.

(3) If the court accepts the plea agreement, the court shall inform the defendant that it will embody in its judgment and sentence the disposition provided for in the agreement.

(4) If the agreement is of the type specified in subdivision (c) (1) (A) or (C) and if the court rejects the plea agreement, the court shall inform the parties of this fact, and advise the defendant personally in open court or, on a showing of good cause, in camera, that the court will not accept the plea agreement. Thereupon, neither party shall be bound by the plea agreement. The defendant shall have the right to withdraw his plea of guilty or plea of nolo contendere and the court shall advise the defendant that, if he does not withdraw his plea, the disposition of the case may be less favorable to him than that contemplated by the plea agreement; and the court shall further advise the defendant that, if he chooses to withdraw his plea of guilty or of nolo contendere, his case will be heard by another judge, unless the parties agree otherwise.

(5) Upon rejecting a plea agreement, a judge shall immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

(6) Except as otherwise provided by law, evidence of a plea of guilty later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged, or any other crime, or of statements made in connection with and relevant to any of the foregoing pleas or offers, is not admissible in the case-in-chief in any civil or criminal proceeding against the person who made the plea or offer. But evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, a plea of nolo contendere, or any offer to plead guilty or nolo contendere to the crime charged or to any other crime, is admissible in any criminal proceeding for perjury or false statement, if the statement was made by the defendant under oath and on the record. In the event that a plea of guilty or a plea of nolo contendere is withdrawn in accordance with this Rule, the judge having received the plea shall take no further part in the trial of the case, unless the parties agree otherwise.

Last amended July 1, 2014.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:9. Pleadings and Motions for Trial; Defenses and Objections.

(a) *Pleadings and Motions.* Pleadings in a criminal proceeding shall be the indictment, information, warrant or summons on which the accused is to be tried and the plea of not guilty, guilty or nolo contendere. Defenses and objections made before trial that heretofore could have been made by other pleas or by demurrers and motions to quash shall be made only by motion to dismiss or to grant appropriate relief, as provided in these Rules.

(b) *The Motion Raising Defenses and Objections.*

(1) Defenses and Objections That Must Be Raised Before Trial. Defenses and objections based on defects in the institution of the prosecution or in the written charge upon which the accused is to be tried, other than that it fails to show jurisdiction in the court or to charge an offense, must be raised by motion made within the time prescribed by paragraph (c) of this Rule. The motion shall include all such defenses and objections then available to the accused. Failure to present any such defense or objection as herein provided shall constitute a waiver thereof. Lack of jurisdiction or the failure of the written charge upon which the accused is to be tried to state an offense shall be noticed by the court at any time during the pendency of the proceeding.

(2) Defenses and Objections That May Be Raised Before Trial. In addition to the defenses and objections specified in subparagraph (b) (1) of this Rule, any defense or objection that is capable of determination without the trial of the general issue may be raised by motion before trial. Failure to present any such defense or objection before the jury returns a verdict or the court finds the defendant guilty shall constitute a waiver thereof.

(3) Form of Motion. Any motion made before trial shall be in writing if made in a circuit court, unless the court for good cause shown permits an oral motion. A motion shall state with particularity the grounds or grounds on which it is based.

(4) Hearing on Motion. A motion before trial raising defenses or objections shall be determined before the trial unless the court orders that it be deferred for determination at the trial of the general issue. An issue of fact shall be heard and determined by the court, unless a jury trial is required by constitution or statute.

(5) Effect of Determination. If a motion is determined adversely to the accused, his plea shall stand or he may plead over or, if the accused has not previously pleaded, he shall be permitted to plead. The motion need not be renewed if the accused properly saves the point for the purpose of appeal when the court first determines the motion.

(c) *Time of Filing Notice or Making Motion.* A motion referred to in subparagraph (b) (1) shall be filed or made before a plea is entered and, in a circuit court, at least 7 days before the day fixed for trial, or, if the motion raises speedy trial or Double Jeopardy grounds as specified in Code § 19.2-266.2 A (ii), at such time prior to trial as the grounds for the motion or objection shall arise, whichever occurs last. A copy of such motion shall, at the time of filing, be submitted to the judge of the circuit court who will hear the case, if known.

(d) *Relief From Waiver.* For good cause shown the court may grant relief from any waiver provided for in this Rule.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 3A:10. Trial Together of More Than One Accused or More Than One Offense.

(a) *More Than One Accused - Joinder of Defendants.* On motion of the Commonwealth, for good cause shown, the court shall order persons charged with participating in contemporaneous and related acts or occurrences or in a series of acts or occurrences constituting an offense or offenses to be tried jointly unless such joint trial would constitute prejudice to a defendant.

(b) *More Than One Accused - Severance of Defendants.* If the court finds that a joint trial would constitute prejudice to a defendant, the court shall order severance as to that defendant or provide such other relief as justice requires.

(c) *An Accused Charged With More Than One Offense.* The court may direct that an accused be tried at one time for all offenses then pending against him, if justice does not require separate trials and (i) the offenses meet the requirements of Rule 3A:6 (b) or (ii) the accused and the Commonwealth's attorney consent thereto.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:11. Discovery and Inspection.

(a) G*eneral Provisions.* — (1) This Rule applies to any prosecution for a felony in a circuit court and to any misdemeanor brought on direct indictment.

(2) The constitutional and statutory duties of the Commonwealth's attorney to provide exculpatory and/or impeachment evidence to an accused supersede any limitation or restriction on discovery provided pursuant to this Rule.

(3) A party may satisfy the requirement to permit the opposing party to inspect and copy or photograph a document, recorded statement or recorded confession by providing an actual duplicate, facsimile or copy of the document, recorded statement or recorded confession to the opposing party in compliance with the applicable time limits and redaction standards set forth in this Rule.

(4) Any material or evidence disclosed or discovered pursuant to this Rule and filed with the clerk of court shall be placed under seal until it is either admitted as an exhibit at a trial or hearing or the court enters an order unsealing the specified material or evidence.

(b) *Discovery by the Accused.* — Upon written motion of an accused a court shall order the Commonwealth's attorney to: (1) Permit the accused to inspect and review any relevant reports prepared by law enforcement officers and made in connection with the particular case, including any written witness statements or written summaries of oral statements contained within such reports, that are known to the Commonwealth's attorney to be in the possession, custody or control of the Commonwealth. Nothing in this Rule requires that the Commonwealth provide the accused with copies of the relevant law enforcement reports, although it may do so in its discretion. The court's order providing for inspection and review of these reports shall be subject to the provisions of subparts (c)(1) and (c)(2) of this Rule regarding redaction and restrictions on dissemination of designated material.

(2) Permit the accused to inspect, review and copy or photograph any relevant:

(A) written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the accused to any law enforcement officer, that are known to the Commonwealth's attorney to be within the possession, custody or control of the Commonwealth;

(B) written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the accused to any person other than a law enforcement officer, that the Commonwealth intends to introduce into evidence against the accused at trial;

(C) written or recorded statements, or the substance of any oral statements, made by a co-defendant or co-conspirator that the Commonwealth intends to introduce into evidence against the accused at trial; and

(D) written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath tests, other scientific reports, and written reports of a physical or mental examination of the accused or the alleged victim made in connection with the particular case, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth.

(3) Permit the accused to inspect, review and copy or photograph designated books, papers, documents, tangible objects, recordings, buildings or places, or copies or portions thereof, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth, upon a showing that the items sought may be material to preparation of the accused's defense and that the request is reasonable.

(4)(A) Notify the accused in writing of the Commonwealth's intent to introduce expert opinion testimony at trial or sentencing and to provide the accused with: (i) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions, and (ii) the witness's qualifications and contact information.

(B) Nothing in subparts (b)(4)(A)(i) and (ii) of this Rule shall render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed pursuant to this Rule, or the expert witness's qualifications, just because the further explanatory language was not included in the notice and disclosure provided under this Rule.

Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, shall satisfy the requirements of subparts (b)(4)(A)(i) and (ii) of this Rule.

(5) Provide to the accused a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the Commonwealth at trial or sentencing. This provision is subject to subpart (c)(1) of this Rule and to any protective orders entered by the court pursuant to subpart (g).

(6) This Rule does not authorize the discovery or inspection of the work product of the Commonwealth's attorney, including internal reports, witness statements, memoranda, correspondence, legal research or other internal documents prepared by the office of the Commonwealth's attorney or its agents in anticipation of trial.

(7) This Rule does not authorize the discovery of the names and/or personal identifying information of confidential informants whom the Commonwealth does not intend to call at trial and with regard to whose identity the Commonwealth asserts it holds a privilege.

(c) *Redaction and Restricted Dissemination Material.* — (1) With regard to any material or evidence provided pursuant to this Rule,

(A) the Commonwealth may redact the residential address, telephone number, email address and place of employment of any witness or victim, or any member of a witness's or victim's family, who satisfies the conditions outlined in §19.2-11.2 of the Code of Virginia. The Commonwealth may redact the date of birth and Social Security Number of any person whose information is contained in material or evidence provided pursuant to this Rule; and

(B) If the Commonwealth redacts personal identifying information pursuant to this subpart of the Rule, the accused may file a motion seeking disclosure of the redacted information. Should the court find good cause for disclosure, it may order the Commonwealth to provide the redacted information. In its discretion, the court ordering the provision of redacted personal identifying information may order that the information be identified as "Restricted Dissemination Material" pursuant to subpart (c)(2) of this Rule.

(2) The Commonwealth may designate evidence or material disclosed pursuant to this Rule as "Restricted Dissemination Material" by prominently stamping or otherwise marking such items as "Restricted Dissemination Material."

(A) The Commonwealth may designate any evidence or material subject to disclosure pursuant to this Rule as "Restricted Dissemination Material," without supporting certification, if the accused's attorney agrees to the designation.

(B) In the absence of an agreement by the attorney for the accused, the attorney for the Commonwealth may designate any evidence or material as "Restricted Dissemination Material" by stamping or otherwise marking it as such and providing a certification in writing, upon information and belief, that: (i) the designated material relates to the statement of a child victim or witness; or (ii) disclosure of the designated material may result in danger to the safety or security of a witness or victim, danger of a witness being intimidated or tampered with, or a risk of compromising an ongoing criminal investigation or confidential law enforcement technique.

(C) Except as otherwise provided by order of the court or these Rules, "Restricted Dissemination Material" may only be disclosed to the accused's attorney, the agents or employees of the accused's attorney, or to an expert witness. The accused's attorney may orally communicate the content of "Restricted Dissemination Material" to the accused or allow the accused to view the content of such material but shall not provide the accused with copies of material so designated. "Restricted Dissemination Material" may not otherwise be reproduced, copied or disseminated in any way.

(D) If the Commonwealth designates evidence or material as "Restricted Dissemination Material" pursuant to subpart (c)(2)(B) of this Rule, the accused may at any time file a motion seeking to remove that designation from such evidence or material. Should the court find good cause to remove the designation, it may order that the evidence or material no longer be designated as "Restricted Dissemination Material."

(E) Within 21 days of the entry of a final order by the trial court, or upon the termination of the representation of the accused, the accused's attorney shall return to the court all originals and copies of any "Restricted Dissemination Material" disclosed pursuant to this Rule. The court shall maintain such returned "Restricted Dissemination Material" under seal. Any material sealed pursuant to this subpart shall remain available for inspection by counsel of record. For good

cause shown, the court may enter an order allowing additional access to the sealed material as the court in its discretion deems appropriate.

(F) In any case in which an accused is not represented by an attorney, the Commonwealth may file a motion seeking to limit the scope of discovery pursuant to this Rule. For good cause shown, the court may order any limitation or restriction on the provision of discovery to an accused who is unrepresented by an attorney as the court in its discretion deems appropriate.

(d) *Discovery by the Commonwealth.* — If the court grants disclosure to the accused under subpart (b) of this Rule, it shall also order the accused to: (1) Permit the Commonwealth to inspect and copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath analyses, and other scientific testing within the accused's possession, custody or control that the defense intends to proffer or introduce into evidence at trial or sentencing.

(2) Disclose whether the accused intends to introduce evidence to establish an alibi and, if so, disclose the place at which the accused claims to have been at the time the alleged offense was committed.

(3) Permit the Commonwealth to inspect, copy or photograph any written reports of physical or mental examination of the accused made in connection with the particular case if the accused intends to rely upon the defense of insanity pursuant to Chapter 11 of Title 19.2; provided, however, that no statement made by the accused in the course of such an examination disclosed pursuant to this Rule shall be used by the Commonwealth in its case-in-chief, whether the examination was conducted with or without the consent of the accused.

(4)(A) Notify the Commonwealth in writing of the accused’s intent to introduce expert opinion testimony at trial or sentencing and to provide the Commonwealth with: (i) any written report of the expert witness setting forth the witness’s opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness’s opinions and the bases and reasons for those opinions, and (ii) the witness’s qualifications and contact information.

(B) Nothing in subparts (d)(4)(A)(i) and (ii) of this Rule shall render inadmissible an expert witness’s testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed pursuant to this Rule, or the expert witness’s qualifications, just because the

further explanatory language was not included in the notice and disclosure provided under this Rule.

Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, shall satisfy the requirements of subparts (d)(4)(A)(i) and (ii) of this Rule.

(5) Provide to the Commonwealth a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the accused at trial or sentencing. The accused's attorney may redact the personal identifying information of any witness if so authorized by a protective order entered by the court pursuant to subpart (g) of this Rule.

(e) *Time of Motion.* — A motion by the accused under this Rule must be made at least 10 calendar days before the day fixed for trial. The motion shall identify all relief sought pursuant to this Rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

(f) *Time, Place and Manner of Discovery and Inspection.* — The order granting relief under this Rule shall specify in writing the time, place and manner of making the discovery and inspection ordered. The court in its discretion may prescribe such terms and conditions as are reasonable and just.

(g) *Protective Order.* — (1) Upon the motion of either party and for good cause, the court may enter a protective order with regard to the discovery or inspection required by this Rule. The court in its discretion may order any condition that it deems necessary to the orderly adjudication of the case or to the fair administration of justice. These conditions may include, but are not limited to:

(A) a requirement that the parties not disclose the contents of any material or evidence disclosed or discovered pursuant to this Rule in any public forum, including any website;

(B) a requirement that the parties not disclose the contents of any material or evidence disclosed or discovered pursuant to this Rule to any third-party who is not an agent or employee of the parties or an expert witness;

(C) authorization to either party to withhold the residential address, telephone number, email address or place of employment of any witness not covered by the terms of subpart (c)(1) of this Rule; or

(D) authorization for either party in appropriate circumstances to withhold from disclosure or place additional restrictions on dissemination of information otherwise discoverable but not exculpatory.

(2) Should either party believe in good faith that the terms of a protective order entered by the court have been violated, such party may move the court to enforce the order and to impose any necessary and appropriate sanction authorized by Virginia law.

(h) Continuing Duty to Disclose; Failure to Comply. — If, after disposition of a motion under this Rule, counsel or a party discovers before or during trial additional material previously requested or falling within the scope of an order previously entered, that is subject to discovery or inspection under this Rule but has not previously been disclosed, the party shall promptly notify the other party or their counsel or the court of the existence of the additional material. If at any time during the pendency of the case it is brought to the attention of the court that a party has failed to comply with this Rule or with an order issued pursuant to this Rule, the court shall order such party to permit the discovery or inspection of materials not previously disclosed, and may grant such other relief authorized by Virginia law as it may in its discretion deem appropriate.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE A
CRIMINAL PRACTICE AND PROCEDURE

Rule 3A:12. Subpoena.

(a) *For Attendance of Witnesses.* — (1) A subpoena for the attendance of a witness to testify before a court not of record shall be issued by the judge, clerk, magistrate, attorney for the Commonwealth or by the attorney for the accused.

(2) A subpoena for the attendance of a witness to testify before a circuit court or a grand jury may be issued by the clerk or attorney for the Commonwealth and, for the attendance of a witness to testify before a circuit court, by the attorney for the accused as well.

(3) A subpoena shall (i) be directed to an appropriate officer or officers, (ii) name the witness to be summoned, (iii) state the name of the court and the title, if any, of the proceeding, (iv) command the officer to summon the witness to appear at the time and place specified in the subpoena for the purpose of giving testimony, and (v) state on whose application the subpoena was issued.

(4) No subpoena or subpoena duces tecum shall be issued in any criminal case or proceeding, including any proceeding before any grand jury, which is (i) directed to a member of the bar of this Commonwealth or any other jurisdiction, and (ii) compels production or testimony concerning any present or former client of the member of the bar, unless the subpoena request has been approved in all specifics, in advance, by a judge of the circuit court wherein the subpoena is requested after reasonable notice to the attorney who is the subject of the proposed subpoena. The proceedings for approval may be conducted in camera, in the judge's discretion, and the judge may seal such proceedings. Such subpoena request shall be made by the attorney for the Commonwealth for the jurisdiction involved, either on motion of the attorney for the Commonwealth or upon request to the attorney for the Commonwealth by the foreman of any grand jury. An accused may also initiate such a subpoena request.

(b) *For Production of Documentary Evidence and of Objects Before a Circuit Court.* — (1) Upon notice to the adverse party and on affidavit by the party applying for the subpoena that the requested writings or objects are material to the proceedings and are in the possession of a person not a party to the action, the judge or the clerk may issue a subpoena duces tecum for the production of writings or objects described in the subpoena. Such subpoena shall command either (i) that the person to whom it is addressed shall appear with the items described either before the court or the clerk, or (ii) that such person shall deliver the items described to the clerk. The subpoena may direct that the writing or object be produced at a time before the trial or before the time when it is to be offered in evidence. The term "material to the proceedings" as used in this subpart (b) does not require that the subpoenaed writings or objects be admissible at trial or that they be exculpatory.

(2) Any subpoenaed writings and objects, regardless of which party sought production of them, shall be available for examination and review by all parties and counsel. Subpoenaed writings or objects shall be received by the clerk and shall be placed under seal and shall not be open for examination and review except by the parties and counsel unless otherwise directed by the court. The clerk shall adopt procedures to ensure compliance with this subpart of the Rule. Until such time as the subpoenaed materials are admitted into evidence they shall remain under seal unless the court orders that some or all of such materials be unsealed.

(3) Where subpoenaed writings and objects are of such nature or content that disclosure to other parties would be unduly prejudicial, the court, upon written motion and notice to all parties, may grant such relief as it deems appropriate, including: (i) quashing the subpoena in whole or in part, (ii) prohibiting or limiting disclosure, removal and copying, (iii) redacting confidential or immaterial information, (iv) prohibiting or restricting further disclosure by parties to the litigation, and/or (v) ordering return of all copies of the subpoenaed material upon completion of the litigation. Such motions may be brought by a party to the litigation, by the entity or individual subpoenaed, or by the entity or individual who is the subject of the subpoenaed material.

(4) If a subpoena requires the production of information that is stored in an electronic format, the person to whom it is addressed shall produce a tangible copy of the information. If a tangible copy cannot be reasonably produced, the subpoenaed person shall permit the parties to review the information on a computer or by other electronic means during normal business hours, provided that the information can be accessed and isolated. If a tangible copy cannot reasonably be produced and the information is commingled with information other than that requested in the subpoena and cannot reasonably be isolated, the person to whom the subpoena is addressed may file a motion to quash the subpoena or a motion for limitations on disclosure or other appropriate relief.

(c) *Service and Return.* — A subpoena may be executed anywhere in the Commonwealth by an officer authorized by law to execute the subpoena in the place where it is executed. The officer executing a subpoena shall make return thereof to the court named in the subpoena.

(d) *Contempt.* — Failure by any person without adequate excuse to obey a properly served subpoena may be deemed a contempt of the court to which the subpoena is returnable.

(e) *Recognizance of a Witness.* — If it appears that the testimony of a person is material in any criminal proceeding, a judicial officer may require him to give a recognizance for his appearance.

(f) *Photocopying of Subpoenaed Documents.* — Subject to the provisions of subpart (b) of this Rule, removal and photocopying of subpoenaed documents by any party or counsel shall be permitted. The court shall direct a procedure for removal, photocopying and return of such documents.

(g) *Undue Burden.* — Where subpoenaed material is so voluminous that its production would place an undue burden on the subpoenaed entity, the court may order that the subpoena duces tecum be satisfied by making the writings and documents reasonably available for inspection by the requesting party, subject to review by the court.

(h) *Virginia Freedom of Information Act.* — In accordance with Virginia Code § 2.2-3703.1, the provisions of the Virginia Freedom of Information Act shall not govern a court's determinations with regard to the applicability of this Rule.

(i) *Subpoena Issued to a Party.* — In a criminal proceeding, a subpoena duces tecum may not be used to obtain material from a party. Nor may a subpoena duces tecum be used to obtain material from an agency or entity participating in, or charged with responsibility for, the investigation or prosecution of a criminal case such that the agency and its employees are deemed agents of the Commonwealth. A subpoenaed agency or entity claiming party status may move for relief from a subpoena on that basis and – if the court quashes the subpoena – discovery shall be governed by Rule 3A:11 and orders issued pursuant to that Rule. For purposes of this rule, the Department of Forensic Science and the Division of Laboratory Consolidated Services are not parties.

(j) *In Camera Review.* — In determining whether a protective order should issue, or other relief be granted, a court may in its discretion review subpoenaed material in camera.

(k) *Confidentiality Provisions of Code §19.2-11.2.* — Where the confidentiality provisions of Virginia Code §19.2-11.2 apply, any material produced pursuant to a subpoena duces tecum shall be treated in accordance with the provisions of that statute.

(l) *Health Records Privacy.* — Any subpoena duces tecum seeking health records, or records concerning the provision of health services, as those terms are defined by Virginia Code § 32.1-127.1:03, are subject to the procedures and requirements of § 32.1-127.1:03(H), including the provisions for objecting to disclosure by a motion to quash.

(m) *Decision of the Court.* — A court must state on the record, or in writing, its reasons for making a decision pursuant to this Rule.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE A
CRIMINAL PRACTICE AND PROCEDURE

Rule 3A:13. Trial by Jury or by Court.

(a) *Right to Jury; Duty of Court in Nonjury Trial.* The accused is entitled to a trial by jury only in a circuit court on a plea of not guilty.

(b) *Waiver of Jury in Circuit Court.* If an accused who has pleaded not guilty in a circuit court consents to trial without a jury, the court may, with the concurrence of the Commonwealth's attorney, try the case without a jury. The court shall determine before trial that the accused's consent was voluntarily and intelligently given, and his consent and the concurrence of the court and the Commonwealth's attorney shall be entered of record.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE A
CRIMINAL PRACTICE AND PROCEDURE

Rule 3A:14. Trial Jurors.

(a) *Examination.* After the prospective jurors are sworn on the voir dire, the court shall question them individually or collectively to determine whether anyone:

(1) Is related by blood, adoption, or marriage to the accused or to a person against whom the alleged offense was committed;

(2) Is an officer, director, agent or employee of the accused;

(3) Has any interest in the trial or the outcome of the case;

(4) Has acquired any information about the alleged offense or the accused from the news media or other sources and, if so, whether such information would affect his impartiality in the case;

(5) Has expressed or formed any opinion as to the guilt or innocence of the accused;

(6) Has a bias or prejudice against the Commonwealth or the accused; or

(7) Has any reason to believe the juror might not give a fair and impartial trial to the Commonwealth and the accused based solely on the law and the evidence.

Thereafter, the court, and counsel as of right, may examine on oath any prospective juror and ask any questions relevant to the qualifications as an impartial juror. A party objecting to a juror may introduce competent evidence in support of the objection.

(b) *Challenge for Cause.* The court, on its own motion or following a challenge for cause, may excuse a prospective juror if it appears the juror is not qualified, and another shall be drawn or called and placed in the juror's stead for the trial of that case.

Last amended by Order dated December 14, 2012; effective January 1, 2013.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE A
CRIMINAL PRACTICE AND PROCEDURE

Rule 3A:14.1 Confidentiality of Juror Personal Information.

(a) *Motion for Order Regulating Disclosure of Jurors' Personal Information.* — As provided in Code § 19.2-263.3, on motion of any party or its own motion, and only upon a finding of good cause sufficient to warrant departure from the norm of open proceedings, the court may issue an order which may include provisions:

(1) regulating the disclosure of the names and home addresses of jurors or prospective jurors in a criminal trial. The court may limit or preclude dissemination of such information to particular persons, but in no event shall such information be denied to counsel for either party or a pro se defendant; and/or

(2) requiring that during the course of the trial, counsel for the parties, and the jurors themselves, shall refer to jurors by number and not by name.

Under this Rule, a finding of "*good cause*" includes, but is not limited to, a determination by the court in a particular case that if personal information of jurors or prospective jurors is disclosed there is a reasonable possibility of bribery, tampering, physical injury, harassment, intimidation of a juror, or any other material interference with the proper discharge of the jury's functions, such as a reasonably perceived threat to the jury's safety, well-being, or capacity to properly focus upon and perform its trial and deliberative duties.

(b) *Additional Personal Information.* — Additional personal information of a juror who has been impaneled in a criminal case shall be released only to the counsel for the defendant, a pro se defendant, and the attorney for the Commonwealth.

(c) *Modification of Order.* — (1) An order under this Rule regulating the disclosure of the names and home addresses of the jurors in a criminal case may be modified by the court in the exercise of its discretion and for good cause shown, and such information may be disseminated to a person having a legitimate interest or need for the information, with such restrictions upon its use and further dissemination as may be deemed appropriate by the court.

(2) The court may, upon motion of either party or its own motion, and for good cause shown, issue an order authorizing the disclosure of any additional personal information of a juror to any other person. Such order may be modified and may place restrictions on the use and further dissemination of such disclosed information.

(d) *Additional Personal Information.* For purposes of this Rule, "*additional personal information*" means any information other than name and home address collected by the court, clerk, or jury commissioner at any time, including but not limited to, a juror's age,

occupation, business addresses, telephone numbers, email addresses, and any other identifying information that would assist another in locating or contacting the juror.

Promulgated by Order dated March 1, 2011.
Last amended by Order dated May 31, 2017; effective July 1, 2017.

Rule 3A:15. Motion to Strike or to Set Aside Verdict; Judgment of Acquittal or New Trial.

(a) *Motion to Strike Evidence.* After the Commonwealth has rested its case or at the conclusion of all the evidence, the court on motion of the accused may strike the Commonwealth's evidence if the evidence is insufficient as a matter of law to sustain a conviction. If the court overrules a motion to strike the evidence and there is a hung jury, the accused may renew the motion within the time specified in Rule 1:11 and the court may take the action authorized by the Rule.

(b) *Motion to Set Aside Verdict.* If the jury returns a verdict of guilty, the court may, on motion of the accused made not later than 21 days after entry of a final order, set aside the verdict for error committed during the trial or if the evidence is insufficient as a matter of law to sustain a conviction.

(c) *Judgment of Acquittal or New Trial.* The court shall enter a judgment of acquittal if it strikes the evidence or sets aside the verdict because the evidence is insufficient as a matter of law to sustain a conviction. The court shall grant a new trial if it sets aside the verdict for any other reason.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:16. Instructions.

(a) *Giving of Instructions.* In a felony case, the instructions shall be reduced to writing. In all cases the court shall instruct the jury before arguments of counsel to the jury.

(b) *Proposed Instructions.* If directed by the court the parties shall submit proposed instructions to the court at such reasonable time before or during the trial as the court may specify and, whether or not proposed instructions have been submitted earlier, the parties may submit proposed instructions at the conclusion of all the evidence.

(c) *Objections.* Before instructing the jury, the court shall advise counsel of the instructions to be given and shall give counsel the opportunity to make objections thereto. Objections shall be made out of the presence of the jury, and before the court instructs the jury unless the court grants leave to make objections at a later time.

(d) *Alternative Forms of Verdicts; Separate Verdicts.* The court may submit alternate forms of verdicts to the jury. The jury shall be instructed to return a separate verdict on each count of an indictment or presentment.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:17. Jury Verdicts.

(a) *Return.* In all criminal prosecutions, the verdict shall be unanimous, in writing and signed by the foreman, and returned by the jury in open court.

(b) *Several Accused.* If there are two or more accused, the jury may return a verdict as to any of them as to whom it can agree.

(c) *Conviction of Lesser Offense.* The accused may be found not guilty of an offense charged but guilty of any offense, or of an attempt to commit any offense, that is substantially charged or necessarily included in the charge against the accused. When the offense charged is a felony, the accused may be found not guilty thereof, but guilty of being an accessory after the fact to that felony.

(d) *Poll of Jury.* When a verdict is returned, the jury shall be polled individually at the request of any party or upon the court's own motion. If upon the poll, all jurors do not agree, the jury may be directed to retire for further deliberations or may be discharged.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE A
CRIMINAL PRACTICE AND PROCEDURE

Rule 3A:17.1. Proceedings in Bifurcated Jury Trials of Non-Capital Felonies and Class 1 misdemeanors.

(a) *Application.* This Rule applies in cases of trial by jury upon a finding that the defendant is guilty of a non-capital felony or a Class 1 misdemeanor.

(b) *Bifurcated Proceedings.* In any jury trial in which the jury returns a verdict of guilty to one or more non-capital felony offenses, or Class 1 misdemeanor a separate proceeding limited to the ascertainment of punishment shall be held as soon as practicable before the same jury.

(c) *Instruction at Guilt Phase.* At the conclusion of all of the evidence in the guilt phase of the trial, the court shall instruct the jury as to punishment with respect to any Class 2, 3 or 4 misdemeanor being tried in the same proceeding or any lesser-included Class 2, 3 or 4 misdemeanor of any charged felony offense which may be properly considered by the jury. The jury shall not be instructed until the punishment phase with reference to the punishment for any charged or lesser-included felony offense or Class 1 misdemeanor.

(d) *Opening Statements at Penalty Phase.* Both the Commonwealth and the defense shall be entitled if they choose, to make an opening statement prior to the presentation of any evidence to the jury relevant to the penalty to be imposed. The Commonwealth shall give its statement first.

(e) *Presentation of Evidence at Penalty Phase.* If the jury convicts the defendant of one or more non-capital felony offenses, or a Class 1 misdemeanor the penalty phase shall proceed in the following order:

(1) The Commonwealth may present any victim impact testimony pursuant to § 19.2-295.3 and shall present the defendant's prior criminal history, including prior convictions and the punishments imposed, by certified, attested, or exemplified copies of the final order(s) as provided by law. As a prerequisite to the introduction of such evidence, the Commonwealth shall have advised the defense, in accord with the requirements of law, of its intention to introduce such evidence.

(2) The defense may introduce relevant admissible evidence related to punishment. The defense shall have the opportunity to present such evidence irrespective of whether or not the Commonwealth presents evidence of previous criminal history.

(3) The Commonwealth may introduce relevant admissible evidence related to punishment in rebuttal.

(4) The defense may introduce relevant, admissible evidence related to punishment in rebuttal.

(f) *Closing Arguments at Penalty Phase.* Both the Commonwealth and defense shall be entitled to make a closing argument on the subject of punishment if they elect to do so. The Commonwealth shall be given the opportunity to argue first, followed by the defense. Rebuttal argument may be made by the Commonwealth.

(g) *Change of Plea.* The accused may enter a plea of guilty to the whole of the indictment at any time until the jury returns a verdict on the issue of the defendant's guilt or innocence.

(h) *Non-Unanimous Jury at the Penalty Phase.* Should the jury fail to reach unanimous agreement as to punishment on any charge for which it returned a verdict of guilty, the court shall impanel a different jury to ascertain punishment, unless the defendant, the attorney for the Commonwealth and the court agree that the court shall fix punishment in the manner provided in Section 19.2-257, for the offense upon which the jury unanimously returned a verdict of guilty.

Amended by Order dated November 1, 2012; effective immediately.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE A
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Rule 3A:18. Death Penalty.

The trial of capital cases shall proceed in accordance with the provisions of Article 4.1 of Chapter 15 of Title 19.2 and, except to the extent conflicting therewith, the provisions of this Part Three A shall be applicable thereto.

Except for good cause shown, the separate proceeding provided for in Section 19.2-264.3 C shall commence as if it were a continuation of the original trial and continue from day to day until concluded.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:19. Appeals.

(a) *Appeal From Conviction in a Circuit Court.* See Part Five of these Rules.

(b) *Appeal From Conviction in a Juvenile and Domestic Relations District Court.* The accused or his counsel shall advise the judge or clerk of the juvenile and domestic relations district court, within 10 days after conviction, of his intention to appeal. The appeal shall be noted on the warrant or summons and, if the accused does not withdraw his appeal before the expiration of the 10-day period, the papers shall be filed with the circuit court at the end of such period. Paying a fine or beginning to serve a sentence does not impair the right to appeal.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:20. Time.

(a) *Extension.* When under this Part Three A an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period extended if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 3A:15 and 19; except to the extent and under the conditions stated in those Rules.

(b) *Unaffected by Expiration of Term.* The period of time specified in this Part Three A for taking any action is not affected or limited by the expiration of a term of court.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:21. Service and Filing of Papers.

(a) *Copies of Written Motions to Be Furnished.* All written motions and notices not required to be served as process shall be served otherwise on each counsel of record by delivering or mailing a copy to him on or before the day of filing. In any case where electronic service and filing is permitted under Rule 1:17, delivery of an electronic copy or digital image of a document shall satisfy this requirement. At the foot of such motions and notices shall be appended either acceptance of service or a certificate of counsel that copies were served as this Rule requires, showing the date of delivery or mailing.

(b) *Filing.* Motions, notices and other items required to be served shall be filed with the clerk.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:22. Forms.

Forms 1 through 9 and 11 in the Appendix of Forms are illustrative and not mandatory; however, Form 10 requires substantial compliance.

RULES OF SUPREME COURT OF VIRGINIA
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Rule 3A:23. Electronic Filing.

In any circuit court which has established an electronic filing system for criminal cases pursuant to Rule 1:17:

(a) Any criminal proceeding may be designated as an Electronically Filed Case upon consent of the Commonwealth and all defendants in the case.

(b) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other instruments in an Electronically Filed Case shall be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.

(1) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(e)(5).

(2) Any check or other negotiable instrument.

(3). Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.

(4) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.

(5) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 3A:24. Special Rule Applicable to Post-Conviction Proceedings: Circuit Court Orders Denying Petitions for Writs of Habeas Corpus.

Any Order of a circuit court denying a petition for a writ of habeas corpus shall include findings of fact and conclusions of law as required by Code § 8.01-654(B)(5). The order shall identify the substance of the claims asserted in the petition, and state the specific reason for the denial of each claim. Any such order may adopt a trial court's written opinion explaining its decision or a transcribed explanation of the court's ruling from the bench; however, an order shall not deny the petition without explanation, or rely upon incorporation by reference of a pleading filed in the case.

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Rule 3A:25. Special Rule Applicable to Post-Conviction Proceedings: Inmate Filings in the Trial Courts Under Code § 8.01-654.

In actions brought under Code § 8.01-654, filed by an inmate confined to an institution, a paper 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 inmate confined to an institution may be established by (1) 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, (2) an official postmark dated on or before the last day for filing, or (3) 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.

Last amended by Order dated July 2, 2019; effective September 1, 2019.

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Form 1. Criminal Complaint (Rule 3A:3).

DC-311, CRIMINAL COMPLAINT, is one of the court forms created for use in criminal proceedings in Virginia courts. This form and others similarly used can be found online at http://www.vacourts.gov/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc300scriminal.pdf.

Form 2. Statement of Witness for Arrest Warrant (Rule 3A:3).

A complainant's sworn statement of facts is captured on DC-311, CRIMINAL COMPLAINT. This form and others used in criminal proceedings in Virginia courts can be found online at

http://www.vacourts.gov/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc300scriminal.pdf.

Form 3. Summons (Rule 3A:4(b)).

DC-319, SUMMONS, is one of the court forms created for use in criminal proceedings in Virginia courts. This form and others similarly used can be found online at http://www.vacourts.gov/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc300scriminal.pdf.

CC-1302, SUMMONS, the summons often used by the circuit courts, can be found online at http://www.vacourts.gov/forms/circuit/cc1302inst.pdf.

Form 4. Indictments (Rule 3A:6).

Murder

COMMONWEALTH OF VIRGINIA

..... Court

....., 20 .....

The Grand Jury charges that:

On or about ....., 20 .... in the (County) (City) of .....

the accused .....…….
(Name of accused)

feloniously did kill and murder .....…… *
(Name of victim)

Va. Code §§ 18.2-31, 18.2-32, 19.2-221.

A True Bill.

.....……
(Foreman)

* Language charging other offenses follows.

Attempted Grand Larceny

On or about ....., 20 ..... in the (County) (City) of .....…….

the accused .....……...
(Name of accused)

feloniously attempted to steal property, namely .....……
(Describe property)

having a value of ($5 or more from the person of .....……..)
(Name of victim)

($200 or more belonging to .....……)
(Name of victim)

(firearm of any value) belonging to .....……
(Name of victim)

Va. Code §§ 18.2-95 and 18.2-26.

Burglary (Common Law)

On or about ....., 20 ..... in the (County) (City) of .....……

the accused .....……...
(Name of accused)

feloniously did break and enter in the nighttime

the dwelling house of .....……..
(Name of victim)

with intent to commit a (felony) (larceny) therein.

Va. Code § 18.2-89.

Statutory (Burglary, Murder, Rape, Robbery, Arson)

(Va. Code § 18.2-90)

On or about ....., 20 ..... in the (County) (City) of.....

the accused .....……
(Name of accused)

feloniously did (enter in the nighttime) (break and enter in the daytime)

(enter and conceal himself in the daytime)

.....…….. , with intent to
(Place described in Va. Code § 18.2-90)

commit (murder)(rape)(robbery)(arson).

Va. Code § 18.2-90.

Statutory Burglary, Va. Code § 18.2-91

On or about ....., 20 ..... in the (County) (City) of.....

the accused .....……..
(Name of accused)

feloniously did (enter in the nighttime) (break and enter in the daytime)

(enter and conceal himself in the daytime)

.....…….. , with intent to
(Place described in Va. Code § 18.2-90)

commit (larceny) (...)

(Describe felony other than murder, rape, robbery or arson)

(assault and battery).

Va. Code § 18.2-91.

Driving While Intoxicated

On or about ....., 20 ..... in the (County) (City) of.....

the accused .....……
(Name of accused)

(feloniously and) unlawfully did operate a motor vehicle while under the

influence of alcohol, narcotic drug, or other self-administered intoxicant or

drug of whatever nature.

Va. Code § 18.2-266.

Forgery - Check

On or about ....., 20 ..... in the (County) (City) of.....

the accused .....……...
(Name of accused)

feloniously forged with the intent to defraud a check of the following words

and figures:

.... , 20 .....
(Bank) (Date)

Pay to the order of ..... $ ..... Dollars

(Endorsed .....……)

Va. Code § 18.2-172.

Malicious or Unlawful Wounding

On or about ....., 20 ..... in the (County) (City) of .....……...

the accused .....……..
(Name of accused)

feloniously (maliciously) (unlawfully but not maliously) caused bodily injury

to .....……..
(Name of victim)

with intent to maim, disfigure, disable or kill.

Va. Code § 18.2-51.

Rape

On or about ....., 20 ..... in the (County) (City) of.....

the accused .....……..
(Name of accused)

feloniously did rape .....……..
(Name of victim)

Va. Code § 18.2-61.

Rape (Statutory, of Female of Age 13 or 14)

On or about ....., 20 ..... in the (County) (City) of .....……

the accused .....……
(Name of accused)

feloniously had (sexual intercourse with) (carnal knowledge of)

.....……
(Name of victim)

age .....…….
(Age of victim at time of offense)

Va. Code § 18.2-63.

Robbery

On or about ....., 20 ..... in the (County) (City) of.....

the accused .....…….
(Name of accused)

feloniously did rob .....…….
(Name of victim)

of .....……..
(Describe property)

Va. Code § 18.2-58.

Uttering - Check

On or about ....., 20 ..... in the (County) (City) of .....……

the accused .....…….
(Name of accused)

feloniously uttered with the intent to defraud a forged check of the following

words and figures:

.... , 20 .....
(Bank) (Date)

Pay to the order of ..... $ ..... Dollars

(Endorsed ..... ……)

Va. Code § 18.2-172.

Form 5. Capias (Rule 3A:7).

DC-361, CAPIAS, is one of the court forms created for use in criminal proceedings in Virginia courts. This form and others similarly used can be found online at

http://www.vacourts.gov/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc300scriminal.pdf.

CC-1301, CAPIAS, often used by the circuit courts, can be found online at

http://www.vacourts.gov/forms/circuit/cc1301inst.pdf.

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Form 6. Waiver of Rights Form (Rule 3A:8)

VIRGINIA:

IN THE CIRCUIT COURT FOR THE

_____

COMMONWEALTH OF VIRGINIA

v. Case No.: _____

_____

WAIVER OF RIGHTS FORM (Rule 3A:8)
Answer "Yes" or "No" or "N/A" where indicated

1. What is your full name?

_____

2. What is your date of birth?

_____

3. How much education do you have?

_____

4. Can you read and write the English language?

_____

If not, is this form being read to you and by whom?

_____

5. Have you consumed any alcohol, drugs or medication that might affect your ability to understand these proceedings or answer these questions truthfully?

_____

6. Are you the person named in the indictment, information or warrant with the commission of the offense(s) of _____ ?

7. Has your attorney reviewed with you the nature of the charge(s) pending against you?

_____

8. Do you fully understand those charges(s), as explained to you by your attorney?

_____

9. Did you have sufficient time to discuss with your attorney the facts of the case and the legal elements of the charge(s)? _____

10. Do you understand what facts the Commonwealth would be required to prove beyond a reasonable doubt in open court before this court could find you guilty of the charge(s)?

_____

11. Have you had sufficient time to discuss with your attorney any defenses that you might have to the charge(s)? _____

12. Have you discussed with your attorney your right to plead guilty, no contest or not guilty? _____

13. Has anyone intimidated you, forced you, offered you leniency (beyond what may be contained in your plea agreement, if applicable) or in any way influenced you to plead guilty/no contest?

_____

14. Has your attorney made any promises to you with respect to your plea(s)?

_____

15. Did you decide for yourself that you would offer a plea of guilty/no contest to the charge(s)?

_____

16. Are you pleading guilty/no contest because you are in fact guilty of the offense(s) for which you are charged? _____ Or, are you pleading guilty/no contest because after discussing this matter with your attorney you believe it will be in your best interests to do so? _____

17. Is your plea of guilty/no contest made freely, voluntarily, and without force, intimidation or promises? _____

18. Do you understand that by pleading guilty/no contest you give up basic rights that are guaranteed to you by the Constitution of the United States and the Constitution of Virginia?

_____

_____

19. Do you understand that by pleading guilty/no contest you give up the following rights:

(a) To have your case tried by a jury? _____

(b) Not to incriminate yourself (by waiving this right, you can be forced to make statements against your interest)? _____

(c) To confront and cross-examine each witness who may be called by the Commonwealth to offer testimony against you? _____

(d) To present a defense in your own behalf? _____

20. Do you fully understand that by pleading guilty/no contest you may waive any grounds you have to appeal your case? _____

21. Are you currently in prison, on parole or probation or under a suspended sentence?

_____

22. Do you understand that pleading guilty/no contest may affect your right to parole, or cause revocation of your parole, probation or suspended sentence?

_____

23. Does that affect your decision to plead guilty/no contest?

_____

24. Has anyone associated with your arrest or prosecution, such as the police, Commonwealth's Attorney or any other person forced, threatened or coerced you to plead guilty/no contest? _____

25. Outside of the terms and conditions as set forth in any Plea Agreement that you have entered into with the Commonwealth, has any person made any other promises to you in writing or orally to induce you to plead guilty/no contest? _____

26. Have you entered into a Plea Agreement with the Commonwealth in this case?

_____

27. Did you read this Plea Agreement that you have offered to the Court in this case?

_____

28. Do you fully understand the content and meaning of the Plea Agreement?

_____

29. Did you sign this Plea Agreement in the presence of your attorney?

_____

30. Do the terms of this Plea Agreement contain the full and complete agreement entered into among you, your lawyer and the Commonwealth? _

31. Are there any other written or oral agreements that are not reflected in this Plea Agreement?

_____

32. Do you understand that, if the Court accepts the Plea Agreement, everyone who has signed the document will be bound by its content?

_____

33. Do you believe it is in your best interest and to your benefit to offer the Plea Agreement to the Court? _____

34. To be asked if the Commonwealth has agreed that a specific sentence is appropriate:

(a) Do you understand that the Court may accept, reject or defer accepting or rejecting the Plea Agreement until there has been an opportunity to consider a presentence report? _____

(b) Do you understand that, if the Court rejects the Plea Agreement, you would be permitted to withdraw your plea of guilty/no contest and have your case heard by a jury or another Judge? _____

(c) Do you understand that if the Court rejects the Plea Agreement and you persist in your plea of guilty/no contest, the Court would not be bound to honor any of the terms or conditions set forth in the Plea Agreement? _____

35. To be asked if the Commonwealth merely recommends, or agrees not to oppose a request for, a specific sentence:

(a) Do you understand that this agreement only provides for the Commonwealth to make a recommendation or to agree not to oppose a request for a particular sentence, that this recommendation or request is not binding on the Court, and if the Court does not accept the recommendation or does not go along with the request, you have no right to withdraw your plea of guilty/no contest unless the Commonwealth fails to perform its part of the agreement? _____

(b) Do you also understand that the sentence the Court imposes may be more severe than the sentence recommended or requested? _____

36. Do you understand that the maximum punishment for the crime(s) to which you are pleading guilty/no contest is _____ years imprisonment and $_____ in fines, plus all court costs? _____

37. If you are pleading guilty/no contest to more than one charge, do you understand that you may be sentenced consecutively and the maximum punishment for these crimes is _____ years imprisonment and a fine of $_____ plus court costs? _____

38. Does this crime(s) have a mandatory punishment? _____

39. If so, do you understand that the Court cannot suspend any portion of the mandatory sentence of _____ years? _____

40. Are you aware there is no parole in Virginia? _____

41. Have you discussed the sentencing guidelines with your attorney, and do you understand that the Court is not required to follow those guidelines? _____

42. Do you understand that if you are not a citizen of the United States and if you plead guilty/no contest or are found to be guilty, there may be consequences of deportation, exclusion from admission into the United States, or denial of naturalization pursuant to the laws of the United States? _____

43. Are you totally satisfied with the services of your attorney? _____

44. Did you review all of the questions on this form with your attorney? _____

45. Did you understand all of the questions on this form and any questions that may have been asked of you, and all of the answers that you gave? _____

46. Have your answers been truthful? _____

47. Do you have any questions to ask the Court? _____

48. If so, please write your questions below:

_____

_____

_____

_____

_____

_____

DATE: _____

_____
Defendant

_____
Attorney for Defendant

A Copy,

Teste:

Clerk

Last amended by Order dated March 1, 2017; effective May 1, 2017.

Form 7. Suggested Questions to Be Put by the Court to an Accused Who Has Pleaded Not Guilty (Rule 3A:8).

Before accepting your plea of not guilty, I will ask you certain questions. If you do not understand any question, please ask me to explain it to you.

1. What is your full name and what is your age? _____

2. Are you the person charged in the (indictment) (information) (warrant)

with the commission of the offense(s)? _____

3. Do you fully understand the charge(s) against you? _____

4. Have you discussed the charge(s) with your lawyer? _____

5. Have you had enough time to discuss with your lawyer any possible defense

you may have to (this) (these) charge(s)? _____

6. Have you given your lawyer the names of witnesses, and if so, are they

present? _____

7. Are you entirely satisfied with the services of your lawyer? _____

8. Are you entering this plea of not guilty freely and voluntarily? _____

9. Are you ready for trial today? _____

10. Do you understand that you are entitled to a trial by jury, but that you

can consent to trial by the judge without a jury? _____

Have you discussed with your lawyer the advisability of trial by a jury or by

the judge without a jury? _____

Do you wish to be tried by a jury or by the judge without a jury? _____

11. Do you understand all of the questions I have asked you? _____

These questions were asked of the defendant in open court in the absence of a jury on _____, 20____

_____

Signature of defendant

_____

Signature of attorney representing defendant

Form 8. Subpoena (Rule 3A:12(a)).

.....……. Court

.....…….
(Address of court)

TO: .....……. or any other authorized officer
(Designation of officer)

You are commanded to summon .....……
(Name and address)

TO the person summoned:

You are commanded to appear in this Court on ....., 20....at .....a.m., to testify in the case of Commonwealth v. .....……..

This subpoena is issued on application of the (Commonwealth) (City) (County) (Town) (Defendant) (Juvenile) in the case of the Commonwealth v. .....…….

....……..
(Date) (Judge) (Clerk) (Commonwealth's Attorney)

Form 9. Subpoena Duces Tecum (Rule 3A:12(b)).

DC-336, SUBPOENA DUCES TECUM, is one of the court forms created for use in criminal proceedings in Virginia courts. This form and others similarly used can be found online at

http://www.vacourts.gov/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc300scriminal.pdf.

CC-1337, SUBPOENA DUCES TECUM, often used by the circuit courts, can be found online at

http://www.vacourts.gov/forms/circuit/cc1337inst.pdf.

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Form 10. Contents of Sentencing Orders.

(Pursuant to the provisions of Code § 19.2-307, all orders wherein an accused is sentenced for a criminal conviction shall conform substantially to the following form. In cases where no prior criminal conviction order has been entered of record, state the defendant's plea, the verdict or findings, the adjudication, whether or not the case was tried by a jury, and, if not, whether the consent of the accused was concurred in by the court and the attorney for the Commonwealth.)

SENTENCING ORDER

VIRGINIA: IN THE CIRCUIT COURT OF .....

FEDERAL INFORMATION
PROCESSING
STANDARDS CODE: …….

Hearing Date: .....…..

Judge: .....……..

COMMONWEALTH OF VIRGINIA

v.

.....……., DEFENDANT

This case came before the Court for sentencing of the defendant, who appeared in person with his attorney, ...……. The Commonwealth was represented by .....……

On .....…… the defendant was found guilty of the following offenses:

CASE NUMBER	OFFENSE DESCRIPTION AND INDICATOR	OFFENSE DATE	VA. CODE SECTION	VIRGINIA CRIME CODE REFERENCE
……..	.....……	……..	……..	..…….
……..	.....……	……..	……..	..…….

The presentence report was considered and is ordered filed as a part of the record in this case in accordance with the provisions of Code § 19.2-299.

Pursuant to the provisions of Code § 19.2-298.01, the Court has considered and reviewed the applicable discretionary sentencing guidelines and the guidelines worksheets. The sentencing guidelines worksheets and the written explanation of any departure from the guidelines are ordered filed as a part of the record in this case.

Before pronouncing the sentence, the Court inquired if the defendant desired to make a statement and if the defendant desired to advance any reason why judgment should not be pronounced.

The Court SENTENCES the defendant to:

Incarceration with the Virginia Department of Corrections for the term of: .....…….. for .....……., and ……..... for ……..... The total sentence imposed is .....……

This sentence shall run (concurrently/consecutively) with .....……

The defendant shall pay costs of ..…….....

A fine of $ ....……... for ..……....

The defendant's license has been suspended for a period of …… (or indefinitely).

A restricted driver's license was issued by separate order.

The Court SUSPENDS ...…….. of the ..……... sentence and ……..... of the ……..... sentence, …….. fine for a period of ……....., for a total suspension of ……....., upon the following condition(s):

Good behavior. The defendant shall be of good behavior for the entire period of the suspended sentence.

Restitution. The defendant shall make restitution as set forth in the attached form DC-317, RESTITUTION ORDER.[1]

Supervised probation. ....……... of the sentence of incarceration is suspended. The defendant is placed on probation to commence ……..... under the supervision of a

---

[1] Form DC-317, RESTITUTION ORDER, and others used in criminal proceedings in Virginia courts can be found online at http://www.vacourts.gov/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc300scriminal.pdf.

Probation Officer for ……..... or unless sooner released by the court or by the Probation Officer. The defendant shall comply with all the rules and requirements set by the Probation Officer. Probation shall include substance abuse counseling and/or testing as prescribed by the Probation Officer.

Community Corrections Alternative Program pursuant to Virginia Code § 19.2-316.4. The defendant shall successfully complete the Community Corrections Alternative Program. Successful

completion of the program shall be followed by a period of supervised probation of (at least one year). (If applicable: The defendant shall remain in custody until program entry.)

Registration. Pursuant to Code § 9.1-903, registration is required for individuals convicted of offenses defined in § 9.1-902.

DNA and Fingerprints. The defendant shall provide a DNA sample and legible fingerprints as directed.

Special Conditions. The defendant shall complete any substance abuse screening, assessment, testing and treatment as directed by the Probation Officer, as well as the following conditions:
.....…….....

Other Special Conditions: ……
…….

Post-Incarceration supervision following felony conviction pursuant to Virginia Code § 18.2-10 and 19.2-295.2.

A. Post-Incarceration Supervised Probation: The court has imposed above a term of ...……... ……..... of incarceration and has suspended (at least 6 months) of the term of incarceration. The defendant is placed on supervised probation to commence upon release from incarceration for a period of (at least 6 months), unless released earlier by the court. The defendant shall comply with all the rules and requirements set by the Probation Officer.

OR

B. Post-Incarceration Post-release Supervision: In addition to the above sentence of incarceration, the court imposes an additional term of (not less than 6 months nor more than 3 years) of incarceration. This term is suspended and a period of post-release supervision of (not less than 6 months nor more than 3 years), which is to commence upon release from incarceration. The defendant shall comply with all the rules and requirements set by the Probation Officer.

Credit for time served. The defendant shall be given credit for time spent in confinement while awaiting trial pursuant to Code § 53.1-187.

.....……..
DATE

ENTER: ....…….....
JUDGE

DEFENDANT IDENTIFICATION:

Name: .....…….....

Alias: .....…….

SSN: .....……..... DOB: ..……... Sex: ……..

SENTENCING SUMMARY:

TOTAL INCARCERATION SENTENCE IMPOSED: ....……....
TOTAL SENTENCE SUSPENDED: …….....
TOTAL SUPERVISED PROBATION TERM: ....…….....
TOTAL POSTRELEASE TERM IMPOSED and SUSPENDED: .....…….....
TOTAL FINE IMPOSED: $ ……TOTAL FINE SUSPEND

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Form 11. Misdemeanor Proceedings in District and Circuit Courts (Rule 3A:8(b)(2); Rule 7C:6; and Rule 8:18).

Suggested Questions to Be Asked When Taking Pleas of Guilty
or Nolo Contendere

A. Pleas of Guilty or Nolo Contendere with Plea Agreements Requiring

Imposition of an Active or Suspended Sentence of Confinement in Jail

1. Do you understand the charge(s) against you?

2. When Defendant appears without counsel:

a) Do you understand you have the right to be represented by a lawyer?

b) Do you understand that if you do not have the financial ability to hire your own lawyer, and you want me to, I will have you interviewed to see if you qualify for court-appointed counsel and I will appoint an attorney to represent you if you qualify?

c) Do you want to hire an attorney to represent you, or be interviewed for court-appointed counsel or do you want to proceed today without a lawyer?

3. In Circuit Court:

a) Do you understand that you have the right to have your case heard by a jury?

b) Do you want your case to be heard by a judge without a jury or do you want a jury trial?

4. a) I understand that you have agreed to plead guilty (no contest) with the understanding that you will be sentenced to _____. Is that correct?

or

b) I understand that you have agreed to plead guilty (no contest) with the understanding that the prosecutor will recommend a sentence of

_____. Do you understand that I do not have to accept the recommendation and that I can sentence you from _____ to _____? (provide full sentence range allowed by law)

5. Have you been promised anything else to get you to plead guilty (no contest)?

6. Are you being forced or threatened into pleading guilty (no contest)?

7. Do you understand that by pleading guilty (no contest) you are giving up your right to a trial including the right to hear from and question the witnesses against you and the right to avoid being required to give evidence against yourself?

8. Do you understand that if you are not a citizen of the United States and if you plead guilty or are found to be guilty, there may be consequences of deportation, exclusion from admission into the United States, or denial of naturalization pursuant to the laws of the United States?

9. Do you have any questions before I accept your plea(s) of guilty (no contest)?

B. Pleas of Guilty or Nolo Contendere Without a Plea Agreement

1. Do you understand the charge(s) against you?

2. When Defendant appears without counsel:

a) Do you understand you have the right to be represented by a lawyer?

b) Do you understand that if you do not have the financial ability to hire your own lawyer, and you want me to, I will have you interviewed to see if you qualify for court-appointed counsel and I will appoint an attorney to represent you if you qualify?

c) Do you want to hire an attorney to represent you, or be interviewed for court-appointed counsel or do you want to proceed today without a lawyer?

3. In Circuit Court:

a) Do you understand that you have the right to have your case heard by a jury?

b) Do you want your case to be heard by a judge without a jury or do you want a jury trial?

4. Do you understand that based upon your plea of guilty (no contest) the possible range of punishment is _____ to _____?

5. Have you been promised anything else to get you to plead guilty (no contest)?

6. Are you being forced or threatened into pleading guilty (no contest)?

7. Do you understand that by pleading guilty (no contest) you are giving up your right to a trial including the right to hear from and question the witnesses against you and the right to avoid being required to give evidence against yourself?

8. Do you understand that if you are not a citizen of the United States and if you plead guilty or are found to be guilty, there may be consequences of deportation, exclusion from admission into the United States, or denial of naturalization pursuant to the laws of the United States?

9. Do you have any questions before I accept your plea(s) of guilty (no contest)?

Suggested Plea of Guilty to Misdemeanor Plea Form with Plea Agreement Requiring Imposition of an Active or Suspended Sentence of Confinement in Jail

1. I understand the charge(s) against me.

2. a) I understand that I have the right to be represented by an attorney.

b) I understand that if I do not have the financial ability to hire my own attorney, I could be interviewed to see if I qualify for court appointed counsel and if I did qualify the court would appoint an attorney to represent me.

c) I do not want to be represented by an attorney and I do not want to be interviewed to see if I qualify for court appointed counsel. It is my desire to give up my right to counsel and to proceed today without an attorney.

3. In Circuit Court:

a) I understand that I have the right to have my case heard by a jury.

b) I do not want my case to be heard by a jury and wish to proceed to have my case heard today by a judge without a jury.

4. a) I am pleading guilty (no contest) today based upon my understanding that I will be sentenced to _____.

b) I am pleading guilty (no contest) today based upon my understanding that the prosecutor will recommend a sentence of _____. I understand that the judge does not have to accept the recommendation and can sentence me from _____ to _____.

5. I have not been promised anything to get me to plead guilty (no contest).

6. I am not being forced or threatened to get me to plead guilty (no contest).

7. I understand that by pleading guilty (no contest) I am giving up my right to a trial including the right to hear from and question the witnesses against me and the right to avoid being required to give evidence against myself.

8. I understand that if I am not a citizen of the United States and I plead guilty or am found to be guilty, there may be consequences of deportation, exclusion from admission into the United States, or denial of naturalization pursuant to the laws of the United States.

9. I do not have any questions to ask the court before the court decides whether to accept my plea of guilty (no contest).

_____ _____

Counsel for Defendant Defendant

Suggested Plea of Guilty to Misdemeanor Plea Form without Plea Agreement

1. I understand the charge(s) against me.

2. a) I understand that I have the right to be represented by an attorney.

b) I understand that if I do not have the financial ability to hire my own attorney, I could be interviewed to see if I qualify for court appointed counsel and if I did qualify the court would appoint an attorney to represent me.

c) I do not want to be represented by an attorney and I do not want to be interviewed to see if I qualify for court appointed counsel. It is my desire

to give up my right to counsel and to proceed today without an attorney.

3. In Circuit Court:

a) I understand that I have the right to have my case heard by a jury.

b) I do not want my case to be heard by a jury and wish to proceed to have my case heard today by a judge without a jury.

4. I am pleading guilty (no contest) today based upon my understanding that I could be sentenced from _____ to _____.

5. I have not been promised anything to get me to plead guilty (no contest).

6. I am not being forced or threatened to get me to plead guilty (no contest).

7. I understand that by pleading guilty (no contest) I am giving up my right to a trial including the right to hear from and question the witnesses against

me and the right to avoid being required to give evidence against myself.

8. I understand that if I am not a citizen of the United States and I plead guilty or am found to be guilty, there may be consequences of deportation, exclusion from admission into the United States, or denial of naturalization pursuant to the laws of the United States.

9. I do not have any questions to ask the court before the court decides to accept my plea of guilty (no contest).

_____ _____

Counsel for Defendant Defendant

Last amended by Order dated October 30, 2015; effective immediately.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE B
TRAFFIC INFRACTIONS AND UNIFORM FINE SCHEDULE

Rule 3B:1. Purpose.

These Rules are promulgated by the Supreme Court of Virginia pursuant to § 16.1-69.40:1 of the Code of Virginia to carry out the provisions of Chapter 585 of the Acts of Assembly of 1977 and Chapter 605 of the Acts of Assembly of 1978.

Last amended by Order dated June 4, 2020; effective July 1, 2020.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE B
TRAFFIC INFRACTIONS AND UNIFORM FINE SCHEDULE

Rule 3B:2. Uniform Fine Schedule.

For any offense listed below, whether prescribed by the specified State statute or by a parallel local ordinance adopted pursuant to the authority granted in Virginia Code § 46.2-1300, a driver may enter a written appearance, waiver of court hearing, plea of guilty, and pay fines and costs. For traffic offenses not listed below, a court hearing is required. Nothing in this Rule affects bonding procedures for those offenses not listed below. Likewise, nothing in this Rule shall be construed to alter the operation of or the penalties prescribed pursuant to §§ 46.2-1220 through 46.2-1230.

This schedule is applied uniformly throughout the Commonwealth, and a clerk or magistrate may not impose a fine different from the amounts shown here. Costs shall be paid in accordance with the provisions of the Code of Virginia or any rules or regulations promulgated thereunder. This schedule does not restrict the fine a judge may impose for an offense listed here in any case for which there is a court hearing.

Description of Offense*	Statute or Regulation	Fine	Processing** Fee***	Total
1. Speed Violations				
Exceeding the speed limit	46.2-870 to 46.2-872, 46.2-873.1 to 46.2-876	$ 6 per mile over speed limit	$51	
Exceeding the speed limit in a school crossing	46.2-873	$ 7 per mile over speed limit	$51	
Exceeding the speed limit in a highway work zone	46.2-878.1	$ 7 per mile over speed limit	$51	
Exceeding the speed limit in a photo-monitored school crossing or highway work zone by at least 10 mph	46.2-873 46.2-878.1 46.2-882.1	$100	$51	$151
Exceeding speed limits set by Transportation Commissioner	46.2-878	$ 6 per mile over speed limit	$51	
Exceeding the speed limit in a residence district	46.2-878.2	$200 plus $8 per mile over speed limit	$51	

Exceeding the speed limit in a 55 mph or 65 mph zone	46.2-870	$ 6 per mile over speed limit	$51	
Driving in excess of 80 mph but less than 86 mph in a 65 mph zone	46.2-878.3	$100 plus $6 per mile over speed limit	$51	
Exceeding the speed limit on bridge	46.2-881	$ 6 per mile over speed limit	$51	
Impeding traffic by slow speed	46.2-877	$30	$51	$81
Failure to drive at approximate speed authorized for lane in which vehicle is moving, on highway where slow moving traffic" lane is designated	46.2-804(1)	$100	$51	$151

2. Other Moving Offenses

Moving violation committed in highway safety corridor	46.2-808.2	Double otherwise applicable fine	$51	
Failure to obey highway sign	46.2-830	$30	$51	$81
Coasting on downgrade with gears in neutral	46.2-811	$30	$51	$81
Driving more than 13 hours in a 24-hour period	46.2-812	$30	$51	$81
Causing or permitting vehicle to be driven more than 13 hours in a 24-hour period	46.2-812	$30	$51	$81
Improper failure to drive on right side of highway	46.2-802	$100	$51	$81
Failure to move in designated direction on one-way roadway	46.2-806	$30	$51	$81
Failure to drive to right of rotary traffic island	46.2-807	$30	$51	$81
Improper failure to keep right in crossing highway intersection	46.2-803	$30	$51	$81
Improper failure to keep right in crossing highway intersection by railroad right of way	46.2-803	$30	$51	$81

Improper failure to observe lanes marked for traffic:				
- failure of slow moving traffic to keep right	46.2-804(1)	$100	$51	$151
- improperly driving in center	46.2-804(2)	$100	$51	$151
- changing lane without first ascertaining safety of move	46.2-804(2)	$100	$51	$151
- improperly driving in center lane of 3-lane highway	46.2-804(3)	$100	$51	$151
- improperly crossing solid line driver's lane	46.2-804(5)	$100	$51	$151
- improperly crossing double solid line	46.2-804(6)	$100	$51	$151
Disregard of lane direction control signal	46.2-805	$30	$51	$81
Failure to obey traffic lights	46.2-833	$100	$51	$151
Evasion of a traffic control device	46.2-833.1	$50	$51	$101
Illegal right turn on red	46.2-835	$50	$51	$101
Illegal left turn on red	46.2-836	$50	$51	$101
Improper passing:				
- failure to remain on right side of highway when meeting vehicle proceeding in opposite direction	46.2-837	$30	$51	$81
- driving too close to vehicle being overtaken in same direction	46.2-838	$30	$51	$81
- returning to right side of highway before safely clear of overtaken vehicle	46.2-838	$30	$51	$81
- improperly passing to the right of a vehicle proceeding in same direction	46.2-841	$30	$51	$81
- failure to give way to the right to overtaking vehicle	46.2-842	$30	$51	$81

- improperly increasing speed when passed by overtaking vehicle	46.2-842	$30	$51	$81
- failure to give way to overtaking vehicle when driving abreast on divided highway	46.2-842.1	$30	$51	$81
- passing when left lane is not clearly visible	46.2-843	$30	$51	$81
- passing on left when oncoming traffic is too near to permit it in safety	46.2-843	$30	$51	$81
- truck or tractor and trailer impeding passage of following traffic by passing another truck or tractor and trailer on upgrade	46.2-843	$30	$51	$81
-passing stopped school bus	46.2-844	$250	$51	$301
Following too closely:				
- motor vehicle following a vehicle more closely than is reasonable or prudent	46.2-816	$30	$51	$81
Improper U turn:				
- within business district, city or town, U turn other than at intersection	46.2-845	$30	$51	$81
- U turn on a curve or approaching crest of hill where not visible to vehicles approaching in any direction within 500 feet	46.2-845	$30	$51	$81
Improper position or method of turning at intersection:				
- unauthorized right turn from other than right hand curb or edge of roadway	46.2-846(A)(1)	$30	$51	$81
- on a two-way roadway, unauthorized left turn from other than lane nearest center line	46.2-846(A)(2)	$30	$51	$81

- on other than two-way roadway, unauthorized left turn from other than left-most available lane	46.2-846(A)(3)	$30	$51	$81
- failure to follow traffic control device of local authority	46.2-846(B)	$30	$51	$81
Starting, backing, stopping or turning without first seeing that such a move can be made in safety	46.2-848	$30	$51	$81
Starting, backing, stopping or turning without giving required signal	46.2-848	$30	$51	$81
Improper signals	46.2-849	$30	$51	$81
Improper change of course after giving signal	46.2-850	$30	$51	$81
Failure to signal prior to moving standing vehicle into traffic	46.2-851	$30	$51	$81
Failure to yield right of way:				
- failure of driver on left to yield to driver on right entering intersection at same time	46.2-820	$30	$51	$81
- failure to obey "yield right of way" sign at intersection	46.2-821	$30	$51	$81
- failure of driver approaching or entering circular intersection to yield to driver already in the circle	46.2-822	$30	$51	$81
- failure to yield at uncontrolled "T" intersection	46.2-824	$30	$51	$81
- failure of driver turning left to yield to oncoming vehicle	46.2-825	$30	$51	$81
- failure to stop and yield when entering public highway or sidewalk from private road, etc.	46.2-826	$30	$51	$81

- failure to yield to U.S. Armed Services, National Guard, etc.	46.2-827	$30	$51	$81
- failure to yield to funeral procession under police escort	46.2-828	$30	$51	$81
- failure to yield right of way to emergency vehicle	46.2-829	$30	$51	$81
- following too near fire apparatus	46.2-921	$30	$51	$81
- driving over fire hose	46.2-922	$30	$51	$81
- failure to yield to pedestrian in clearly marked crosswalk or at intersection	46.2-924	$30	$51	$81
- failure to yield to pedestrian boarding or alighting from a bus	46.2-927	$30	$51	$81
- failure to stop and yield when approaching intersection of highway controlled by stop sign	46.2-821	$30	$51	$81
- failure to slow down or stop and yield when approaching intersection on highway controlled by "yield right of way" sign	46.2-821	$30	$51	$81
Driving through pedestrian safety zone	46.2-814	$30	$51	$81
Failure to obey railroad warning signal	46.2-884	$30	$51	$81
Proceeding improperly at railroad grade crossing:				
- generally	46.2-885	$30	$51	$81
- vehicles carrying passengers for hire, school bus or truck with flammable or explosive cargo	46.2-886	$30	$51	$81
- tractor, steam shovel, etc.	46.2-887	$30	$51	$81

Stopping bus or truck on highway to unload passengers or cargo	46.2-893	$30	$51	$81
Unlawful use of all-terrain vehicle	46.2-915.1	$30	$51	$81
Failure to display headlights at night or during time of poor visibility	46.2-1030	$30	$51	$81
Driving with excessive lights for purpose of general illumination ahead of vehicle	46.2-1030	$30	$51	$81
Failure to display warning lights properly	46.2-1030	$30	$51	$81
Failure to dim headlights	46.2-1034	$30	$51	$81
Driving in violation of HOV Lane Restrictions	33.2-501(B)	$100	$51	$151
Driving in violation of HOV Lane Restrictions, Planning District Eight (first offense)	33.2-501(B)(1)	$125	$51	$176
Driving in violation of HOV Lane Restrictions, Planning District Eight (second offense within five years from a first offense)	33.2-501(B)(2)	$250	$51	$301
Driving in violation of HOV Lane Restrictions, Planning District Eight (third offense within five years from a first offense)	33.2-501(B)(3)	$500	$51	$551
Driving in violation of HOV Lane Restrictions, Planning District Eight (fourth offense within five years from a first offense)	33.2-501(B)(4)	$1,000	$51	$1,051

Violations of 33.2-503(3) are only prepayable if unpaid tolls and all administrative fees imposed by the HOT lanes operator are paid in addition to the fines and court costs reflected here.

Driving vehicle in violation of HOT Lane Restrictions (first offense)	33.2-503(3)	$50	$51	$101
Driving vehicle in violation Of HOT Lane Restrictions (second offense)	33.2–503(3)	$100	$51	$151

Driving vehicle in violation of HOT Lane Restrictions (third offense within two years of second offense)	33.2-503(3)	$250	$51	$301
Driving vehicle in violation of HOT Lane Restrictions (fourth and subsequent offense within three years from second offense)	33.2-503(3)	$500	$51	$551
Driving vehicle in violation of HOT lane vehicle classification restrictions (first offense)	33.2-503(4)	$125	$51	$176
Driving vehicle in violation of HOT lane vehicle classification restrictions (second offense within five years from a first offense)	33.2-503(4)	$250	$51	$301
Driving vehicle in violation of HOT lane vehicle classification restrictions (third offense within five years from a first offense)	33.2-503(4)	$500	$51	$551
Driving vehicle in violation of HOT lane vehicle classification restrictions (fourth and subsequent offense within five years from a first offense)	33.2-503(4)	$1,000	$51	$1,051

3. Equipment Violations

Insufficient lighting equipment:	46.2-1010	$30	$51	$81
- less than two proper headlights on autos, trucks, busses, etc.	46.2-1011	$30	$51	$81
- motorcycle without proper headlight	46.2-1012	$30	$51	$81
- motorcycle with more than two headlights	46.2-1012	$30	$51	$81
- improper rear lights	46.2-1013	$30	$51	$81
- improper brake lights	46.2-1014	$30	$51	$81
- improper lighting equipment on all other mobile equipment	46.2-1016	$30	$51	$81

Failure of car to be equipped with supplemental high mount stop light	46.2-1014.1	$30	$51	$81
Improper dimension or marker lights:				
- generally	46.2-1017	$30	$51	$81
- vehicles or loads exceeding 35 feet	46.2-1018	$30	$51	$81
Spotlights or ditchlights				
- more than two	46.2-1019	$30	$51	$81
- aimed left of highway center or more than 100 feet ahead of vehicle	46.2-1019	$30	$51	$81
- unapproved type	46.2-1019	$30	$51	$81
- use in conjunction with or in place of headlights, except in emergency	46.2-1019	$30	$51	$81
- improper use of auxiliary lamps on emergency vehicles	46.2-1028	$30	$51	$81
Headlights improperly aimed or of improper intensity:				
- single beam headlights	46.2-1031	$30	$51	$81
- multiple beam headlights	46.2-1032	$30	$51	$81
Failure of car to be equipped with windshield defroster or defogger	46.2-1055.1	$30	$51	$81
Inadequate brakes:				
- generally	46.2-1066	$30	$51	$81
- bicycles	46.2-1066	$15	$51	$66
- holding device	46.2-1068	$30	$51	$81
- motorcycles	46.2-1069	$30	$51	$81
- trailers or semitrailers	46.2-1070	$30	$51	$81
Improper alteration of suspension system	46.2-1063	$30	$51	$81
Inadequate steering gear	46.2-1065	$30	$51	$81

Inadequate horn	46.2-1059	$30	$51	$81
Illegal siren, whistle or horn	46.2-1060	$30	$51	$81
Use of speedometer not in good working order	46.2-1080	$30	$51	$81
Improper painting and lettering on school bus	46.2-1089	$30	$51	$81
Absence of or inadequate rear view mirrors:				
- generally	46.2-1082	$30	$51	$81
- vehicle registered for passenger vehicular transportation	46.2-1082	$30	$51	$81
Insufficient rear fenders, flags or guards on trucks	46.2-1083	$30	$51	$81
Improper signs on windshields, etc.	46.2-1052	$30	$51	$81
Driver's view obstructed because of suspended objects or altered vehicle	46.2-1054	$30	$51	$81
Inadequate windshield wipers	46.2-1055	$30	$51	$81
Absence of required safety glass	46.2-1056	$30	$51	$81
Absence of windshield	46.2-1057	$30	$51	$81
Improper replacement of glass in vehicle	46.2-1058	$30	$51	$81
Improper or inadequate tires:				
- violation of restrictions on solid rubber tires	46.2-1041	$30	$51	$81
- operation of vehicle with insufficient tire tread	46.2-1043	$30	$51	$81
- improper use of studded tires	46.2-1044	$30	$51	$81
Lack of or inadequate signal device	46.2-1038, 46.2-1039	$30	$51	$81
Failure to use flashing signals when stopped on highway	46.2-1040	$30	$51	$81

Inadequate exhaust system:				
- driver of vehicle	46.2-1049	$30	$51	$81
- owner permitting or allowing operation of vehicle	46.2-1049	$30	$51	$81
- vehicle without proper pollution control device	46.2-1048	$30	$51	$81
- muffler cutout, straight exhaust or gutted muffler	46.2-1047	$30	$51	$81
Operation of vehicle without securely affixed or properly located operator's seat	46.2-1084	$30	$51	$81
Improper motorcycle steering mechanism	46.2-1085	$30	$51	$81
Motorcycle without muffler	46.2-1050	$30	$51	$81
Improper cooling unit	46.2-1088	$30	$51	$81
Use of unapproved equipment	46.2-1002	$30	$51	$81
Use of defective or unsafe equipment	46.2-1003	$30	$51	$81
Operating vehicle not equipped with proper seat belts	46.2-1092	$30	$51	$81
Failure to have vehicle inspected	46.2-1158	$30	$51	$81
Failure to correct defects discovered by inspection	46.2-1158	$50	$51	$101
Driving after expiration of rejection inspection sticker	46.2-1158	$50	$51	$101

4. Parking or Stopping Violations

Opening door of parked motor vehicle when not reasonably safe to do so	46.2-818.1	$30	$51	$81
Stopping or parking in violation of a highway sign for a driver to sleep or rest	46.2-830.1	$20	$51	$71
Vehicle improperly stopped or parked on highway	46.2-888	$20	$51	$71

- parked or stopped at or near fire or accident so as to cause traffic hazard or interfere with emergency operations	46.2-890	$20	$51	$71
Parking too near fire apparatus	46.2-921	$20	$51	$71
Failure to use proper warning device when vehicle disabled in highway:				
- bus, truck, trailer, house trailer, or mobile home	46.2-111	$20	$51	$71
- vehicle transporting inflammable liquids	46.2-111	$20	$51	$71
- failure to use red flags when vehicle disabled	46.2-111	$20	$51	$71
Vehicle improperly parked in a VDOT owned commuter parking lot	46.2-1219.2	$20	$51	$71
Parking in front of fire hydrant, or private driveway, near street corner, fire station, or rescue squad building and too close to intersection	46.2-1239	$20	$51	$71
Failure to dim headlights on parked vehicle	46.2-1035	$20	$51	$71
Vehicle parked or stopped on highway without lights at night or during low visibility	46.2-1037	$20	$51	$71
Failure to set handbrake and turn wheels to curb on parked car	46.2-1071	$20	$51	$71
Improper use of parking space reserved for persons with disabilities	46.2-1242	$150	$51	$201

5. Trucks and Hauling or Towing Vehicles

Absence of flag or light at end of load of four feet or more (excluding violation on a two-lane highway where passing is permitted)	46.2-1121	$30	$51	$81

Absence of flag or light at end of load of four feet or more on a two-lane highway where passing is permitted	46.2-1121	$250	$51	$301
Failure to fasten load of logs, barrels, etc.	46.2-1155	$30	$51	$81
Failure to prevent escape of vehicle contents	46.2-1156	$30	$51	$81
Load extending too far beyond front (excluding violation on a two-lane highway where passing is permitted)	46.2-1120	$30	$51	$81
Load extending too far beyond front on a two-lane highway where passing is permitted	46.2-1120	$30	$51	$81
Load extending too far beyond sides	46.2-1111	$250	$51	$301
Improper towing				
- improperly towing more than one trailer, etc. (excluding violation on a two-lane highway where passing is permitted)	46.2-1116	$30	$51	$81
- towing without draw bar not exceeding 15 feet and emergency chain (excluding violation on a two-lane highway where passing is permitted)	46.2-1118	$30	$51	$81
- improperly towing more than one trailer, etc., on a two-lane highway where passing is permitted	46.2-1116	$250	$51	$301
- towing without draw bar not exceeding 15 feet and emergency chain on a two-lane highway where passing is permitted	46.2-1118	250	$51	$301

6. Pedestrian Violations

Malicious or careless interference with vehicle passage	46.2-923	$15	$51	$66
Failure to observe pedestrian control signals	46.2-925	$15	$51	$66

Stepping into street where driver's vision obscured	46.2-926	$15	$51	$66
Soliciting rides	46.2-929	$15	$51	$66
Failure to walk on left edge of roadway where no sidewalk	46.2-928	$15	$51	$66
Unlawful loitering on bridge or highway right-of-way	46.2-930	$15	$51	$66
Playing on streets or highways	46.2-932	$15	$51	$66

7. Miscellaneous Offenses

Unlawful riding of an animal at night	46.2-800.1	$30	$51	$81
Improper abandonment of motor vehicle	46.2-1209	$40	$51	$91
Failure to obtain registration	46.2-600	$25	$51	$76
Failure to carry license or registration	46.2-104	$10	$51	$61
Expiration of registration	46.2-613	$25	$51	$76
Operate vehicle which is unregistered, untitled, or without plates/decals or with expired registration/license/decals	46.2-613(1)	$25	$51	$76
Possess, use or knowingly permit use of registration card, license plate, or decal by anyone not entitled to it	46.2-613(2)	$25	$51	$76
Possess, lend or knowingly permit use of registration card, license plate, or decal by anyone not entitled to it	46.2-613(3)	$25	$51	$76
Expired registration	46.2-646	$25	$51	$76
Pedestrian, bicycle, animal, moped, prohibited vehicle on controlled access highway	46.2-808	$30	$51	$81
Operating motorcycle without headlight, horn or rearview mirror at certain times	46.2-912	$30	$51	$81
Operating or riding a motorcycle without helmet; operating motorcycle without	46.2-910(A)	$25	$51	$76

face shield, goggles or safety windshield				
Occupation of trailer being towed on highways	46.2-813	$30	$51	$81
Unlawful use of radar detection device	46.2-1079	$40	$51	$91
Unlawful use of radar jamming device	46.2-1079	$40	$51	$91
Unlawful use of earphones while operating vehicle	46.2-1078	$25	$51	$76
Failure to display slow moving vehicle emblem	46.2-1081	$15	$51	$66
Failure to display license plate	46.2-711	$25	$51	$76
Improper display of license plate	46.2-715	$25	$51	$76
License plate improperly fastened or obscured	46.2-716	$25	$51	$76
Vehicle exceeding width limitations	46.2-1105	$250	$51	$301
Vehicle exceeding height limitations (excluding offenses of driving in violation of tunnel height restrictions and failure to report overhead bridge or structure collision)	46.2-1110	$250	$51	$301
Vehicle exceeding length regulations (excluding violation on a two-lane highway where passing is permitted)	46.2-1112	$250	$51	$301
Vehicle exceeding length regulations on a two-lane highway where passing is permitted	46.2-1112	$250	$51	$301

8. Bicycle Violations

Riding bicycle improperly on roadway	46.2-905	$15	$51	$66
Carrying articles improperly on bicycle	46.2-906	$15	$51	$66

Bicycle without proper headlight	46.2-1015	$15	$51	$66
Bicycle without rear reflector or light	46.2-1015	$15	$51	$66
Bicycle on highway without adequate brake	46.2-1066	$15	$51	$66

Description of Offense*	Regulation[1]	Fine	Processing** Fee***	Total
9. Motor Carrier Offenses[†]				
(a.) General Violations				
Marking of motor vehicle	49 C.F.R. § 390.21	$25	$51	$76
Railroad crossing/stopping	49 C.F.R. § 392.10	$100	$51	$151
(b.) Driver Violations				
No medical examiner's certificate	49 C.F.R. § 391.41	$50	$51	$101
Improper medical examiner's certificate	49 C.F.R. § 391.43	$50	$51	$101
Medical certificate invalid	49 C.F.R. § 391.43	$50	$51	$101
No medical waiver	49 C.F.R. § 391.49	$50	$51	$101
Ill/fatigued driver	49 C.F.R. § 392.3	$75	$51	$126
Possess alcoholic beverage	49 C.F.R. § 392.5	$100	$51	$151
Violate 10-hour rule, 15-hour rule	49 C.F.R. § 395.3	$100	$51	$151
Violate 60/70 hour rule	49 C.F.R. § 395.3	$100	$51	$151
Log book violation (general)	49 C.F.R. § 395.8	$100	$51	$151
No log book	49 C.F.R. § 395.8	$100	$51	$151
Log book not current	49 C.F.R. § 395.8	$100	$51	$151

Fail to retain previous seven days on log book	49 C.F.R. § 395.8	$100	$51	$151

(c.) Equipment Violations

Equipment - inspection/use	49 C.F.R. § 392.7	$50	$51	$101
Emergency equipment - inspection/use	49 C.F.R. § 392.8	$50	$51	$101
Safe loading (secured)	49 C.F.R. § 392.9	$100	$51	$151
Brakes - inoperative or missing	49 C.F.R. § 393.40 to § 393.52	$100	$51	$151
Fuel tank securement	49 C.F.R. § 393.65	$50	$51	$101
Fuel leak/cap	49 C.F.R. § 393.67	$25	$51	$76
Coupling/towing devices	49 C.F.R. §§ 393.70, 393.71	$50	$51	$101
Defective tires/tire exceeds weight limit	49 C.F.R. § 393.75	$50	$51	$101
Bus violations	49 C.F.R. §§ 393.89 to 393.92	$50	$51	$101
Front end structure	49 C.F.R. § 393.106	$50	$51	$101
Frame - cracked, loose, sagging, broken	49 C.F.R. § 393.201	$100	$51	$151
Cab/body components – defective	49 C.F.R. § 393.203	$50	$51	$101
Wheels/rims defective	49 C.F.R. § 393.205	$50	$51	$101
Suspension – defective	49 C.F.R. § 393.207	$50	$51	$101
Steering system – defective	49 C.F.R. § 393.209	$100	$51	$151
Vehicle maintenance (general)	49 C.F.R. § 396.3	$100	$51	$151

No driver vehicle inspection report	49 C.F.R. § 396.11	$25	$51	$76
No periodic inspection	49 C.F.R. §§ 396.17 to 396.25	$25	$51	$76

(d.) Hazardous Materials - Driving and Parking

Fail to attend Division 1.1, 1.2 or 1.3 material	49 C.F.R. § 397.5	$100	$51	$151
Fail to attend other hazardous materials class	49 C.F.R. § 397.5	$100	$51	$151
Improper parking Division 1.1, 1.2 or 1.3 material	49 C.F.R. § 397.7, § 397.11	$100	$51	$151
Improper parking other hazardous materials	49 C.F.R. § 397.7, § 397.11	$100	$51	$151
Fail to have route plan	49 C.F.R. § 397.67	$100	$51	$151
Smoking violations	49 C.F.R. § 397.13	$100	$51	$151
Instructions and document violations	49 C.F.R. § 397.19	$100	$51	$151

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* The description of offense is for reference and is not a legal definition.
** Unless otherwise provided by statute.
*** See §§ 9.1-106 and 53.1-120 of the Code.
1 The category "regulation" refers to the section of the Code of Federal Regulations as incorporated by regulation at 19 VAC 30-20-80 of the Virginia Motor Carrier Safety Regulations. These regulations are included for identification and reference purposes only, since these violations are violations of Virginia regulations.
†These fines are imposed for violations of certain Virginia Motor Carrier Safety Regulations. The statutory authority to impose these fines is contained in § 52-8.4 of the Code of Virginia and in 19 VAC 30-20-10, et seq., of the Virginia Motor Carrier Safety Regulations, incorporating by reference 49 C.F.R. Parts 390-397.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE C
NON-TRAFFIC PREPAYABLE OFFENSES AND UNIFORM FINE SCHEDULE

Rule 3C:1. Purpose and Effective Date.

These rules are promulgated by the Supreme Court of Virginia pursuant to § 16.1-69.40:2 of the Code of Virginia to carry out the provisions of Chapter 605 of the Acts of Assembly of 1978 and Chapter 421 of the Acts of Assembly of 1989.

Last amended by Order dated June 4, 2020; effective July 1, 2020.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE C
NON-TRAFFIC PREPAYABLE OFFENSES AND
UNIFORM FINE SCHEDULE

Rule 3C:2. Uniform Fine Schedule.

Any person charged with any offense listed below may enter a written appearance, waiver of court hearing, plea of guilty, and pay fines and costs.

This schedule is applied uniformly throughout the Commonwealth, and a clerk or magistrate may not impose a fine different from the amounts shown here. Costs shall be paid in accordance with the provisions of the Code of Virginia or any rules or regulations promulgated thereunder. The schedule does not restrict the fine a judge may impose for an offense listed here in any case for which there is a court hearing.

Where injury to the person is involved, prepayment may not be made, even though the offense or violation appears on the list below. See Va. Code § 16.1-69.40:2(A).

A violation of a provision of Title 28.2 may be prepaid only if the person has not violated a provision of Title 28.2 within the past 12 months. See Va. Code § 28.2-903.

A violation of any of the provisions of the hunting, trapping, or inland fish laws, or of § 18.2-132, or any regulations adopted by the Board of Wildlife Resources pursuant thereto, may be prepaid only if the person has not violated any of those provisions within the past three years. See Va. Code § 29.1-338.

Description of Offense*	Statute or Regulation	Fine	Processing** Fee***	Total
Drinking or tendering alcoholic beverage in public place	4.1-308	$25	$61	$86
Failing to assist forest warden in fighting fire	10.1-1139	$30	$61	$91
Unlawful burning of brush, leaves, etc.	10.1-1142(A) 10.1-1142(D)	$40	$61	$101
Unlawful burning during restricted period	10.1-1142(B) 10.1-1142(D)	$40	$61	$101
Leaving certain fires unattended or failing to extinguish the same	10.1-1142(C) 10.1-1142(D)	$40	$61	$101
Hunting or trapping in state forests without special use permit	10.1-1151	$35	$61	$96
Hunting or trapping in state forests in violation of restrictions or conditions of special use permit	10.1-1153	$35	$61	$96

Unlawful admittance, parking or use at certain Dept.-owned facilities or Dept.-leased land	29.1-113	$25	$61	$86
Failure to post signs regarding disposal of used motor oils	10.1-1422.6(D)	$25	$61	$86
Unlawful buying, selling or disposing of milk case or crate	18.2-102.2	$35	$61	$96
Unlawful refusal to return milk case or crate	18.2-102.2	$35	$61	$96
Unlawful defacing, cover up or removal of business identification on milk case or crate	18.2-102.2	$35	$61	$96
Bringing unleashed dog into Capitol Square	18.2-123	$10	$61	$71
Trespassing at night upon cemetery	18.2-125	$35	$61	$96
Trespassing at night upon church or school property	18.2-128(A)	$35	$61	$96
Trespassing upon lands to hunt, fish or trap without consent	18.2-132	$50	$61	$111
Trespassing by international release of hunting dogs on the lands of another	18.2-132.1	$50	$61	$111
Computer invasion of privacy by intentionally examining personal information without authority	18.2-152.5	$50	$61	$111
Trespassing on railroad track	18.2-159	$35	$61	$96
Trespassing on railroad trains	18.2-160	$35	$61	$96
Boarding or riding train without lawful payment of fare	18.2-160.1(A) 18.2-160.1(B)	$100	$61	$161
Unlawfully intercepting or monitoring employee telephone calls	18.2-167.1	$35	$61	$96
Failing to report removal, alteration of trademark or identification numbers on a business machine	18.2-214.1	$50	$61	$111
Using games, contests, lotteries to promote sale of products having both federal and state tax	18.2-242	$50	$61	$111

Expectorating in public	18.2-322	$15	$61	$76
Drinking alcoholic beverage while driving motor vehicle	18.2-323.1	$75	$61	$136
Gambling illegally	18.2-326	$35	$61	$96
Selling to, distributing to or purchasing for persons under age 21 tobacco products	18.2-371.2(A)	$75	-	$75
Purchasing or possessing tobacco products when under age 21	18.2-371.2(B)	$35	-	$35
Being intoxicated in public	18.2-388	$25	$61	$86
Shooting pigeons for amusement or renting premises for such purposes	18.2-403.3(2) 3.2-6573	$35	$61	$96
Making false statement to secure dog license	18.2-403.3(8) 3.2-6587(A)(1)	$35	$61	$96
Failing to pay dog license tax	18.2-403.3(9) 3.2-6530 3.2-6587(A)	$25	$61	$86
Concealing unlicensed dog	18.2-403.3(10) 3.2-6587(A)	$35	$61	$96
Unlawfully removing dog collar or tag	18.2-403.3(11) 3.2-6587(A)	$35	$61	$96
Using abusive language	18.2-416	$60	$61	$121
Using recorded telephone solicitation calls for initial sales contacts	18.2-425.1(A)	$50	$61	$111
Using recorded telephone solicitation calls which do not disengage when party called attempts to do so	18.2-425.1(B)	$50	$61	$111
Unlawfully communicating with prisoners by persons outside any jail	18.2-473.1	$75	$61	$136
Unlawfully possessing or duplicating keys to public buildings	18.2-503	$50	$61	$111
Unlawfully changing name	18.2-504.1	$60	$61	$121
Campaigning at election registration location	24.2-1003	$50	$61	$111

Failing to obey chief or other fire officer answering an alarm or operating at an emergency incident	27-15.1	$50	$61	$111
Fishing without a saltwater license	28.2-302.1	$75	$61	$136
Unlawful setting of fishnets	28.2-309	$150	$61	$211
Taking fish or shellfish on or within 500 yards below Chickahominy Dam at Walker's on the Chickahominy River other than with rod and reel and hand line	28.2-311	$60	$61	$121
Buying, selling or possessing oysters under the prescribed size and undersized shells taken from the natural rocks, beds and shoals	28.2-510	$110	$61	$171
Having oysters or shells on culling board, deck, washboard or other receptacle above hold or in deckhouse when boat is oystering upon natural rocks, beds or shoals and not at anchor; when off the public rocks; when approaching a buy boat; or when approaching a landing	28.2-513	$150	$61	$211
Having more than one-half gallon of shucked oysters on board a boat harvesting on the public rocks	28.2-514	$60	$61	$121
Taking or catching oysters or shells for purpose of converting same into lime without permission from Commission	28.2-529	$110	$61	$171
Unlawful violation of regulations governing use of crab traps and pounds	28.2-701	$150	$61	$211
Taking or catching crabs from statutorily prohibited area from June 1 to Sept. 15, for purpose of resale	28.2-709	$150	$61	$211
Placing or maintaining any crab, eel, or fish pot in navigable channel which has navigation aids installed or approved by any agency of U.S. government	28.2-710	$60	$61	$121

Placing, setting or leaving crab pots in tidal tributaries between Jan. 1 and Jan. 31 or other time period specified by Marine Res. Comm.	28.2-711	$60	$61	$121
Possess Striped Bass less than 18 inches	4VAC20-252-30(C)	$50 per fish (Maximum fine not to exceed $500)	$61	
Possess Striped Bass larger than the maximum size	4VAC20-252-50(E)	$50.00 per fish (Maximum fine not to exceed $500)	$61	
Possess Striped Bass over creel limit	4VAC20-252-50(C)	$100.00 per fish (Maximum fine not to exceed $500)	$61	
Fail to purchase Striped Bass buyer's permit	4VAC20-252-130(D)	$100.00	$61	$161
Unlawfully set, place, or leave crab pots in tidal waters	4VAC20-270-40(C)	$100.00	$61	$161
Unlawful for any person to take, catch, or possess any speckled trout less than minimum size	4VAC20-280-30(A)	$50 per fish (Maximum fine not to exceed $500)	$61	
Unlawful for hook-and-line, rod-and-reel or hand-line to possess oversize speckled trout	4VAC20-280-30(B)	$50 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to possess any red drum less than 18 or greater than 26 inches	4VAC20-280-30(C)	$50 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to possess more than creel limit for speckled trout	4VAC20-280-40	$100 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to take or catch more than 1 black drum	4VAC20-320-40	$100 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to take, catch or possess any black drum less than 16 inches	4VAC20-320-60	$50 per fish (Maximum fine not to exceed $500)	$61	
Failure to cull crabs at harvest location	4VAC20-370-20	$100	$61	$161
Unlawful crab culling containers	4VAC20-370-20	$100	$61	$161
Unlawful to possess more than the maximum number of gray trout or under the minimum size	4VAC20-380-60	$50 per fish (Maximum fine not to exceed $500)	$61	

Drift and anchor gill nets not marked	4VAC20-430-20	$50	$61	$111
Staked gill net not marked	4VAC20-430-30	$50	$61	$111
Unlawful for any person to possess more than 10 bluefish	4VAC20-450-20	$100 per fish (Maximum fine not to exceed $500)	$61	
Fail to completely remove traps, leads, wire, poles and all other related gear of crab traps and pounds no later than December 31 of each year	4VAC20-460-30	$100	$61	$161
Unlawful to possess more than 2 amberjack or more than 1 cobia at any time	4VAC20-510-20	$100 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to possess amberjack less than 32 inches or cobia less than 37 inches	4VAC20-510-30	$50 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to catch and retain possession of American shad	4VAC20-530-30	$100 per fish (Maximum fine not to exceed $500)	$61	
Unlawful for any person to possess more than 15 Spanish mackerel or more than 3 king mackerel	4VAC20-540-30	$100 per fish (Maximum fine not to exceed $500)	$61	
Unlawful for any person to set any gill net or nonfixed finfishing device and let net or device remain unfished	4VAC20-550-20	$150	$61	$211
Unlawful to alter finfish such that the species cannot be determined	4VAC20-580-20(A)	$200	$61	$261
Unlawful to alter any finfish regulated by size such that total length cannot be determined	4VAC20-580-20(B)	$200	$61	$261
Unlawful to possess any summer flounder smaller than designated size limit	4VAC20-620-50(D)	$50 per fish (Maximum fine not to exceed $500)	$61	
Unlawfully possessing fish from recreational gill net	4VAC20-670-30(E)	$50	$61	$111
Unlawfully fishing recreational crab pots	4VAC20-670-30(I)	$75	$61	$136

Unlawful to place, set or fish any crab pot that does not contain at least two unobstructed cull ring of proper size and location	4VAC20-700-20	$150	$61	$211
Unlawful to catch and retain possession of any scup smaller than the minimum sizes	4VAC20-910-30	$50 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to possess any black sea bass smaller than minimum size limits	4VAC20-950-30(C)	$50 per fish (Maximum fine not to exceed $500)	$61	
Possession of any quantity of black sea bass that exceeds possession limit	4VAC20-950-45	$100 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to possess tautog smaller than minimum size limit	4VAC20-960-30(C)	$50 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to possess more than four tautog recreationally	4VAC20-960-45	$100 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to possess more than four spadefish recreationally	4VAC20-970-30(A)	$100 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to possess more than six spadefish by commercial hook and line	4VAC20-970-30(C)	$100 per fish (Maximum fine not to exceed $500)	$61	
Unlawful to harvest, land or possess more than four sheepshead recreationally	4VAC20-1110-30	$100 per fish (Maximum fine not to exceed $500)	$61	
Failure to use and maintain a certified scale to weigh those fish, shellfish and marine organisms regulated by a harvest quota, weight limit or landing weight	4VAC20-1170-10	$50	$61	$111
Unlawful to place a net within 300 yards of the side or end of a fixed fishing device	4VAC20-1220-30	$100	$61	$161
Unlawful to take or catch any marine or anadromous fish species recreationally without obtaining, annually, a Fisherman Identification Program (FIP) Registration	4VAC20-1240-30	$25	$61	$86

Unlawful to catch and retain possession of any river herring from Virginia tidal waters	4VAC20-1260-30	$100 per fish (Maximum fine not to exceed $500)	$61	
Unauthorized Transfer of License (note Order #)	PRFC Reg I 1 a [1]		[2]	$250
Setting 1 to 5 More Crab Pots than Licensed (note Order #)	PRFC Reg I 2 d (1)[1]		[2]	$150
Setting 6 to 10 More Crab Pots than Licensed (note Order #)	PRFC Reg I 2 d (1)[1]		[2]	$250
Setting 11 to 15 More Crab Pots than Licensed (note Order #)	PRFC Reg I 2 d (1)[1]		[2]	$350
Setting 16 to 20 More Crab Pots than Licensed (note Order #)	PRFC Reg I 2 d (1)[1]		[2]	$450
Setting 21 or More Crab Pots than Licensed (note Order #)	PRFC Reg I 2 d (1)[1]		[2]	$500
Unlawful Crabbing with a 2 on 1 Boat Exemption Permit	PRFC Reg I 2 d (6)[1]		[2]	$250
Improper Identification of Oyster Tong Vessel	PRFC Reg I 2 f (1)[1]		[2]	$125
Improper Identification of Hand Scrape Vessel	PRFC Reg I 2 f (3)[1]		[2]	$125
Unlicensed Hand Scrape Assistant	PRFC Reg I 2 f (5)(1)[1]		[2]	$125
Unlicensed Hand Tong Assistant	PRFC Reg I 2 f (5)(2)[1]		[2]	$125
Gill Net Set in Water Depth More than 36' MLW	PRFC Reg I 2 (i)(1)[1]		[2]	$250
Fish Trot Line Set with Hooks Too Shallow	PRFC Reg I 2 1 (1)[1]		[2]	$125
Failure to Display Commercial Hook and Line Pennant	PRFC Reg I 2 l (2)[1]		[2]	$125
More Unlicensed Commercial Hook and Line Crew Members Than Allowed	PRFC Reg I 2 l (2)[1]		[2]	$300
Violation of Bowfishing Regulation	PRFC Reg I 2 1 (3)[1]		[2]	$200
Possession of Fish Species Other than Northern Snakehead per fish	PFRC Reg 1 2 1 (3)[1]		[2]	$125

Improper Identification of Eel, Fish, or Bait Pots or Vessel	PRFC Reg I 2 m (4)[1]	[2]	$125
Improper Identification of Pound, Gill or Fyke Net	PRFC Reg I 2 n (8)[1]	[2]	$125
Failing to Maintain 1 to 5 Stakes or Buoys	PRFC Reg I 2 n (9)		$200
Failing to Maintain 6 to 10 Stakes or Buoys	PRFC Reg I 2 n (9)		$250
Failing to Maintain 11 to 15 Stakes or Buoys	PRFC Reg I 2 n (9)		$300
Failing to Maintain 16 to 20 Stakes or Buoys	PRFC Reg I 2 n (9)		$350
Failing to Maintain 21 or more Stakes or Buoys	PRFC Reg I 2 n (9)[1]	[2]	$500
Improper Identification of Fish Trot Line or Vessel	PRFC Reg I 2 q[1]	[2]	$125
Gill Net Set Out of Location	PRFC Reg I 2 s (1)[1]	[2]	$200
Failing to Remove 1 to 5 Stakes	PRFC Reg I 2 s (2)[1]	[2]	$200
Failing to Remove 6 to 10 Stakes	PRFC Reg I 2 s (2)[1]	[2]	$250
Failing to Remove 11 to 15 Stakes	PRFC Reg I 2 s (2)[1]	[2]	$300
Failing to Remove 16 to 20 Stakes	PRFC Reg I 2 s (2)[1]	[2]	$350
Failing to Remove 21 or more Stakes	PRFC Reg I 2 s (2)[1]	[2]	$500
No Reflective Material/Flags on Gill or Fyke	PRFC Reg I 2 s (3)[1]	[2]	$125
No Reflective Material/Flags on Pound Net	PRFC Reg I 2 s (3)[1]	[2]	$250
Gill Net Set Out of Location	PRFC Reg I 2 s[1]	[2]	$75
Operating Charter Boat without Sport Decal	PRFC Reg I 2 u[1]	[2]	$300
Commercial Fishing/Crabbing/ Oystering/Clamming without License	PRFC Reg I 3 b[1]	[2]	$300

Failure to Exhibit Commercial License	PRFC Reg I 3 b[1]	[2]	$125
Placing 1 to 10 Buoys, Gear or Pots in Marked Channel	PRFC Reg I 3 c		$150
Placing 11 to 15 Buoys, Gear or Pots in Marked Channel	PRFC Reg I 3 c		$200
Placing 16 or more Buoys, Gear or Pots in Marked Channel	PRFC Reg I 3 c		$250
Altering/Modifying Striped Bass ID Tags per tag	PRFC Reg I 3 e[1]	[2]	$250
Possession of Other Jurisdiction Striped Bass Tags (1 to 5 tags)	PRFC Reg I 3 f[1]	[2]	$250 per tag
Possession of Other Jurisdiction	PRFC Reg I 3 f[1]	[2]	$500 per tag
Possessing Hand Scrape During Unlawful Time (note Order #)	PRFC Reg II 2 b[1]	[2]	$150
Oystering Before or After Closed Hours (note Order #)	PRFC Reg II 2 b[1]	[2]	$250
Oystering During Closed Season (note Order #)	PRFC Reg II 2 b[1]	[2]	$500
Possessing Patent Tong or Dredging Equipment without Permit	PRFC Reg II 2 e[1]	[2]	$125
Possessing 6 to 10% Unculled Oysters	PRFC Reg II 2 f (1)		$200
Possessing 11 to 15% Unculled Oysters	PRFC Reg II 2 f (1)		$350
Possessing 16% or more Unculled Oysters	PRFC Reg II 2 f (1)[1]	[2]	$500
Not Culling on Oyster Bar	PRFC Reg II 2 f (2)[1]	[2]	$ 500
Possessing Oysters in Containers (not Oyster Basket) or on Washboards	PRFC Reg II 2 g[1]		$200
Oystering in Closed Area (including Sanctuaries)	PRFC Reg II 4 a-b[1]	[2]	$500
Possessing Oysters in Untagged Oyster Baskets	PRFC Reg II 2 g (1)[1]	[2]	$250 per basket

Exceeding Minimum or Maximum Mesh Size	PRFC Reg III 8 b[1]	[2]	$500
Violations of Haul Seine Regulations	PRFC Reg III 8 c (1-2)[1]	[2]	$200
Failure to Install or Maintain Functional Fish Cull Panels	PRFC Reg III 8 (d)[1]	[2]	$200
Obstructed Fish Cull Panels	PRFC Reg III 8 (d)[1]	[2]	$200
Fishing During Closed Season (Commercial)	PRFC Reg III 9 a (1-7)[1]	[2]	$250
Possessing Fish During Closed Season (note Order #) per fish	PRFC Reg III 9 b[1]	[2]	$125
Exceeding Fish Catch/Creel Limits (note Order #) per fish	PRFC Reg III 10 a[1]	[2]	$125
Possessing Striped Bass in Excess of Catch/Creel Limits (note Order #) per fish	PRFC Reg III 10 a[1]	[2]	$150
Using Striped Bass ID Tags of Another	PRFC Reg III 10 b[1]	[2]	$350
Failure to Tag Commercially Caught Striped Bass (1 to 4 fish)	PRFC Reg III 10 b[1]	[2]	$200 per fish
Unlawful Use of Striped Bass Tags (i.e. by gear type) (note Order #)	PRFC Reg III 10 b[1]	[2]	$500
Possessing Undersize Fish (note Order #) $125 1st fish plus $10 each add'l fish	PRFC Reg III 11a	[2]	$125
Possess Oversize Striped Bass (note Order #) per fish	PRFC Reg III 11 a[1]	[2]	$250
Improper Identification of Soft Clam Vessel	PRFC Reg V 1 a[1]	[2]	$125
Possessing 6% or more Undersized Clams	PRFC Reg V 3 a[1]	[2]	$150
Exceeding Clam Catch Limits per bushel	PRFC Reg V 4 a[1]	[2]	$ 250
Clamming in Closed Area	PRFC Reg V 6 d[1]	[2]	$500
Failure to Exhibit Sport Fishing License/ Improper Display of License	PRFC Reg VI 2 c[1]	[2]	$125

Exceeding Unlicensed Recreational Crabbing Gear or Catch Limits	PRFC Reg VI 4 a	[2]	$150
Sport Crabbing without License	PRFC Reg VI 4 b [1]	[2]	$150
Failure to Exhibit Sport Crabbing License	PRFC Reg VI 4 b[1]	[2]	$125
Exceeding Licensed Sport Crabbing Gear Limits	PRFC Reg VI 4 c[1]	[2]	$125
Improper Identification of Sport Crabbing Gear	PRFC Reg VI 4 d[1]	[2]	$125
Exceeding Licensed Sport Crabbing Catch Limits	PRFC Reg VI 4 e[1]	[2]	$125
Sport Fishing without License	PRFC Reg VI 5 a[1]	[2]	$150
Fishing for Striped Bass During Closed Season without Barbless Hooks	PRFC Reg VI 5 e[1]	[2]	$125
Failing to Remove Peeler Traps per trap	PRFC Reg VII 1 d[1]	[2]	$200

Possessing Undersize Crabs

#per Bushel	#per Barrel			
5 to 9	11 to 24	PRFC Reg VII 2 a[1]	[2]	$150
10 to 14	25 to 39	PRFC Reg VII 2 a[1]	[2]	$225
15 to 25	40 to 59	PRFC Reg VII 2 a[1]	[2]	$275
26 or more	60 or more	PRFC Reg VII 2 a[1]	[2]	$400
Improper Identification of Crab Pot Vessel		PRFC Reg VII 3 a [1]	[2]	$125
Improper Identification of Crabbing Gear		PRFC Reg VII 3 b [1]	[2]	$125

Crab Pots without Decal/Tag
– 300 Pot License

# pots without decal/tag			
1 to 15	PRFC Reg VII 3 b [1]	[2]	$250

16 to 30	PRFC Reg VII 3 b [1]	[2]	$500

Crab Pots without Decal/Tag – 400 Pot License

<u># pots without decal/tag</u>

1 to 20	PRFC Reg VII 3 b [1]	[2]	$250
21 to 40	PRFC Reg VII 3 b [1]	[2]	$500

Crab Pots without Decal/Tag – 500 Pot License

<u># pots without decal/tag</u>

1 to 25	PRFC Reg VII 3 b [1]	[2]	$250
26 to 50	PRFC Reg VII 3 b [1]	[2]	$500

Crabbing/Possession of Crabs During Closed Season (note Order #)	PRFC Reg VII 4 a[1]	[2]	$250
Crabbing at Night (note Order #)	PRFC Reg VII 5 b[1]	[2]	$200
No Culling Container on Board	PRFC Reg VII 6 a[1]	[2]	$200
Transporting Crabs not in Baskets or Barrels	PRFC Reg VII 6 a[1]	[2]	$200
No or Closed Cull Rings in 1 to 5 Pots	PRFC Reg VII 6 b[1]	[2]	$175
No or Closed Cull Rings in 6 to 10 Pots	PRFC Reg VII 6 b[1]	[2]	$275
No or Closed Cull Rings in 11 to 15 Pots	PRFC Reg VII 6 b[1]	[2]	$450
No or Closed Cull Rings in 16 to 20 Pots	PRFC Reg VII 6 b[1]	[2]	$500
Failure to Separate Crabs per container	PRFC Reg VII 6 c [1]	[2]	$150
Exceeding Crab Harvest Limit (note Order #) per bushel	PRFC Reg VII 7 a [1]	[2]	$150

Hunting, trapping, or fishing without license	29.1-335	$60 + fee equal to cost of License	$61	$121
Failing to carry hunting, trapping or fishing license	29.1-336	$35	$61	$96
Hunting bear or deer w/out special stamp	29.1-354	$35	$61	$96
Hunting, fishing or trapping in national forest w/out special permit	29.1-408	$35	$61	$96
Failing to obtain permit for taxidermy	29.1-415 29.1-412	$50	$61	$111
Failing to obtain permit for netting fish	29.1-416 29.1-412	$50	$61	$111
Failing to obtain permit for capturing, propagating and disposing of wildlife for authorized purposes	29.1-417 29.1-412	$50	$61	$111
Failing to obtain permit for collecting specimens	29.1-418 29.1-412	$50	$61	$111
Failing to obtain permit for taking, holding falcons, hawks and owls to use to hunt wild game	29.1-419 29.1-412	$50	$61	$111
Failing to secure permits required for field trials	29.1-422 18.2-403.3(6)	$50	$61	$111
Hunting with unauthorized weapons	29.1-519	$60	$61	$121
Violating hunting times	29.1-520	$60	$61	$121
Hunting on Sunday	29.1-521(A)(1)	$50	$61	$111
Hunting after obtaining daily or season limit	29.1-521(A)(3)	$50	$61	$111
Hunting over bait or occupying baited blind	29.1-521(A)(4)	$100	$61	$161
Providing no name or address on traps set on another's property	29.1-521(A)(7)	$25	$61	$86
Failing to visit traps daily and remove animals	29.1-521(A)(9)	$35	$61	$96
Unlawfully hunting, trapping, possessing, transporting animals or carcasses	29.1-521(A)(10)	$100	$61	$161

Violating blaze orange/pink law	29.1-530.1	$25	$61	$86
Certain violations pertaining to sanctuaries, refuges, etc.	29.1-554	$60	$61	$121
Shooting, attempting to shoot, or taking game on preserve before complying with regulations	29.1-603	$35	$61	$96
Removing shot game from preserve without attaching seal	29.1-606	$35	$61	$96
Unregistered motorboat	29.1-702(A)	$75	$61	$136
No registration on board	29.1-702(B)	$25	$61	$86
Expired registration	29.1-703	$25	$61	$86
Failure to display registration	29.1-703	$25	$61	$86
Failure to display expiration decal	29.1-703	$25	$61	$86
Operating motorboat or manipulating skis in marked area	29.1-734	$35	$61	$96
Operation of vessel without proper safety equipment	29.1-735(C)	$35	$61	$96
Boating safety education requirement violation	29.1-735.2	$100	$61	$116
Renting out a motorboat without safety equipment	29.1-736(A)	$35	$61	$96
Offering for rent other boats without sufficient life preservers	29.1-736(B)	$35	$61	$96
Violation of muffling device requirements for motorboats	29.1-737	$25	$61	$86
Absence of observer when towing water skier not wearing life preserver	29.1-742(A)	$35	$61	$96
Skiing before/after hours	29.1-742(B)	$75	$61	$136
Operating motorboat at excessive speed when within 50 feet of docks, piers, ramps, people in water	29.1-744.3	$50	$61	$111
Operating personal watercraft under age 14	29.1-748(A)(1)	$35	$61	$96

Operating personal watercraft without wearing personal flotation device	29.1-748(A)(3)	$35	$61	$96
Operating personal watercraft without a lanyard	29.1-748(A)(4)	$35	$61	$96
Operating personal watercraft between sunset and sunrise	29.1-748(A)(5)	$35	$61	$96
Exceeding capacity on personal watercraft	29.1-748(A)(6)	$35	$61	$96
Permitting operation of personal watercraft by person under age 14	29.1-749(A)	$75	$61	$136
Destruction of flowers, plants, minerals, etc. on a state park[3]	4 VAC 5-30-50[4]	$100	$61	$161
Destruction of buildings, signs, structures, etc. on a state park[3]	4 VAC 5-30-60[4]	$100	$61	$161
Disposal of refuse, garbage, etc. on a state park[3]	4 VAC 5-30-70[4]	$50	$61	$111
Pollution of waters on a state park[3]	4 VAC 5-30-80[4]	$100	$61	$161
Opening and closing hours of a state park[3]	4 VAC 5-30-120[4]	$50	$61	$111
Failure to pay fees in a fee area of a state park[3]	4 VAC 5-30-130[4]	$50	$61	$111
Picknicking in non-designated areas of a state park[3]	4 VAC 5-30-140[4]	$25	$61	$86
Camping in a state park[3] other than according to established rule	4 VAC 5-30-150[4]	$50	$61	$111
Swimming in unauthorized area or manner in a state park[3]	4 VAC 5-30-170[4]	$50	$61	$111
Boating in a state park[3] swimming area	4 VAC 5-30-190[4]	$50	$61	$111
Possession of firearms in a state park[3] by unauthorized persons	4 VAC 5-30-200[4]	$100	$61	$161
Fires in unauthorized areas of a state park[3]	4 VAC 5-30-220[4]	$100	$61	$161
Smoking in a prohibited area of a state park[3]	4 VAC 5-30-230[4]	$50	$61	$111

Unauthorized hunting in a state park[3]	4 VAC 5-30-240[4]	$100	$61	$161
Fishing in non-designated areas of a state park[3]	4 VAC 5-30-250[4]	$50	$61	$111
Allowing animals to run at large in a state park[3]	4 VAC 5-30-260[4]	$50	$61	$111
Games or athletic contests in non-designated areas of a state park[3]	4 VAC 5-30-270[4]	$50	$61	$111
Persons in non-designated areas of a state park[3] or failure to comply with a safety sign	4 VAC 5-30-274[4]	$50	$61	$111
Bicycle in non-designated areas of a state park[3] or failure to comply with a safety sign	4 VAC 5-30-276[4]	$50	$61	$111
Horses in non-designated areas of a state park[3]	4 VAC 5-30-280[4]	$50	$61	$111
Vehicles in a prohibited area of a state park[3]	4 VAC 5-30-290[4]	$50	$61	$111
Parking in an unauthorized area of a state park[3]	4 VAC 5-30-300[4]	$25	$61	$86
Obstructing traffic in a state park[3]	4 VAC 5-30-310[4]	$50	$61	$111
Operating an excessively loaded vehicle in a state park[3]	4 VAC 5-30-330[4]	$50	$61	$111
Engaging in commercial enterprise on a state park[3] without a permit	4 VAC 5-30-340[4]	$50	$61	$111
Operate a commercial vehicle on a state park[3] without a permit	4 VAC 5-30-360[4]	$50	$61	$111
Advertising within a state park[3] without a permit	4 VAC 5-30-370[4]	$50	$61	$111
Soliciting alms or contributions within a state park[3] without a permit	4 VAC 5-30-390[4]	$25	$61	$86
Landing an aircraft or parachute within a state park[3] without a permit	4 VAC 5-30-400[4]	$50	$61	$111
Importation of firewood into a state park[3] contrary to the limitations imposed by the DCR Director	4 VAC 5-30-410[4]	$100	$61	$161

Release of animals or wildlife captured or propagated elsewhere into a state park[3]	4 VAC 5-30-420[4]	$50	$61	$111
Feeding wildlife on a state park[3]	4 VAC 5-30-422[4]	$50	$61	$111
Constructing, maintaining or occupying unauthorized structures on department-owned lands or national forest lands	4 VAC 15-20-150†	$30	$61	$91
Using recorded or electronically amplified imitations of animal or bird calls or sounds to take wild animals and wild birds	4 VAC 15-40-30†	$50	$61	$111
Unlawfully possessing or using a bow or gun which is not unloaded and cased or dismantled on national forest lands statewide or on department-owned lands or on other department-managed lands west of the Blue Ridge Mountains during closed season	4 VAC 15-40-60(A)†	$75	$61	$136
Using a bow or firearm outside the established boundaries of an archery or shooting range or using a bow or firearm for other than target shooting at such archery or shooting range during closed season	4 VAC 15-40-60(D)†	$50	$61	$111
Chasing with a dog or training dogs on national forest lands or on department-owned lands outside authorized hunting, chasing or training seasons or during unauthorized raccoon hound field trials	4 VAC 15-40-60(E)†	$50	$61	$111
Failing to mark certain traps or snares with non-ferrous identity tags	4 VAC 15-40-170††	$25	$61	$86
Unlawfully validate (notch) a bear license prior to killing a bear or after killing bear fail to validate a bear license tag before moving the carcass from the place of kill	4 VAC 15-50-81(A)†	$50	$61	$111
Failing to present bear carcass at an authorized checking station after having validated the appropriate bear license tag or failing to comply with procedure at such checking station	4 VAC 15-50-81(B)†	$50	$61	$111

Destroying the identity (sex) of bear before validating bear license tag and checking at an authorized checking station	4 VAC 15-50-81(C)†	$50	$61	$111
Unlawfully validate a deer license tag prior to killing a deer or after killing deer fail to validate a deer license tag before moving the carcass from the place of kill	4 VAC 15-90-231(A)†	$50	$61	$111
Failing to either present deer carcass at an authorized checking station after having validated the appropriate deer license tag or report the kill through automated reporting system	4 VAC 15-90-231(B)†	$50	$61	$111
Destroying the identity (sex) of deer before validating deer license tag and checking at an authorized checking station	4 VAC 15-90-231(C)†	$50	$61	$111
Unlawfully validate a turkey license tag prior to killing a turkey or after killing turkey failing to validate a turkey license tag before moving the carcass from the place of kill	4 VAC 15-240-81(A)†	$50	$61	$111
Failing to either present turkey carcass at an authorized checking station after having validated the appropriate turkey license tag or during the spring season only report the kill through automated reporting system	4 VAC 15-240-81(B)†	$50	$61	$111
Destroying the identity (sex) of turkey before validating turkey license tag and checking at an authorized checking system	4 VAC 15-240-81(C)†	$50	$61	$111
Failing to use nontoxic shot for waterfowl hunting	4 VAC 15-260-140†	$25	$61	$86
Using a rifle of a calibre less than 23 for hunting or killing of bear or deer†††	4 VAC 15-270-10	$100	$61	$161
Exceeding the creel limits for various species of fish on designated waters	4 VAC 15-320-25†	$60	$61	$121

Possessing illegal size game fish	4 VAC 15-320-25†	$25	$61	$86
Fishing in designated stocked trout waters or in waters specified in the regulations listed (during the period from May 16 through September 30) after obtaining the daily creel limit of trout	4 VAC 15-330-80†	$50	$61	$111
Feeding or baiting trout in designated stocked trout waters	4 VAC 15-330-90†	$10	$61	$71
Taking or attempting to take fish at any time by snagging, grabbing, snaring, gigging, with a striking iron, or with the use of SCUBA gear	4 VAC 15-350-10†	$50	$61	$111
Unlawfully using trot-line, jugline or set pole	4 VAC 15-350-60†	$25	$61	$86
Failure to display light while drifting or at anchor	4 VAC 15-420-100††††	$25	$61	$86
Vessel failing to obey regulatory markers; placing in, on or near the water unauthorized regulatory markers	4 VAC 15-370-50†	$30	$61	$91
Failure to keep to starboard when meeting head and head	4 VAC 15-390-20††††	$30	$61	$91
Failure to yield right-of-way when crossing	4 VAC 15-390-30††††	$30	$61	$91
Failure to keep clear when overtaking another vessel	4 VAC 15-390-40(A)††††	$30	$61	$91
Failure of motorboat to yield right of way to sailing vessel	4 VAC 15-390-50††††	$35	$61	$96
Failure to slacken speed to avoid endangerment of persons or property by wake	4 VAC 15-390-80††††	$30	$61	$91
Watercraft: No personal floatation device	4 VAC 15-430-30††††	$35	$61	$91
Watercraft: No visual distress signal	4 VAC 15-430-80††††	$35	$61	$91
Watercraft: No fire extinguishing equipment	4 VAC 15-430-190††††	$35	$61	$91

Smoking in vehicle with a minor the age of 15 present	46.2-810.1	$100	-	$100
Failure of person at least age 18 occupying front seat of vehicle to use safety belt system	46.2-1094(A) 46.2-1094(C)	$25	-	$25
Failure of driver to ensure that child up to age 8 is properly secured in approved child restraint device (first violation only)	46.2-1095(A) 46.2-1098	$50	-	$50
Failure of driver to ensure that another person 8 through 17 years of age is properly secured by safety belt system (first violation only)	46.2-1095(B) 46.2-1098	$50	-	$50
Failure of driver to carry written statement exempting child from use of child restraint device	46.2-1096 46.2-1098	$20	-	$20
Refusing officer's order to drive vehicle to weighing station	46.2-1137	$35	$61	$96
Driving in violation of HOT Lane Restrictions (first offense)	33.2-503(3)	$50	$61	$111
Driving in violation of HOT Lane Restrictions (second offense)	33.2-503(3)	$250	$61	$311
Driving in violation of HOT Lane Restrictions (third offense within two years of second offense)	33.2-503(3)	$500	$61	$561
Driving in violation of HOT Lane Restrictions (fourth and subsequent offense within three years of second offense)	33.2-503(3)	$1,000	$61	$1,061

* The description of offense is for reference and is not a legal definition.
** Unless otherwise provided by statute.
*** See §§ 9.1-106 and 53.1-120 of the Code.
[1] This designation "PRF Reg" refers to the Potomac River Fisheries Commission Regulations. The cite provides the regulation number, the section number and the subsection number.
[2] Subtract fees from total and post balance to fine.
[3] "Park" is defined pursuant to § 4 VAC 5-30-10 and is intended for the purposes of this rule to mean all designated parks, parkways, historical and natural areas, sites and other recreational areas under the jurisdiction of the Virginia Department of Conservation and Recreation.
[4] Established pursuant to § 10.1-104 of the Code.
† These Regulations are promulgated pursuant to §§ 29.1-501 and 29.1-502 of the Code.
†† The Regulations are promulgated pursuant to §§ 29.1-103, 29.1-501 and 29.1-502 of the Code.
††† The Regulations are promulgated pursuant to § 29.1-501 of the Code.
†††† The Regulations are promulgated pursuant to §§ 29.1-701 and 29.1- and 29.1-802 of the Code.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE D
CIVIL PRACTICE AND PROCEDURE IN THE
GENERAL DISTRICT COURTS

Rules 3D:1 through 3D:8. (Repealed).

Repealed by order of court November 21, 1988, effective July 1, 1989.

RULES OF SUPREME COURT OF VIRGINIA
PART FOUR
PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:0. Application of Part Four.

(a) The Rules in this Part Four shall apply in civil cases in the circuit courts. They also shall apply to proceedings for separate maintenance, divorce or annulment of marriage, for the exercise of the right of eminent domain, and for writs of habeas corpus or in the nature of coram nobis as provided in Rule 4:1(b)(5). Whenever in this Part Four the word "action" appears it shall mean a civil case, whether the claims arise at law or in equity.

(b) No provision of any of the Rules in this Part Four shall affect the practice of taking evidence at trial in any action; but such practice, including that of generally taking evidence ore tenus in actions upon claims arising at law and of generally taking evidence by deposition in equitable claims, shall continue unaffected hereby.

RULES OF SUPREME COURT OF VIRGINIA
PART FOUR
PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:1. General Provisions Governing Discovery.

(a) *Discovery Methods.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) *Scope of Discovery.* Unless otherwise limited by order of the court in accordance with these Rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Subject to the provisions of Rule 4:8 (g), the frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice to counsel of record or pursuant to a motion under subdivision (c).

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person (which includes any individual, corporation, partnership or other association) carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this Rule and prepared in

anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts; Costs - Special Provisions for Eminent Domain Proceedings. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this Rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

> (A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) A party may depose any person who has been identified as an expert whose opinion may be presented at trial, subject to the provisions of subdivision (b)(4)(C) of this Rule concerning fees and expenses. (iii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this Rule, concerning fees and expenses as the court may deem appropriate.
>
> (B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent and expenses incurred in responding to discovery under subdivisions (b)(4)(A)(ii), (b)(4)(A)(iii), and (b)(4)(B) of this Rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(iii) of this Rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this Rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) Notwithstanding the provisions of subdivision (b)(4)(C) of this Rule, the condemnor in eminent domain proceedings, when it initiates discovery, shall pay all reasonable costs thereof, including the cost and expense of those experts discoverable under subdivision (b) of this Rule. The condemnor shall be deemed to have initiated discovery if it uses, or gives notice of the use of, any discovery method before the condemnee does so, even though the condemnee subsequently engages in discovery.

(5) Limitations on Discovery in Certain Proceedings. In any proceeding (1) for separate maintenance, divorce, or annulment of marriage, (2) for the exercise of the right of eminent domain, or (3) for a writ of habeas corpus or in the nature of coram nobis; (a) the scope of discovery shall extend only to matters which are relevant to the issues in the proceeding and which are not privileged; and (b) no discovery shall be allowed in any proceeding for a writ of habeas corpus or in the nature of coram nobis without prior leave of the court, which may deny or limit discovery in any such proceeding. In any proceeding for divorce or annulment of marriage, a notice to take depositions must be served in the Commonwealth by an officer authorized to serve the same, except that, in cases where such suits have been commenced and an appearance has been made on behalf of the defendant by counsel, notices to take depositions may be served in accordance with Rule 1:12.

(6) Claims of Privilege or Protection of Trial Preparation Materials.

(i) When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(ii) If a party believes that a document or electronically stored information that has already been produced is privileged or its confidentiality is otherwise protected the producing party may notify any other party of such claim and the basis for the claimed privilege or

protection. Upon receiving such notice, any party holding a copy of the designated material shall sequester or destroy its copies thereof, and shall not duplicate or disseminate such material pending disposition of the claim of privilege or protection by agreement, or upon motion by any party. If a receiving party has disclosed the information before being notified of the claim of privilege or other protection, that party must take reasonable steps to retrieve the designated material. The producing party must preserve the information until the claim of privilege or other protection is resolved.

(7) Electronically Stored Information. A party need not provide discovery of electronically stored information ("ESI") from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought has the burden of showing that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the discovery, including allocation of the reasonable costs thereof.

If the party receiving a discovery request anticipates that it will require the production of ESI and that an ESI protocol is needed, then within 21 days of being served with the request, or within 28 days of service of requests served with the Complaint, the receiving party shall propose an ESI protocol which should address: (A) an initial list of custodians or the person(s) with knowledge of the party's custodians and the location of ESI, (B) a date range, (C) production specifications, (D) search terms, and (E) the identification and return of inadvertently revealed privileged materials. If the proposed protocol is not acceptable, the parties shall in good faith attempt to meet within 15 days from service of the protocol on the party requesting the ESI. If, after 15 days from service of the protocol, the parties are unable to agree to limits on the discovery of the ESI, on motion to compel discovery or for a protective order, the court shall, in its discretion, determine appropriate limitations or conditions on the ESI request, if any, including allocation of the reasonable costs thereof.

(8) Pre-Motion Negotiation. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(c) *Protective Orders.* Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county or city where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2)

that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) *Sequence and Timing of Discovery.*

(1) Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(2) Discovery shall continue after a demurrer, plea or dispositive motion addressing one or more claims or counter-claims has been filed and while such motion is pending decision – unless the court in its discretion orders that discovery on some or all issues in the action should be suspended.

(e) *Supplementation of Responses.* A party who has responded to a request for discovery is under a duty to supplement or correct the response to include information thereafter acquired in the following circumstances.

(1) A party is under a duty promptly to amend and/or supplement all responses to discovery requests directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony, when additional or corrective information becomes available.

(2) A party is under a duty promptly to amend and/or supplement all other prior responses to interrogatories, requests for production, or requests for admission if the party learns that any such response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(3) A court may order, or the parties may agree to provide, supplementation in addition to that required in subsections (1) and (2) of this subpart (e).

(4) A party may supplement a prior discovery response by filing an updated response labelled "Supplemental" or "Amended", or by otherwise notifying all other parties of the updated information in writing, signed by counsel of record.

(f) *Service Under This Part.* Except for the service of the notice required under Rule 4:2(a)(2), any notice or document required or permitted to be served under this Part Four shall be served as provided in Rule 1:12 except that any notice or document permitted to be served with the initial pleading shall be served (or accepted) in the same manner as such pleading.

(g) *Signing of Discovery Requests, Responses, and Objections.* Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection, and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these Rules and warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Last amended by Order dated October 31, 2018; effective January 1, 2019.

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PART FOUR
PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:2. Depositions Before Action or Pending Appeal.

(a) *Before Action.*

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of this Commonwealth may file a verified petition in the circuit court in the county or city of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (A) that the petitioner expects to be a party to an action cognizable in a court of this Commonwealth but is presently unable to bring it or cause it to be brought; (B) the subject matter of the expected action and his interest therein; (C) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (D) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (E) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served either within the Commonwealth in the manner provided for service of a complaint or without the Commonwealth in the manner provided by Code § 8.01-320; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not so served, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a person under a disability, a guardian ad litem shall be appointed to attend on his behalf.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these Rules. The attendance of witnesses may be compelled by subpoena, and the court may make orders of the character provided for by Rules 4:9 and 4:10. For the purpose of applying these Rules to depositions

for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Cost. The cost of such depositions shall be paid by the petitioner, except that the other parties in interest who produce witnesses on their behalf or who make use of witnesses produced by others shall pay their proportionate part of the cost of the transcribed testimony and evidence taken or given on behalf of each of such parties.

(5) Filing. The depositions shall be certified as prescribed in Rule 4:5 and then returned to and filed by the clerk of the court which ordered its taking.

(6) Use of Deposition. If a deposition to perpetuate testimony is taken under these Rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a court of this Commonwealth in accordance with the provisions of Rule 4:1.

(b) *Pending Appeal*. If an appeal has been taken from a judgment of a court of record or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in that court. In such case the party who desires to perpetuate the testimony may make a motion in the court in which the judgment was rendered for leave to take the depositions, upon the same notice and service thereof as if the action was pending therein. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make orders of the character provided for by Rules 4:9 and 4:10, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions taken in pending actions.

(c) *Perpetuation of Testimony*. This Rule provides the exclusive procedure to perpetuate testimony.

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Rule 4:3. Persons Before Whom Depositions May Be Taken.

(a) *Within this Commonwealth.* Within this Commonwealth depositions may be taken before any person authorized by law to administer oaths, and if certified by his hand may be received without proof of the signature to such certificate.

(b) *Within the United States.* In any other State of the United States or within any territory or insular possession subject to the dominion of the United States, depositions may be taken before any officer authorized to take depositions in the jurisdiction wherein the witness may be, or before any commissioner appointed by the Governor of this Commonwealth.

(c) *No Commission Necessary.* No commission by the Governor of this Commonwealth shall be necessary to take a deposition whether within or without this Commonwealth.

(d) *In Foreign Countries.* In a foreign state or country depositions shall be taken (1) before any American minister plenipotentiary, charge d'affaires, secretary of embassy or legation, consul general, consul, vice-consul, or commercial agent of the United States in a foreign country, or any other representative of the United States therein, including commissioned officers of the armed services of the United States, or (2) before the mayor, or other magistrate of any city, town or corporation in such country, or any notary therein.

(e) *Certificate When Deposition Taken Outside Commonwealth.* Any person before whom a deposition is taken outside this Commonwealth shall certify the same with his official seal annexed; and, if he have none, the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal, except that no seal shall be required of a commissioned officer of the armed services of the United States, but his signature shall be authenticated by the commanding officer of the military installation or ship to which he is assigned.

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Rule 4:4. Stipulations Regarding Discovery.

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions and (2) modify the procedures provided by these Rules for other methods of discovery, including discovery of electronically stored information. Stipulations may include agreements with non-party witnesses, consistent with Code § 8.01-420.4. Such stipulations shall be filed with the deposition or other discovery completed pursuant thereto.

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Rule 4:5. Depositions Upon Oral Examination.

(a) *When Depositions May Be Taken*. — After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition before the expiration of the period within which a defendant may file a responsive pleading under Rule 3:8, except that leave is not required (1) if a defendant has served a notice of taking deposition, or (2) if special notice is given as provided in subdivision (b)(2) of this Rule. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(a1) *Taking of Depositions.* — (i) Party Depositions. A deposition of a party, or any witness designated under Rule 4:5(b)(6) to testify on behalf of a party, shall be taken in the county or city in which suit is pending, in an adjacent county or city, at a place upon which the parties agree, or at a place that the court in such suit may, for good cause, designate. Good cause may include the expense or inconvenience of a non-resident party defendant appearing in one of the locations specified in this subsection. The restrictions as to parties set forth in this subdivision (a1)(i) shall not apply where no responsive pleading has been filed or an appearance otherwise made.

(ii) Non-party Witness Depositions. Unless otherwise provided by the law of the jurisdiction where a non-party witness resides, a deposition of a non-party witness shall be taken in the county or city where the non-party witness resides, is employed, or has a principal place of business; at a place upon which the witness and the parties to the litigation agree; or at a place that the court may, for good cause, designate.

(iii) Taking Depositions Outside the State. Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or, where applicable, the law of the United States, or (2) before a person appointed or commissioned by the court in which the action is pending, and such a person shall have the power by virtue of such appointment or commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter rogatory shall be issued upon application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A commission or letter rogatory may be addressed "To the Appropriate Authority in (here name the state, territory, or country)." Witnesses may be compelled to

appear and testify at depositions taken outside this state by process issued and served in accordance with the law of the jurisdiction where the deposition is taken or, where applicable, the law of the United States. Upon motion, the courts of this State shall issue a commission or letter rogatory requesting the assistance of the courts or authorities of the foreign jurisdiction.

(iv) Uniform Interstate Depositions and Discovery Act. Depositions and related documentary production sought in Virginia pursuant to a subpoena issued under the authority of a foreign jurisdiction shall be subject to the provisions of the Uniform Interstate Depositions and Discovery Act, Virginia Code §§ 8.01-412.8 through 8.01-412.15.

(b) *Notice of Examination: General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization. —*

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the Commonwealth, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the period for filing a responsive pleading under Rule 3:8, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Unless otherwise agreed to by the parties or otherwise provided by court order or by law, only the witness, the parties, their respective counsel including such counsel's staff, experts identified pursuant to Rule 4:1(b)(4)(A), and those involved with the administration of the deposition (such as court reporters and translators) may attend the deposition, given the private nature of discovery. Counsel of record for the parties and counsel for any non-party deponent must timely confer regarding any other attendees

who are requested by a party or by the deponent to be present at the deposition. A party seeking to exclude any person from attending a deposition – or seeking authorization for any person to attend a deposition – must move for an order in the discretion of the circuit court.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 4:9 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 4:9 shall apply to the request.

(6) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules.

(7) Unless the court orders otherwise, a deposition may be taken by telephone, video conferencing, or teleconferencing. A deposition taken by telephone, video conferencing, or teleconferencing shall be taken before an appropriate officer in the locality where the deponent is present to answer questions propounded to him.

(c) *Examination and Cross-Examination; Record of Examination; Oath; Objections.*

(1) Unless the parties agree otherwise, examination of a witness at deposition is begun by the party noticing the deposition. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. If requested by one of the parties, the testimony shall be transcribed. The preservation or waiver of objections during the deposition is governed by the provisions of Rule 4:7.

(2) An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objections. Any objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege or protection for attorney work-product pursuant to Rule 4:1(b)(3), to enforce a limitation ordered by the court, or to present a motion under subsection (d).

(3) In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) *Motion to Terminate or Limit Examination.* — At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county or city where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 4:1(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) *Submission to Witness; Changes; Signing.* — When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 4:7(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.* —

(1) The officer shall prepare an electronic or digitally imaged copy of the deposition transcript, including signatures and any changes as provided in subsection (e) of this Rule, and shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. In a divorce or annulment case, the officer shall then promptly file the electronic or digitally imaged deposition in the office of the clerk, notifying all other parties of such action. In all other cases, the officer shall then lodge the deposition with the attorney for the party who initiated the taking of the deposition, notifying the clerk and all parties of such action. Depositions taken pursuant to this Rule or Rule 4:6 (except depositions taken in divorce and annulment cases) shall not be filed with the clerk until the court so directs, either on its own initiative or upon the request of any party prior to or during the trial. Any such filing shall be made electronically unless otherwise ordered by the judge.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for

identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) *Failure to Attend or to Serve Subpoena; Expenses. —*

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

Last amended by Order dated January 9, 2020; effective March 15, 2020.

Rule 4:6. Depositions Upon Written Questions.

(a) *Serving Questions; Notice.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 4:5(b)(6).

Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) *Officer to Take Responses and Prepare Record.* A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 4:5(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file the electronic or digitally imaged deposition or lodge the deposition with the attorney for the party who initiated the taking of the deposition, attaching thereto the copy of the notice and the questions received.

(c) *Notice of Filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 4:6A. Number of Depositions.

There shall be no limit on the number of witnesses whose depositions may be taken by a party except by order of the court for good cause shown.

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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:

(1) Any deposition taken in a civil action may be used for any purpose in supporting or opposing an equitable claim; provided, however, that such a deposition may be used on an issue heard by an advisory jury empaneled pursuant to Code § 8.01-336(E) or a hearing ore tenus only as provided by subdivision (a)(4) of this Rule.

(2) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 4:5(b)(6) or 4:6(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose in any action upon a claim arising at law, issue heard by an advisory jury empaneled pursuant to Code § 8.01-336(E), or hearing ore tenus upon an equitable claim if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) that the witness is a judge, or is a superintendent of a hospital for the insane more than 30 miles from the place of trial, or is a physician, surgeon, dentist, chiropractor, or registered nurse who, in the regular course of his profession, treated or examined any party to the proceeding, or is in any public office or service the duties of which prevent his attending court provided, however, that if the deponent is subject to the jurisdiction of the court, the court may, upon a showing of good cause or sua sponte, order him to attend and to testify ore tenus; or (F) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the

interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(6) No deposition shall be read in any action against a person under a disability unless it be taken in the presence of the guardian ad litem appointed or attorney serving pursuant to § 8.01-9, or upon questions agreed on by the guardian or attorney before the taking.

(7) In any action, the fact that a deposition has not been offered in evidence prior to an interlocutory decree or order shall 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 and duly filed in the one action may be used in the other as if originally taken therefor.

(b) *Form of Presentation; Objections to Admissibility.* A party may offer deposition testimony pursuant to this Rule in stenographic or nonstenographic form. Except as otherwise directed by the court, if all or part of a deposition is offered, the offering party shall provide the court with a transcript of the portions so offered in either form or in electronic or digitally imaged form. Except as provided in Rule 1:18 and subject to the provisions of subdivision (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) *Effect of Taking or Using Depositions.* A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under

subdivision (a)(3) of this Rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) *Effect of Errors and Irregularities in Depositions.*

(1) As to Notice. – All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. – Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition. –

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 4:6 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. – Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under Rules 4:5 and 4:6 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(e) *Limitation on Use of Depositions.* No motion for summary judgment or to strike the evidence shall be sustained when based in whole or in part upon any depositions under Rule 4:5, unless such use of depositions is permitted by § 8.01-420.

(f) *Record.* Depositions shall become a part of the record only to the extent that they are offered in evidence.

Last amended by Order dated June 21, 2013; effective July 1, 2013.

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Rule 4:7A. Audio-Visual Depositions.

(a) *When Depositions May Be Taken by Audio-Visual Means.* Any depositions permitted under these Rules may be taken by audio-visual means including, but not limited to, videoconferencing and teleconferencing, as authorized by and when taken in compliance with law.

(b) *Procedure.*

(1) The deposition must begin with an oral or written statement on camera which includes (i) each operator's name and business address or, if applicable, the identity of the video conferencing or teleconferencing proprietor and locations participating in the video conference or teleconference; (ii) the name and business address of the operator's employer; (iii) the date, time and place of the deposition; (iv) the caption of the case; (v) the name of the witness; (vi) the party on whose behalf the deposition is being taken; (vii) with respect to video conferencing or teleconferencing, the identities of persons present at the deposition and the location of each such person; and (viii) any stipulations by the parties; and

(2) In addition, all counsel present on behalf of any party or witness shall identify themselves on camera. The oath for witnesses shall be administered on camera. If the length of a deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit shall be announced on camera. At the conclusion of a deposition, a statement shall be made on camera that the deposition is concluded. A statement may be made on camera setting forth any stipulations made by counsel concerning the custody of the audio-visual recording and exhibits or other pertinent matters; and

(3) All objections must be made as in the case of stenographic depositions.

(c) *Editing.* No audio-visual deposition shall be edited except pursuant to a stipulation of the parties or pursuant to order of the court and only as and to the extent directed in such stipulation and/oor order. In any case where the parties stipulate or the court orders the audio-visual recording to be edited prior to its use, the original recording shall not be altered and the editing shall be done on a copy or copies.

(d) *Recording and Transcription.*

(1) Any deposition may be recorded by audio-visual means without a stenographic record. The audio-visual recording is an official record of the deposition. A transcript prepared by a court reporter shall also be deemed an official record of the deposition. Any party may make, at its own expense, a

simultaneous stenographic or audio record of the deposition. Upon request and at his own expense, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

(2) If an appeal is taken in the case, the appellant must cause to be prepared and filed with the clerk a written transcript of that portion of an audio-visual deposition made a part of the record in the trial court to the extent germane to an issue on appeal. The appellee may designate additional portions to be so prepared by the appellant and filed.

(e) *Use.* An audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

(f) *Submission to the Witness; Changes; Signing.* The provisions of Rule 4:5(e) shall not apply to an audio-visual deposition. The other provisions of Rule 4:5 shall be applicable to the extent practicable.

(g) *Filing.* Unless otherwise stipulated by the parties or ordered by the court, the original audio-visual recording of a deposition, any copy edited pursuant to stipulation or an order of the court, and exhibits shall be filed only in accord with Rule 4:5(f)(1).

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Rule 4:8. Interrogatories to Parties.

(a) *Availability; Procedures for Use*. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint upon that party.

(b) *Form.* The party answering the interrogatories shall restate each question, by photocopying it or otherwise, then insert the word "Answer" and immediately thereafter state the response to that question. The answering party shall attach the necessary oath and certificate of service to the answers.

(c) *Filing.*

(1) Interrogatories and answers or objections thereto shall not be filed unless the court directs such filing on its own initiative or upon the request of any party prior to or during the trial.

(2) When the propriety or sufficiency of any interrogatory, answer or objection, or the service thereof, is challenged, or any other issue concerning such discovery is presented to the court for decision, copies of the relevant items, including any applicable certificates of service, shall be made available to the court by counsel.

(3) In an Electronically Filed Case, submission of interrogatories, answers, objections and certificates of service as provided in subdivisions (c)(1) and (c)(2) of this Rule shall be made by filing an electronic or digitally imaged copy thereof, unless the court directs otherwise.

(d) *Answers.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 21 days after the service of the interrogatories, except that a defendant may serve answers or objections within 28 days after service of the bill of complaint or motion for judgment upon that defendant. The court may allow a shorter or longer time. The party

submitting the interrogatories may move for an order under Rule 4:12(a) with respect to any objection to or other failure to answer an interrogatory.

(e) *Scope; Use*. Interrogatories may relate to any matters which can be inquired into under Rule 4:1(b), and the answers may be used to the extent permitted by the rules of evidence and for the purposes of Rule 3:20. Only such interrogatories and the answers thereto as are offered in evidence shall become a part of the record.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(f) *Option to Produce Business Records.* Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained. A specification of electronically stored information may be made under this Rule if the information will be made available in a reasonably usable form or forms.

(g) *Limitation on Interrogatories.* No party shall serve upon any other party, at any one time or cumulatively, more than thirty written interrogatories, including all parts and sub-parts without leave of court for good cause shown.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 4:9. Production by Parties of Documents, Electronically Stored Information, and Things; Entry on Land for Inspection and Other Purposes; Production at Trial.

(a) *Scope.* Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form), or to inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 4:1(b) and which are in the possession, custody, or control of the party upon whom the request is served; or (2) to produce any such documents or electronically stored information to the court in which the proceeding is pending at the time of trial; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 4:1(b).

(b) *Procedure.*

(i) Initiation of the Request. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, period and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

(ii) Response. The party upon whom the request is served shall serve a written response within 21 days after the service of the request, except that a defendant may serve a response within 28 days after service of the complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for the objection. If objection is made to part of an item or category, the part shall be specified and production shall be permitted as to the remaining parts. An objection must state whether any responsive materials are being withheld on the basis of that objection. If objection

is made to the requested form or forms for producing electronically stored information - or if no form was specified in the request - the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 4:12(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(iii) Organization, Reasonable Accessibility, and Forms of Production. Unless the parties otherwise agree, or the court otherwise orders:

(A) Production of Documents. A party who produces documents for inspection either shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(B) Electronically Stored Information.

(1) Responses to a request for production of electronically stored information shall be subject to the provisions of Rules 4:1(b)(7) and 4:1(b)(8).

(2) If a request does not specify the form or forms for producing electronically stored information, or if a responding party objects to the requested form or forms of production, a responding party must produce the information as it is ordinarily maintained if it is reasonably usable in such form or forms, or must produce the information in another form or forms in which it is reasonably usable. A party need not produce the same electronically stored information in more than one form.

(iv) Proceedings Under the Uniform Interstate Depositions and Discovery Act. Production of documents and electronic records sought in Virginia pursuant to a subpoena issued under the authority of a foreign jurisdiction shall be subject to the provisions of the Uniform Interstate Depositions and Discovery Act, Virginia Code §§ 8.01-412.8 through 8.01-412.15.

(c) *Proceedings on Failure or Refusal to Comply*. If a party fails or refuses to obey an order made under section (b) of this Rule, the court may proceed as provided by Rule 4:12(b)(2).

(d) *Filing*. Requests to a party pursuant to this Rule and responses or objections shall be filed as provided in Rule 4:8(c).

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Rule 4:9A. Production from Non-Parties of Documents, Electronically Stored Information, and Things and Entry on Land for Inspection and Other Purposes; Production at Trial.

(a) *Issuance of a Subpoena Duces Tecum.* Except as provided in paragraph (d) of this Rule, a subpoena duces tecum may be issued:

(1) By the clerk of court. Upon written request therefor filed with the clerk of the court in which the action or suit is pending by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel, the clerk shall issue to a person not a party therein a subpoena duces tecum subject to this Rule.

(2) By an attorney. In a pending civil proceeding, a subpoena duces tecum may be issued by an attorney-at-law as an officer of the court if he or she is an active member of the Virginia State Bar at the time of issuance. An attorney may not issue a subpoena duces tecum in those civil proceedings excluded in Virginia Code § 8.01-407. An attorney-issued subpoena duces tecum must be signed as if a pleading and must contain the attorney's address, telephone number and Virginia State Bar identification number. A copy of any attorney-issued subpoena duces tecum must be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel. If time for compliance with an attorney-issued subpoena duces tecum is less than fourteen (14) days after service of the subpoena, the person to whom the subpoena is directed may serve on the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection, copying, sampling or testing should not be had. If an objection is made, the party issuing the subpoena shall not be entitled to the requested production, inspection, copying, sampling or testing, except pursuant to an order of the court in which the civil proceeding is pending. If an objection is made, the party issuing the subpoena may, upon notice to the person to whom the subpoena is directed, move for an order to compel the production, inspection, copying, sampling or testing. Upon a timely motion, the court may quash, modify or sustain the subpoena as provided above in subsection (c) of this Rule.

(b) *Content of Subpoena Duces Tecum; Objections.* Subject to paragraph (d) of this Rule, a subpoena duces tecum shall command the person to whom it is directed, or someone acting on his behalf, to produce the documents, electronically stored information, or designated tangible things (including writings, drawings, graphs, charts, photographs, and other data or data compilations stored in any medium from which

information can be obtained, translated, if necessary, by the respondent into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 4:1(b) which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(c) *Responding to a Subpoena; Objections; Production of Documents and Electronically Stored Information.*

(1) Production of Documents. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) Electronically Stored Information.

(A) A person responding to a subpoena need not provide discovery of electronically stored information from sources the responder identifies as not reasonably accessible because of undue burden or cost. On motion to compel production or to quash a subpoena, the person from whom production is sought under the subpoena must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order production of responsive material from such sources if the subpoenaing party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the production of such information, including allocation of the reasonable costs thereof.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding thereto must produce the information as it is ordinarily maintained if it is reasonably usable in such form or forms, or must produce the information in another form or forms in which it is reasonably usable. A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) Objections and Procedures. The court, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (1) quash or modify the subpoena, or the method or form for production of electronically stored information, if the subpoena would otherwise be unduly burdensome or expensive, (2) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of some or all of the reasonable cost of producing the

documents, electronically stored information, and tangible things so designated and described or (3) direct that the documents and tangible things subpoenaed, including electronically stored information (unless another location for production is agreed upon by the requesting and producing parties), be returned only to the office of the clerk of the court through which such documents and tangible things are subpoenaed in which event, upon request of any party in interest, or his attorney, the clerk of such court shall permit the withdrawal of such documents and tangible things by such party or his attorney for such reasonable period of time as will permit his inspection, photographing, or copying thereof.

(4) Pre-Motion Negotiation. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(d) *Certain Officials.* No request to produce made pursuant to paragraph (b) above shall be served, and no subpoena provided for in paragraph (c) above shall issue, until prior order of the court is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any Ambassador or Consul; or any Military Officer on active duty holding the rank of Admiral or General.

(e) *Certain Health Records.* Patient health records protected by the privacy provisions of Code Section 32.1-127.1:03 shall be disclosed only in accordance with the provisions and procedures prescribed by that statute.

(f) *Copies of Documents and Other Subpoenaed Information.*

(1) Documents. When one party to a civil proceeding subpoenas documents, the subpoenaing party, upon receipt of the subpoenaed documents, shall, if requested, provide true and full copies of the same to any party or to the attorney for any other party in accordance with Code § 8.01-417(B).

(2) Electronically stored information. When one party to a civil proceeding subpoenas and obtains electronically stored information, the subpoenaing party shall, if requested, provide true and full copies of the same to any party or that party's attorney, in the form the subpoenaing party received the information, upon reimbursement of the proportionate cost of obtaining such materials.

(g) *Proceedings on Failure or Refusal to Comply.* If a non-party, after being served with a subpoena issued under the provisions of this Rule, fails or refuses to comply therewith, he may be proceeded against as for contempt of court as provided in § 18.2-456.

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Rule 4:10. Physical and Mental Examination of Persons.

(a) *Order for Examination.* When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending, upon motion of an adverse party, may order the party to submit to a physical or mental examination by one or more health care providers, as defined in § 8.01-581.1, employed by the moving party or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties, shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made, and shall fix the time for filing the report and furnishing the copies.

(b) *Out-of-State Examiners.* Examiners named in such an order shall be licensed to practice in, and shall be residents of or have an office in, this Commonwealth. However, notwithstanding the reference to licensure by this Commonwealth in the definition of health care providers in § 8.01-581.1, the court may, in the exercise of its sound discretion and upon determining that the ends of justice will be served, order an examination by one who is not licensed to practice in, is not a resident of, and does not have an office in, this Commonwealth but who is duly licensed in his or her jurisdiction.

(c) *Report of Examiner.*

(1) A written report of the examination shall be made by the examiner to the court and filed with the clerk thereof before the trial and a copy furnished to each party. The report shall be detailed, setting out the findings of the examiner, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. In an Electronically Filed Case, the report of examination shall be filed in electronic or digital image form as provided in Rule 1:17.

(2) The written report of the examination so filed with the clerk may be read into evidence if offered by the party who submitted to the examination. A party examined who takes the deposition of any examiner who shall have conducted an examination ordered pursuant to this Rule, waives any privilege that might have been asserted in that action or in any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examination made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of a health care examiner or the taking of a deposition of such examiner in accordance with the provisions of any other Rule.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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Rule 4:11. Requests for Admission.

(a) *Request for Admission.* A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 4:1(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 21 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 28 days after service of the complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 4:12(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) *Effect of Admission.* Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 4:13 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

(c) *Filing.* Except as provided in Rules 3:3 and 1:17, requests for admissions and answers or objections shall be served and filed as provided in Rule 4:8.

(d) *Part of Record.* Only such requests for admissions and the answers thereto as are offered in evidence shall become a part of the record.

(e) *Limitation on Number of Requests. –*

(1) Requests for admission not related to genuineness of documents. Unless all parties agree, or the court grants leave for good cause shown, no party shall serve upon any other party, at any one time or cumulatively, more than 30 requests for admission, including all parts and subparts, that do not relate to the genuineness of documents. Leave to propound additional requests shall be liberally granted in the interests of justice.

(2) Requests for admission relating to the genuineness of documents. The number of requests for admissions relating to the genuineness of documents shall not be limited unless the court enters a protective order pursuant to the provisions of Rule 4:1(c) upon a finding that justice so requires in order to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden or expense.

Last amended by Order dated February 27, 2015; effective May 1, 2015.

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Rule 4:12. Failure to Make Discovery; Sanctions.

(a) *Motion for Order Compelling Discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the county or city where the deposition is to be taken. An application for an order to a deponent who is not a party shall be made to the court in the county or city where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rule 4:5 or 4:6, or a corporation or other entity fails to make a designation under Rule 4:5(b)(6) or 4:6(a), or a party fails to answer an interrogatory submitted under Rule 4:8, or if a party, in response to a request for inspection submitted under Rule 4:9, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

A motion under subdivision (a) of this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 4:1(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) *Failure to Comply With Order.*

(1) Sanctions by Court in County or City Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county or city in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 4:5(b) (6) or 4:6(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this Rule or Rule 4:10, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 4:10(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the

party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) *Expenses on Failure to Admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 4:11, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 4:11(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) *Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Requests for Production or Inspection.* — If a party or an officer, director, or managing agent of a party or a person designated under Rule 4:5(b)(6) or 4:6(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 4:8, after proper service of the interrogatories, or (3) to serve a written response to a request for production or inspection submitted under Rule 4:9, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may – without prior entry of a Rule 4:12(b) order to compel regarding this failure – impose any of the sanctions listed in paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 4:1(c).

A motion under subdivision (d) of this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

Last amended by Order dated January 25, 2018; effective April 1, 2018.

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PART FOUR
PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:13. Pretrial Procedure; Formulating Issues.

The court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

(1) A determination of the issues;

(2) A plan and schedule of discovery;

(3) Any limitations on the scope and methods of discovery;

(4) The necessity or desirability of amendments to the pleadings;

(5) The possibility of obtaining admissions of fact and admissions regarding documents and information obtained through electronic discovery;

(6) The limitation of the number of expert witnesses;

(7) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(8) issues relating to the preservation of potentially discoverable information, including electronically stored information and information that may be located in sources that are believed not reasonably accessible because of undue burden or cost;

(9) provisions for disclosure or discovery of electronically stored information;

(10) any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production;

(11) any provisions that will aid in the use of electronically stored or digitally imaged documents in the trial of the action; and

(12) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by

admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

Rule 4:14. Disposition of Discovery Material.

Any discovery material not admitted in evidence filed in a clerk's office may be destroyed by the clerk after one year after entry of the final judgment or decree. But if the action or suit is the subject of an appeal, such material shall not be destroyed until the lapse of one year after receipt of the mandate on appeal or the entry of any final judgment or decree thereafter.

RULES OF SUPREME COURT OF VIRGINIA
PART FOUR
PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:15. Motions Practice.

All civil case motions in circuit court shall be scheduled and heard using the following procedures:

(a) Scheduling – All civil case motions in circuit court shall be scheduled and heard using the following procedures:

1. Presenting the motion on a day the court designates for motions hearings, or

2. Contacting designated personnel in the office of the clerk of the court or the chambers of the judge or judges of the court.

(b) Notice – Reasonable notice of the presentation of a motion shall be served on all counsel of record. Absent leave of court, and except as provided in paragraph (c) of this Rule, reasonable notice shall be in writing and served at least seven days before the hearing. Counsel of record shall make a reasonable effort to confer before giving notice of a motion to resolve the subject of the motion and to determine a mutually agreeable hearing date and time. The notice shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. In an Electronically Filed Case, the notice provisions of this paragraph and the filing and service requirements of paragraph (c) of this Rule shall be accomplished in accord with Rule 1:17.

(c) Filing and Service of Briefs – Counsel of record may elect or the court may require the parties to file briefs in support of or in opposition to a motion. Any such briefs should be filed with the court and served on all counsel of record sufficiently before the hearing to allow consideration of the issues involved. Absent leave of court, if a brief in support of a motion is five or fewer pages in length, the required notice and the brief shall be filed and served at least 14 days before the hearing and any brief in opposition to the motion shall be filed and served at least seven days before the hearing. If a brief will be more than five pages in length, an alternative hearing date, notice requirement, and briefing schedule may be determined by the court or its designee. Absent leave of court, the length of a brief shall not exceed 20 pages, double spaced.

(d) Hearing – Except as otherwise provided in this subparagraph, upon request of counsel of record for any party, or at the court's request, the court shall hear oral argument on a motion. Oral argument on a motion for reconsideration or

any motion in any case where a pro se incarcerated person is counsel of record shall be heard orally only at the request of the court. A court may place reasonable limits on the length of oral argument. No party shall be deprived of the opportunity to present its position on the merits of a motion solely because of the unfamiliarity of counsel of record with the motions procedures of that court. A court, however, at the request of counsel of record, or in the judge's discretion, may postpone the hearing of the motion, or require the filing of briefs to assure fairness to all parties and the ability of the court to review all such briefs in advance of the hearing.

(e) Definition of Served – For purposes of this Rule, a pleading shall be deemed served when it is actually received by, or in the office of, counsel of record through delivery, mailing, facsimile transmission or electronic mail as provided in Rule 1:12.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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

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

(a) *Scope of Rules*. Part Five governs all proceedings in the Supreme Court of Virginia.

(b) *Citation*. These Rules may be cited generally as the "Rules of the Supreme Court of Virginia" and specifically as "Rule 5:___."

(c) *Definitions*.

(1) "clerk" means clerk of the court or commission from which an appeal is taken unless some other clerk is specified and, unless the context otherwise requires, includes a deputy clerk;

(2) "clerk of this Court" includes a deputy clerk;

(3) "counsel" has the definition given in Rule 1:5 and in this Part Five includes a party not represented by counsel;

(4) "counsel for the appellant" means one of the attorneys representing each appellant represented by an attorney and each appellant not represented by an attorney;

(5) "counsel for the appellee" means one of the attorneys representing each appellee represented by an attorney and each appellee not represented by an attorney. In an appeal from the State Corporation Commission, "counsel for the appellee" shall also include counsel for the Commission and, unless the Commonwealth is the appellant, the Attorney General;

(6) "Court of Appeals" means the Court of Appeals of Virginia;

(7) "opposing counsel" means, depending on the context, "counsel for the appellant" or "counsel for the appellee";

(8) "judge" means judge of the trial court, unless the context otherwise requires, or if the judge of the trial court is not available, any judge authorized to act under Rule 5:12;

(9) "judgment" includes an order or decree from which an appeal is taken;

(10) "trial court" means the circuit court from which an appeal is taken;

(11) the "date of entry" of any final judgment or other appealable order or decree shall be the date the judgment, order, or decree is signed by the judge.

(d) *Service*. Unless service or notice is otherwise specified in a given Rule, any paper or object filed with this Court must have included within it or appended to it a certificate of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count is used, the certificate must also state the number of words (headings, footnotes, and quotations count

towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(e) *Notice of Change of Address and Other Contact Information*. If an attorney has a change in mailing address, telephone number, facsimile number, or e-mail address any time after the filing of the notice of appeal, the attorney must immediately notify the clerk of this Court and all other counsel of record in writing. The notice must reference the style and record number of all cases pending before this Court.

(f) *Citing Unpublished Judicial Dispositions*. The citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as "unpublished," "not for publication," "non precedential," or the like, is permitted as informative, but shall not be received as binding authority. If the cited disposition is not available in a publicly accessible electronic database, a copy of that disposition must be filed with the brief or other paper in which it is cited.

(g) *Filings.* Every paper or object filed with or transmitted to this Court shall be filed or transmitted in compliance with these Rules. Originals or copies of papers or objects shall not be filed with or transmitted to any justice of this Court, unless expressly authorized by the Court. A failure to comply with this prohibition may result in the imposition of penalties under Rule 5:1A.

Promulgated by Order dated Friday, April 16, 2018; effective June 15, 2018.

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

Rule 5:1A. Penalties for Non-compliance; Show Cause; Dismissal.

(a) *Penalties; Show Cause; Dismissal.* This Court may dismiss an appeal or impose such other penalty as it deems appropriate for non-compliance with these Rules. Except as provided in Rule 5:17(c)(1)(i) and (iii), regarding assignments of error, prior to the dismissal of an appeal for any defect in the filings related to formatting, curable failure to comply with other requirements, or the failure to meet non-mandatory filing deadlines, this Court may issue a show cause order to counsel or a party not represented by an attorney, prescribing a time in which to cure such defect or to otherwise show cause why the appeal should not be dismissed or other penalty imposed.

(b) *Report to Virginia State Bar*. If an attorney's failure to comply with these Rules results in the dismissal of an appeal, this Court may report the attorney to the Virginia State Bar in accordance with Rule 8.3 of the Virginia Rules of Professional Conduct.

Amended by Order dated Friday, May 16, 2014; effective immediately.

Rule 5:2. Sessions and Divisions.

Except as provided in Code § 17.1-304, sessions and divisions of this Court will be held at Richmond, or at such other locations as this Court may designate consistent with applicable law, and will continue for such length of time as this Court may determine.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

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

Rule 5:3. Convening of Court - When En Banc - When in Division.

(a) This Court will sit en banc or in divisions.

(b) Whenever four or more of the Justices are convened, this Court shall be deemed to be sitting en banc and vested with all of the powers of this Court. Whenever three of the Justices are convened, this Court shall be deemed to be sitting as a division, and vested with all of the powers of a division of this Court.

(c) If the Justices composing any division shall differ as to the judgment to be rendered in any case, or if, within ten days after the decision is rendered by the division any Justice of such division shall file in the office of the clerk of this Court a certificate that, in the opinion of the Justice, such decision is in conflict with a prior decision of this Court or of one of the divisions thereof, or if this Court shall so determine, the case shall be reheard and decided by this Court sitting en banc.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5:4. Motions and Responses; Orders.

(a) *Motions and Responses*. —

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

(2) Responses. Opposing counsel may have 10 days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the 10 days expire, if necessary. Once such a response is filed, no further pleadings in support of or in opposition to a motion may be filed without leave of Court.

(3) Number of Copies. An original and three copies of all motions or responses must be filed.

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

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

ADVISORY NOTE

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

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.
Last amended by Order dated April 26, 2019; effective July 1, 2019.

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

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), 5:21(a)(3), and 5:21(b)(2)), a petition for appeal (Rules 5:17(a) and 5:21(a)(6)), 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.

(b) *Post-Trial Proceedings Below and Their Effect on the Notice of Appeal*. The time period for filing the notice of appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended by the trial court pursuant to Rule 1:1 or a timely petition for rehearing is filed in the Court of Appeals. In any such case, the time for filing the notice of appeal shall be computed from the date of final judgment entered following such modification, vacation, or suspension, or from the date the Court of Appeals refuses a timely petition for rehearing or enters final judgment following the granting of such a petition.

(c) *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 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) *Inmate Filing*. 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 (1) 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, (2) an official postmark dated on or before the last day for filing, or (3) 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.

(e) *Extensions Generally*. Except as provided in paragraph (a) of this Rule, a motion for an extension of time is timely if filed either within the original filing deadline or within any extension period specified by the governing rule. Filing the motion within the original filing deadline or within the specified extension period does not toll the original filing deadline or further extend the period of extension.

Last amended by Order dated July 2, 2019; effective September 1, 2019.

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

Rule 5:6. Forms of Briefs and Other Papers.

(a) *Paper Size, Line Spacing, Font, and Margins*.

(1) General Rules. Briefs, appendices, motions, petitions, and other papers may be printed or produced on screen by any process that yields a clear black image on a white background and, when printed, must be on 8-1/2 x 11inch paper. Margins must be at least one inch on all four sides of each page.

(2) Specific Rules for Motions, Petitions, and Briefs. Except by leave of Court, all motions, petitions, and briefs, including footnotes, must use one of the font styles listed on the Court's website in at least 14-point and must be printed on only one side of the page. Text shall not be reduced and must be double spaced except for headings, assignments of error, quotations, and footnotes, which must be single spaced. Page numbers are required and may appear in either the top or bottom margin, but no text, including footnotes, is permitted in the one inch margins. Page or word limits for motions, petitions, and briefs do not include the cover page, table of contents, table of authorities, or certificate.

(3) Specific Rules for the Appendix. The appendix may be printed using both sides of the page. Any transcript, including a deposition transcript, that is made a part of the appendix shall be in 12-point type or larger. Any transcript contained in the appendix that fails to conform to the 12-point type requirement may be returned to counsel, and counsel shall be required to promptly comply with this requirement in accordance with the instruction of this Court. The use of condensed or multi-page transcripts is prohibited. Page numbers are required and may appear in either the top or bottom margin.

(b) *Binding and Cover.* All briefs and appendices shall be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The style of the case (with the name of the appellant stated first) and the record number of the case shall be stated on the front cover of all briefs and appendices and, in addition, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address of counsel submitting the brief shall be placed on the front cover of all briefs.

(c) *Effect of Non-compliance.* No appeal shall be dismissed for failure to comply with the provisions of this Rule; the clerk of this Court may, however, require that a document be redone in compliance with this Rule. Failure to comply after notice of noncompliance, however, may result in the dismissal of the case.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated December 15, 2016; effective immediately.

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

Rule 5:6A. Citation of Supplemental Authorities.

If pertinent and significant authorities come to a party's attention after the party's petition for appeal, brief in opposition, or brief has been filed, or after oral argument but before decision, a party may promptly advise the Court by letter, with a copy to all other parties, setting forth the citations. The letter shall be filed with the clerk's office and not directly with any Justice. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and shall not exceed 350 words. The Court, in its discretion, may refuse to consider the supplemental authorities if they unfairly expand the scope of the arguments on brief, raise matters that should have been previously briefed, appear to be untimely, or are otherwise inappropriate to consider.

Last amended by Order dated October 5, 2018; effective immediately.

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

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

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

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

(2) What the Petition Must Contain. The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition. All petitions must comply with the requirements of Code § 8.01-655. Where a petition for a writ of habeas corpus is filed by counsel, counsel shall attach as an exhibit a single copy of the complete record of the proceedings that resulted in the detention the petition challenges. The record shall comply with the form and content requirements of Rule 5:7(a)(5), and counsel may seek leave to provide less than the complete record as provided for in Rule 5:7(a)(6).

(3) Service of Petitions; Service of Papers after Initial Process. Except as provided herein, service of process must be accomplished in accordance with Chapter 8 of Title 8.01. Service of all papers filed after the petition shall be accomplished in accordance with Rule 1:12.

(i) Non-Public Officials. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent.

(ii) Public Officials. When habeas corpus is directed to a public official, service shall be made on the respondent and shall also be made on or accepted by the Attorney General or an Assistant Attorney General. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent.

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

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

(4) When to Respond to a Petition; Reply. No responsive pleading to a petition filed by a prisoner acting pro se shall be required except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within forty days after service of the petition. The deadline for counsel for the petitioner to file a reply to a responsive pleading shall be 30 days from the date the responsive pleading is due.

(5) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth grounds of defense as in an action at law. The answer shall state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities shall accompany each responsive pleading. In any case in which the respondent states an opinion that the taking of evidence is not necessary for the proper disposition of a petition for a writ of habeas corpus, the respondent shall attach as separate exhibits:

(i) a single copy of the complete record of the proceedings that resulted in the detention the petition challenges, provided that such complete record has not previously been provided by counsel for petitioner. When criminal proceedings resulted in the challenged detention, the record of those proceedings shall include:

(1) a copy of the documents and exhibits filed or lodged in the office of the clerk of the trial court;

(2) a copy of each instruction marked “given” or “refused” and initialed by the judge;

(3) a copy of each exhibit offered in evidence, whether admitted or not, except for drugs, guns and other weapons, ammunition, blood vials and other bio-hazard type materials, money, jewelry, articles of clothing, and bulky items such as large graphs and maps;

(4) a copy of each order entered by the trial court;

(5) a copy of any opinion or memorandum decision rendered by the judge of the trial court;

(6) a copy of any transcript that was filed with the circuit court, or a copy of any videotape recording of any proceeding in those circuit courts authorized by this Court to use videotape recordings.

(7) These records shall be compiled as follows:

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

(b) each paper constituting a part of the record in chronological order;

(c) each page of the record shall be numbered at the bottom; and

(d) transcripts and exhibits may be included in separate volumes or envelopes identified by the table of contents, except that any exhibit that cannot be conveniently placed in a volume or envelope shall be identified by a tag. Each such volume or envelope shall include, on its cover or inside, a descriptive list of exhibits contained therein.

(ii) copies of any other document on which the respondent relies to assert that the taking of evidence is not necessary.

(6) Leave to respond without providing a complete record. In any case in which the respondent states an opinion that the complete record of the proceedings that resulted in the detention the petition challenges is not necessary for the proper disposition of the petition, the respondent may move for leave to provide less than all of the record. Such leave shall be sought no later than 14 days prior to the filing of a responsive pleading. In any case where leave is granted, the Court may direct the respondent to provide any additional portion of the record at any time.

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

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

(9) Calling up the Record. If this Court determines that any portion of the underlying trial or appellate record is necessary for a proper determination of the merits of the petition, the clerk of this Court is authorized to request the record and, to the extent necessary, the preparation of any transcripts, and the clerk of the trial court, commission, or the Court of Appeals as appropriate shall prepare the requested transcripts and transmit it forthwith upon request without the necessity of an order.

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

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

(2) Service of Petitions; Service of Papers after Initial Process.

(i) Generally. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent. Except in cases brought by prisoners acting pro se, service of process must be accomplished in accordance with Chapter 8 of Title 8.01. Service of all papers filed after the petition shall be served in accordance with Rule 1:12.

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

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

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

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

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

(5) When to Respond to a Petition; Reply. No responsive pleading shall be required for a petition filed by a prisoner acting pro se except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within 21 days after service of the petition or the filing thereof, whichever date is later. The deadline for counsel for the petitioner or a pro se petitioner to file a reply to a responsive pleading shall be 14 days from the date the responsive pleading is due.

(6) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth an answer as in an action at law. The answer shall state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities should accompany each responsive pleading.

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

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

(c) *When this Court May Act on a Petition.* — This Court may act on any petition for a writ of habeas corpus, mandamus, or prohibition before a responsive pleading or reply of the petitioner is filed. This Court may by order shorten the period within which a responsive pleading must or reply may be filed.

(d) *Further Proceedings on Petitions*. — Further proceedings shall be in accordance with the orders of this Court or a Justice thereof to whom this Court may delegate authority to determine all procedural matters. If this Court or the designated Justice determines that evidence is desirable, (1) depositions may be taken according to a schedule agreed upon by counsel and filed in the office of the clerk of this Court or, in the absence of agreement, according to a schedule determined by this Court or the designated Justice, or (2) the Court may order the circuit court in which the judicial proceeding resulting in petitioner's detention occurred to conduct an evidentiary hearing. Such hearings shall be limited in subject matter to the issues enumerated in the order. The circuit court shall conduct such a hearing within 90 days after the order has been received and shall report its findings of fact to this Court within 60 days after the conclusion of the hearing. Any objection to the report must be filed in this Court within 30 days after the report is filed.

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

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

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

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

In cases in which the sentence of death has been imposed:

(a) *Petition for the Writ.* A petition for a writ of habeas corpus shall be filed in the office of the clerk of this Court within 60 days after the earliest of: (i) the denial by the Supreme Court of the United States of a petition for a writ of certiorari to the judgment of this Court on direct appeal, (ii) an order of the Supreme Court of the United States affirming imposition of the sentence of death in a case in which that Court granted a writ of certiorari to review the judgment of this Court on direct appeal, or (iii) the expiration of the period for filing a petition for a writ of certiorari in the Supreme Court of the United States without such a petition being filed.

(b) *Contents of Petition for Writ.* Each petition for a writ of habeas corpus shall be verified and shall include an enumerated list of the grounds asserted for relief together with all supporting facts upon which the petitioner relies. The petition shall contain citation to the relevant legal authorities and an enumeration of all previous petitions and their disposition. The petition shall state whether, in the opinion of the petitioner, the taking of evidence is necessary for the proper disposition of the petition. The petition shall be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof upon the Attorney General of Virginia or by an acceptance of service signed by the Attorney General or an Assistant Attorney General.

(c) *Response.* Within 30 days after service of the petition, the Attorney General shall file with the clerk of this Court a responsive pleading, which may include a motion to dismiss. The response shall include citation to the relevant legal authorities and shall state whether, in the opinion of the Attorney General, the taking of evidence is necessary for the proper disposition of the petition.

(d) *Reply*. Within 20 days after the Attorney General's responsive pleading is filed pursuant to subparagraph (c), the petitioner may file a reply.

(e) *Copies to be Filed.* Ten copies of the petition, the Attorney General's responsive pleading, and the petitioner's reply shall be filed in the office of the clerk of this Court.

(f) *Motions.* Upon the filing of any motion other than a motion to dismiss included in a responsive pleading filed pursuant to subparagraph (c) of this Rule, or upon the filing of an objection pursuant to Code § 8.01-654(C)(3), the opposing party may file a response within ten days of the filing of the motion or objection, or within such time as this Court may order.

(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.

(h) *Further Proceedings by Order of this Court.* Further proceedings shall be conducted in accordance with the orders of this Court. If it is determined that an evidentiary hearing is necessary for the proper disposition of the petition, this Court shall enter an order directing the circuit court that entered the judgment imposing the sentence of death to conduct such a hearing in accordance with the provisions of Code § 8.01-654(C)(1), (2), and (3).

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

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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

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

(a) *Who may File a Petition.* A petition for a writ of actual innocence based upon previously unknown or untested human biological evidence may be filed by any person who has been convicted of a felony upon a plea of not guilty, or who was adjudicated delinquent upon a plea of not guilty by a circuit court of an offense that would be a felony if committed by an adult, or by any person, regardless of plea, who has been sentenced to death, or convicted or adjudicated delinquent of a class 1 felony, a class 2 felony or any felony for which the maximum penalty is imprisonment for life.

(b) *Time for Filing*. A petition under this Rule shall be filed in the office of the Clerk of this Court within 60 days after the date upon which exculpatory test results are obtained by the petitioner or his counsel of record from the Department of Forensic Science for any tests conducted on human biological evidence pursuant to Code § 19.2-327.1.

(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 or adjudicated delinquent, including all previous records, applications, petitions, and appeals relating to these convictions or adjudications of delinquency, and their dispositions; (ii) that the petitioner is actually innocent of the crime or crimes for which he was convicted or adjudicated delinquent; (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 would have found the petitioner guilty or delinquent beyond a reasonable doubt of the offense or offenses for which the petitioner was convicted or adjudicated delinquent; and (viii) if the conviction or adjudication of delinquency became final in the circuit court after June 30, 1996, that the evidence was not available for testing under Code § 9.1-1104.

(d) *Service of the Petition and Return of Service*. Prior to filing a petition, the petitioner shall serve the petition, along with all attachments, on the Attorney General and on the Commonwealth's Attorney for the jurisdiction where the conviction or adjudication of delinquency occurred. The petitioner shall file with the petition either (i) a duly executed return of service in the form of a verification that a copy of the petition

and all attachments have been served, or (ii) an acceptance of service signed by either or both of the parties to be served, or (iii) a combination of the two.

(e) *Filing Fee.* The petition must be accompanied by either (i) a check or money order for the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee.

(f) *Response.* The Attorney General shall respond to the petition as follows:

(1) Within 30 days after service of the petition, the Attorney General shall file with the clerk of this Court a pleading in the form of a declaration stating, in the opinion of the Attorney General, with an explanation of the reasons therefor, whether the record of any trial or appellate proceedings involving the conviction or convictions, or adjudication or adjudications of delinquency, or of any proceedings under Code § 19.2-327.1, is necessary for preparation of a response to the petition. If the Attorney General asserts that the record, or any part thereof, of any trial or appellate court proceedings is necessary, the Attorney General shall request the production of such record by this Court, and shall describe with specificity, including the court, docket number and date of judgment, each and every record or part thereof which is requested.

(2) If the Attorney General asserts in the declaration required by subparagraph (f)(1) of this Rule that no trial or appellate court record, or any part thereof, is necessary for the preparation of a responsive pleading to the petition, the Attorney General shall file with the clerk of this Court within 30 days thereafter a pleading in response to the petition. Any pleading in response filed by the Attorney General may include a motion to dismiss. The response shall include citation to any relevant legal authorities, and may contain a proffer of any evidence pertaining to the guilt of the petitioner that is not included in the record of the case, including any evidence that was suppressed at trial.

(3) If the Attorney General asserts in the declaration required by subparagraph (f)(1) of this Rule that a trial or appellate court record, or any part thereof, is necessary for the preparation of a response to the petition, the court shall issue the writ of certiorari described in Code § 19.2-327.3(D) to the clerk of the respective court below for the production of the record forthwith to the clerk of this Court. Upon receipt of the record by the clerk of this Court, the clerk shall immediately notify in writing the petitioner, any attorney for the petitioner, the Attorney General, and the attorney for the Commonwealth of the jurisdiction where the conviction or convictions or adjudication or adjudications of delinquency occurred, of the date of receipt of the record. Within 30 days after receipt of the record by the clerk of this Court, the Attorney General shall file the responsive pleading described in subparagraph (f)(2) of this Rule.

(g) *Reply.* Within 20 days after the Attorney General's responsive pleading is filed pursuant to subparagraph (f) of this Rule, the petitioner may file a reply.

(h) *Copies to be Filed.* Ten copies of the petition, and the Attorney General's responsive pleading, and the petitioner's reply, if any, shall be filed in the office of the clerk of this Court.

(i) *Further Proceedings by Order of this Court.* Further proceedings shall be conducted in accordance with the orders of this Court. If this Court determines that an evidentiary hearing is necessary for the proper disposition of the petition, this Court may order that the circuit court conduct a hearing within 90 days after the order has been issued to certify findings of fact with respect to such issues as this Court shall direct. The record and certified findings of fact of the circuit court shall be filed with the clerk of this Court within 30 days after the hearing is concluded.

(j) *Appointment of Counsel*. In any petition filed pursuant to and in compliance with this Rule, petitioner shall be entitled to the appointment of counsel subject to the provisions of Code § 19.2-157 et seq. Any request for counsel in this Court must be made on the form provided by this Court, entitled REQUEST FOR COUNSEL – PETITION FOR A WRIT OF ACTUAL INNOCENCE, and must include: (i) all the information required by the in forma pauperis affidavit attached to the request for appointment of counsel, and (ii) an attested copy of the order of the circuit court ordering that testing of human biological evidence on the petitioner's behalf be conducted by the Department of Forensic Science pursuant to Code § 19.2-327.1.

(k) *Duty of Counsel.* Any attorney(s) appointed to represent a petitioner pursuant to Code § 19.2-327.1 shall be deemed to be counsel of record for petitioner for all purposes and proceedings under this Rule until a final order of this Court is issued pursuant to Code § 19.2-327.5, or until counsel is relieved or replaced by other counsel by leave of this Court.

Last amended by Order dated June 21, 2013; effective July 1, 2013.

Rule 5:8. Applicability.

This Section C applies only to cases in which direct appeal to this Court from a trial court is authorized by law.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5:9. Notice of Appeal.

(a) *Filing Deadline; Where to File.* No appeal shall be allowed unless, within 30 days after the entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court pursuant to Rule 5:5(a), counsel for the appellant files with the clerk of the trial court a notice of appeal and at the same time mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the court announces a decision or ruling – but before the entry of such judgment or order – is treated as filed on the date of and after the entry.

Appeals from the Circuit Court – Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order shall be moot and of no effect. A new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.

(b) *Content.* The notice of appeal shall contain a statement whether any transcript or statement of facts, testimony and other incidents of the case will be filed. In the event a transcript is to be filed, the notice of appeal shall certify that a copy of the transcript has been ordered from the court reporter who reported the case or is otherwise already in the possession of appellant, or was previously filed in the proceedings.

(c) *Separate Cases.* Whenever two or more cases were tried together in the trial court, one notice of appeal and one record may be used to bring all of such cases before this Court even though such cases were not consolidated by formal order.

(d) *Special Provision for Cases Involving a Guardian Ad Litem.* No appeal shall be dismissed because the notice of appeal fails to identify a guardian ad litem or to provide notice to a guardian ad litem. Upon motion for good cause shown or by sua sponte order of this Court, the notice of appeal may be amended to identify the guardian ad litem and to provide notice to such guardian.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated July 2, 2019; effective September 1, 2019.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
C. PROCEDURE FOR FILING AN APPEAL FROM A TRIAL COURT

Rule 5:10. Record on Appeal: Contents.

(a) *Contents.* The following constitute the record on appeal from the trial court:

(1) the documents and exhibits filed or lodged in the office of the clerk of the trial court, including any report of a commissioner in chancery and the accompanying depositions and other papers;

(2) each instruction marked "given" or "refused" and initialed by the judge;

(3) each exhibit offered in evidence, whether admitted or not, and initialed by the trial judge (or any photograph thereof as authorized by § 19.2-270.4 (A) and (C)). (All non-documentary exhibits shall be tagged or labeled in the trial court and the tag or label initialed by the judge.);

(4) the original draft or a copy of each order entered by the trial court;

(5) any opinion or memorandum decision rendered by the judge of the trial court;

(6) any deposition and any discovery material encompassed within Part Four offered in evidence (whether admitted or rejected) at any proceeding; and

(7) the transcript of any proceeding or a written statement of facts, testimony, and other incidents of the case when made a part of the record as provided in Rule 5:11, or the official videotape recording of any proceeding in those circuit courts authorized by this Court to use videotape recordings. This Court may require that any videotape proceedings be transcribed, in whole or in part, and made a part of the record as provided in Rule 5:11, except that the transcript shall be filed within 60 days after the entry of the order requiring such transcript; and

(8) the notice of appeal.

(b) *Disagreement on Contents.* If disagreement arises as to the contents of any part of the record, the matter shall, in the first instance, be submitted to and decided by the trial court.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order entered April 10, 2015; effective July 1, 2015.

Rule 5:11. Record on Appeal: Transcript or Written Statement.

(a) *Effect of Non-compliance*.

(1) Obligation of the Petitioner/Appellant. It is the obligation of the petitioner/appellant to ensure that the record is sufficient to enable the Court to evaluate and resolve the assignments of error. When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues related to the assignments of error, any assignments of error affected by the omission shall not be considered.

(2) Obligation of the Respondent/Appellee. It is the obligation of the respondent/appellee to ensure that the record is sufficient to enable the Court to evaluate and resolve any assignments of cross-error. When the respondent/appellee who assigns cross-error fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues related to the assignments of cross-error, any assignments of cross-error affected by the omission shall not be considered.

(b) *Transcript.* The transcript of any proceeding in the case that is necessary for the appeal shall be filed in the office of the clerk of the trial court no later than 60 days after entry of judgment.

(c) *Notice of Filing Transcript.*

(1) Within 10 days after the transcript is filed or, if the transcript is filed prior to the filing of the notice of appeal, within 10 days after the notice of appeal is filed, counsel for appellant shall (i) give written notice to all other counsel of the date on which the transcript was filed, and (ii) file a copy of the notice with the clerk of the trial court. There shall be appended to the notice either a certificate of counsel for appellant that a copy of the notice has been mailed to all other counsel or an acceptance of service of such notice by all other counsel.

(2) When multiple transcripts are filed, the 10 day period for filing the notice required by this Rule shall be calculated from the date on which the last transcript is filed, or from the date on which the notice of appeal is filed, whichever is later. The notice of filing transcripts shall identify all transcripts filed and the date upon which the last transcript was filed. If the notice of appeal states that no additional transcripts will be filed and identifies the transcripts that have been filed, if any, then no additional written notice of filing of transcripts is required and the notice of appeal will serve as the notice of filing transcripts for purposes of this Rule.

(3) Any failure to file the notice required by this Rule that materially prejudices an appellee will result in the affected transcripts being stricken from the record on appeal. For purposes of this Rule, material prejudice includes preventing the appellee

from raising legitimate objections to the contents of the transcript or misleading the appellee about the contents of the record. The appellee shall have the burden of establishing such prejudice in the brief in opposition or, if no brief in opposition is filed, in a written statement filed with the clerk of this Court within the time fixed by these Rules for the filing of a brief in opposition.

(d) *Supplementation, Correction, or Modification of Transcript.* If anything material to any party is omitted from or misstated in the transcript, or if the transcript or any portion thereof is untimely filed, by omission, clerical error, or accident, the filing may be supplemented, corrected, or modified at any time within 70 days from the entry of judgment appealed from. Notice as provided in paragraph (c) of this Rule must be given for any such supplementation, correction, or modification. Thereafter, such supplementation, correction, or modification may be made, by order of this Court sua sponte or upon motion of any party, if at least two Justices of this Court concur in a finding that any such supplementation, correction, or modification is warranted by a showing of good cause sufficient to excuse the deficiency.

(e) *Written Statement in Lieu of Transcript.* A written statement of facts, testimony, and other incidents of the case, which may include or consist of a portion of the transcript, becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of the trial court. The judge may sign the statement forthwith upon its presentation to him if it is signed by counsel for all parties, but if objection is made to the accuracy or completeness of the statement, it shall be signed in accordance with paragraph (g) of this Rule.

(f) The term "other incidents of the case" in subsection (e) includes motions, proffers, objections, and rulings of the trial court regarding any issue that a party intends to assign as error or otherwise address on appeal.

(g) *Objections.* Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted shall be filed with the clerk of the trial court within 15 days after the date the notice of filing the transcript (paragraph (c) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (e) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. Counsel for the objecting party shall give the trial judge prompt notice of the filing of such objections. Within 10 days after the notice of objection is filed with the clerk of the trial court, the trial judge shall:

(1) overrule the objections; or

(2) make any corrections that the trial judge deems necessary; or

(3) include any accurate additions to make the record complete; or

(4) certify the manner in which the record is incomplete; and

(5) sign the transcript or written statement.

At any time while the record remains in the office of the clerk of the trial court, the trial judge may, after notice to counsel and hearing, correct the transcript or written statement.

The judge's signature on a transcript or written statement, without more, shall constitute certification that the procedural requirements of this Rule have been satisfied.

Promulgated by Order dated October 31, 2018; effective January 1, 2019.

Rule 5:12. Judge Authorized to Act.

The judge authorized to act in all matters relating to the record on appeal shall be any judge having authority to enter orders in the case or in the court in which the case was heard or, in a case heard by three judges, any one of them.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

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.

(b) *Form of the Record.*

(1) The record shall 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 paper 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 shall 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 shall be identified by a tag. Each such volume or envelope shall include, on its cover or inside, a descriptive list of exhibits contained therein. Reference shall 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 shall 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 shall 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 shall be certified as such and transmitted with the record.

(c) *Transmission.* The clerk of the trial court shall retain the record for 21 days after the notice of appeal has been filed with him pursuant to Rule 5:9. If the notice of appeal

states that a transcript or statement will thereafter be filed, the clerk of the trial court shall retain the record for 21 days after the filing in his office of such transcript or statement or, if objection is made to the transcript or statement pursuant to Rule 5:11(g), the clerk of the trial court shall retain the record for 5 days after the objection is acted upon by the trial judge. The clerk of the trial court shall 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 shall transmit the record sooner if requested in writing by counsel for all parties to the appeal and shall, whether or not so requested, transmit the record in time for delivery to the clerk of this Court within 90 days after entry of the judgment appealed from. The failure of the clerk of the trial court to transmit the record as herein provided shall not be a ground for dismissal of the appeal by this Court.

(d) *Record Returned to Trial Court.* When the mandate is issued by this Court, the clerk of this Court shall return the record to the clerk of the trial court, disciplinary board, or commission in which the proceeding originated. The record shall be returned by that clerk upon the request of the clerk of this Court.

Last amended by Order dated March 24, 2017; effective July 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
C. PROCEDURE FOR FILING AN APPEAL FROM A TRIAL COURT

Rule 5:13A. Digital Appellate Record: Preparation and Transmission.

(a) *Preparation.* A Digital Appellate Record may be created instead of a paper record, with substantially the same content as its paper counterpart. The clerk of the tribunal in which the proceeding originated shall be responsible for preparing the digital record, if the clerk chooses to transmit a digital record in place of the paper version.

(b) *Form of Record.* The digital record shall comply with the Digital Appellate Record Standards posted on the Supreme Court of Virginia website.

(c) *Exhibits.* Original exhibits should be imaged and retained by the clerk of the tribunal. The omission of any exhibit that cannot be scanned or imaged must be noted in a descriptive list of exhibits. On motion or sua sponte, this Court may order the tribunal to transmit any retained exhibit.

(d) *Transmission*. The clerk of the tribunal shall transmit the record to the clerk of this Court, in a manner prescribed by the Digital Appellate Record Standards, using the Digital Records System created for this purpose. The same timing and dismissal rules apply to transmissions of digital records as apply to their paper counterparts in Rule 5:13.

(e) *Disposition of Record.* When the mandate is issued by this Court, the clerk of this Court shall return all tangible items, if any, to the clerk of the tribunal in which the proceeding originated. The digital record will not be returned. If necessary, the record shall be re-sent by that clerk upon the request of the clerk of this Court.

(f) *Public Record.* The publicly available digital record shall be the digital document prepared by the tribunal clerk with all information that is sealed or protected from public disclosure by law redacted or excluded.

Promulgated by Order dated April 10, 2015; effective July 1, 2015.

Last amended by Order dated October 30, 2015; effective January 1, 2016.

Last amended by Order dated Thursday, December 22, 2011; effective March 1, 2012.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
D. PROCEDURE FOR FILING AN APPEAL FROM THE COURT OF APPEALS

Rule 5:14. Notice of Appeal; Certification.

(a) *Notice of Appeal.* No appeal from a judgment of the Court of Appeals which is subject to appeal to this Court shall be allowed unless, within 30 days after entry of final judgment or order denying a timely petition for rehearing, a notice of appeal is filed with the clerk of the Court of Appeals.

(b) *Notice of Certification.* Whenever this Court shall certify a case pending in the Court of Appeals for review by this Court, notice of certification shall be given by the clerk of this Court to all counsel and to the clerk of the Court of Appeals. A case certified for review by this Court shall proceed as if a petition for appeal had been granted by this Court on the date of the certification for review, except as otherwise ordered.

(c) *Bail Pending Appeal in Criminal Cases*. In criminal cases, either party may appeal an order of the Court of Appeals affirming, reversing, or modifying a circuit court order regarding bail pending appeal as provided by this Rule, Rule 5:15 and Rule 5:17.

Rule 5:15. Record on Appeal From Court of Appeals or Certification for Review.

(a) *Generally.* In cases on appeal from the Court of Appeals and those certified for review, the record in this Court shall consist of the record as filed in the office of the clerk of the Court of Appeals and, in addition, all other documents relating to the case which have been filed in the office of the clerk of the Court of Appeals, including any opinion or memorandum decision in cases decided by the Court of Appeals. Pursuant to Rule 5:13 or Rule 5:13A, the clerk of the Court of Appeals shall transmit all such documents to the clerk of this Court within 10 days after the filing of the notice of appeal to this Court or the issuance of the certification for review. The clerk of the Court of Appeals shall certify that the documents so transmitted constitute the record in the Court of Appeals.

(b) *Bail Pending Appeal in Criminal Cases.* In criminal cases on appeal from a Court of Appeals' order affirming a trial court's order setting or denying bail pending appeal, the record shall consist of: (1) the sentencing order entered by the trial court; (2) a pre-sentence report when available; (3) the trial court's order denying or setting bail; (4) the transcript of the bail hearing or a stipulation of facts between the parties regarding what evidence was introduced at the hearing and the reason(s) the trial judge gave for the bail decision; (5) appellant's motion for review in the Court of Appeals; and (6) the order of the Court of Appeals on the motion for review.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order entered April 10, 2015; effective July 1, 2015.

Rule 5:16. Disposition of Record.

When there can be no further proceedings in this Court, the clerk of this Court shall return the record to the clerk of the trial court or commission in which the case originated. The record shall be returned by that clerk upon the request of the clerk of this Court.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
E. PERFECTING THE APPEAL

Rule 5:17. Petition for Appeal.

(a) *When the Petition Must be Filed*. Unless otherwise provided by rule or statute, in every case in which the appellate jurisdiction of this Court is invoked, a petition for appeal must be filed with the clerk of this Court within the following time periods:

(1) in the case of an appeal direct from a trial court, not more than 90 days after entry of the order appealed from; or

(2) in the case of an appeal from the Court of Appeals, within 30 days after entry of the judgment appealed from or a denial of a timely petition for rehearing.

(b) *Who Must Receive a Copy of the Petition.* When the petition for appeal is filed with the clerk of this Court, a copy of the petition shall be served on opposing counsel.

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

(1) Assignments of Error. Under a heading entitled "Assignments of Error," the petition shall 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 transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken shall be included with each assignment of error. If the error relates to failure of the tribunal or count 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 where the issue was preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(i) Effect of Failure to Assign Error. Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, the petition shall be dismissed.

(ii) Nature of Assignments of Error in Appeals from the Court of Appeals. When appeal is taken from a judgment of the Court of Appeals, only assignments of error relating to assignments of error presented in, and to actions taken by, the Court of Appeals may be included in the petition for appeal to this Court.

(iii) Insufficient Assignments of Error. An assignment of error that does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. An assignment of error in an appeal from the Court of Appeals to the Supreme Court which recites that "the trial court erred" and specifies the errors in the trial court, will be sufficient so long as the Court of Appeals ruled upon the specific merits of the alleged trial court error and the error assigned in this Court is

identical to that assigned in the Court of Appeals. If the assignments of error are insufficient, the petition for appeal shall be dismissed.

(iv) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the petition for appeal contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c)(1) of this Rule, a rule to show cause will issue pursuant to Rule 5:1A. If there is a deficiency in the reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken - including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) of the record where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s) - a rule to show cause will issue pursuant to Rule 5:1A.

(2) Required Statements When the Appeal is from the Court of Appeals.

When appeal is taken from a judgment of the Court of Appeals in a case in which judgment is made final under Code § 17.1-410, the petition for appeal shall contain a statement setting forth in what respect the decision of the Court of Appeals involves the following:

(i) a substantial constitutional question as a determinative issue, or

(ii) matters of significant precedential value.

If the petition for appeal does not contain such a statement, the appeal will be dismissed.

(3) Table of Contents and Table of Authorities. A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities shall include the year thereof.

(4) Nature of the Case and Material Proceedings Below. A brief statement of the nature of the case and of the material proceedings in the trial court or commission in which the case originated. This statement shall omit references to any paper filed or action taken that does not relate to the assignments of error.

(5) Statement of Facts. A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record, transcript, or written statement of facts. Any quotation from the record should be brief. When the facts are in dispute, the petition shall 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.

(6) Authorities and Argument. With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities – shall be stated in one place and not scattered through the petition. At the option of counsel, the argument may be preceded by a short summary.

(7) Conclusion. A short conclusion stating the precise relief sought.

(d) *Filing Fee Required With the Petition.* When it is filed, the petition for appeal must be accompanied by a check or money order payable to the "Clerk of the Supreme Court of Virginia" for the amount required by statute. The clerk of this Court may file a petition for appeal that is not accompanied by such fee if the fee is received by the clerk

within 10 days of the date the petition for appeal is filed. If the fee is not received within such time, the petition for appeal shall be dismissed.

(e) *Number of Copies to File*. Seven copies of the petition shall be filed with the clerk of this Court.

(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.

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

(h) *Procedure for an Anders appeal.* If counsel for appellant finds appellant's appeal to be without merit, counsel must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Brown v. Warden of Virginia State Penitentiary*, 238 Va. 551, 385 S.E.2d 587 (1989). In compliance therewith, counsel is required to file (1) a petition for appeal which refers to anything in the record which might arguably support the appeal and which demonstrates to this Court counsel's conscientious examination of the merits of the appeal; (2) a motion for leave to withdraw as counsel; and (3) a motion for an extension of time to allow the appellant to file a supplemental petition for appeal. The petition for appeal and the motion for leave to withdraw as counsel should specifically cite to *Anders*. All three pleadings must be served on opposing counsel and upon the client and must contain a certificate providing evidence of such service. This Court will rule upon the motion for extension of time upon its receipt, but will not rule on the motion to withdraw until this Court considers the case in its entirety, including any supplemental petition for appeal that may be filed.

(i) *What the Certificate Must Contain.* The appellant shall include within the petition for appeal a certificate stating:

(1) the names of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each party, and the mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of any party not represented by counsel;

(2) that a copy of the petition for appeal has been mailed or delivered on the date stated therein to all opposing counsel and all parties not represented by counsel;

(3) if a word count is used, the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count);

(4) in a criminal case or habeas corpus appeal, a statement whether counsel for defendant has been appointed or privately retained; and

(5) whether the appellant desires to state orally to a panel of this Court the reasons why the petition for appeal should be granted, and, if so, whether in person or by conference telephone call.

(j) *Oral Argument.*

(1) Right to Oral Argument. The appellant shall be entitled to state orally, in person or by telephone conference call, to a panel of this Court the reasons why the petition for appeal should be granted. The appellee shall not be entitled to oral argument, whether in person or by telephone conference call. Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court must comply with the requirements of Rule 1A:4.

(2) Waiver of Right to Oral Argument. The appellant may waive the right to oral argument on the petition for appeal before a panel by notifying the clerk of this Court and opposing counsel in writing, or by filing a reply brief.

(3) No Oral Argument on Pro Se Inmate's Petition. If an appellant is not represented by counsel and is incarcerated, the petition for appeal may be considered by this Court without oral argument.

(4) Notice of Oral Argument. If the appellant has requested oral argument, notice of the date and time of such argument shall be provided to counsel for the appellant or to any pro se appellant and to counsel for the appellee or any pro se appellee who has filed a Brief in Opposition or otherwise appeared in the appeal.

Last amended by Order dated October 31, 2018; effective January 1, 2019.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
E. PERFECTING THE APPEAL

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

(a) *Time for Filing.* — In every case in which the jurisdiction of this Court is invoked pursuant to Code § 8.01-626, a petition for review must be filed with the clerk of this Court within 15 days of

(i) an order of a circuit court that grants an injunction, refuses an injunction, or dissolves or refuses to enlarge an existing injunction; or

(ii) an order of the Court of Appeals deciding a petition for review filed in that court pursuant to Code § 8.01-626.

(b) *Copy to Opposing Counsel.* — At the time the petition for review is filed, a copy of the petition shall be served on counsel for the respondent. At the same time that the petition is served, a copy of the petition shall also be emailed to counsel for the respondent, unless said counsel does not have, or does not provide, an email address. With the agreement of the parties, the petition may be served on counsel for the respondent solely by email.

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

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

(ii) The petition shall be accompanied by a copy of the pertinent portions of the record of the lower tribunal(s), including the relevant portions of any transcripts filed in the circuit court and the order(s) entered by the lower tribunal(s) respecting the injunction (hereafter "the record"). The copy of the record shall constitute part of the petition for the purpose of paragraph (b), but shall not count against the petition size limit.

(iii) The petition for review shall contain a certificate:

(1) providing the names of all petitioners and respondents; the name, Virginia State Bar number, mailing address, telephone number, facsimile number (if any), and e-mail address of counsel for each party; and the mailing address, telephone number, facsimile number (if any), and e-mail address of any party not represented by counsel;

(2) certifying that a copy of the petition has been served on all

opposing counsel and all parties not represented by counsel, and specifying the date and manner of service.

(3) if a word count is used, certifying the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count);

(4) certifying that the copy of the record being filed is an accurate copy of the record of the lower tribunal(s) and contains everything therefrom necessary for a review of the petition.

(d) *Number of Copies to File.* — Four copies of the petition, including the record of the lower tribunal(s), shall be filed. Only one copy of the record of the lower tribunal(s) need be filed if, upon filing the petition, counsel for the petitioner also files an electronic copy of the said record as an Adobe Acrobat Portable Document Format (PDF) document on a CD-ROM.

(e) *Filing Fee.* — The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount required by statute. The clerk of this Court may file a petition for review that is not accompanied by such fee if the fee is received by the clerk within 5 days of the date the petition for review is filed. If the fee is not received within such time, the petition for review shall be dismissed.

(f) *Scope and Review.* —

(i) a petition for review may be considered by this Court whether the lower court's order, or that part of the order dealing with the injunction, is temporary or permanent. If review is sought from a final order that deals with injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses injunctive relief. All other issues shall be governed by the normal rules and timetables that apply to appeals. If both a petition for review under Code § 8.01-626 and an appeal under § 8.01-670 are filed to challenge the same final order, the clerk of this Court will assign separate record numbers to the two proceedings.

(ii) a petition for review may be considered by a single Justice of this Court, or by a panel of Justices.

(g) *Responsive Pleading.* — A respondent may file a response to a petition for review within seven days of the date of service of same, unless the Court specifies a shorter time frame. The response shall not exceed the greater of 12 pages or 2,100 words. For the purpose of this rule, a petition for review is considered served 3 days from the date on which it was mailed, or 1 day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, the Court may act on a petition for review without awaiting a response; however, absent exceptional circumstances, the Court shall not grant

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

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

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

Rule 5:18. Brief in Opposition.

(a) *Filing Time.* A brief in opposition to granting the appeal may be filed with the clerk of this Court by the appellee within 21 days after petition for appeal is served on counsel for the appellee. Within the same time the counsel for appellee shall mail or deliver a copy to counsel for appellant. Seven copies shall be filed.

(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. The brief in opposition must be signed by at least one counsel of record.

(c) *Assignments of cross-error.* The brief in opposition may include assignments of cross-error. If the brief in opposition contains an assignment or assignments of cross-error, the cover of the brief must so indicate by being styled, "Brief in Opposition and Assignment of Cross-Error."

(1) A cross-error must be assigned in the brief in opposition in order to be noticed by this Court.

(2) The provisions of Rule 5:25 shall apply to limit the assignments of cross-error which will be heard on the appeal.

(3) A brief in opposition containing assignments of cross-error shall conform to the form, content, and maximum word requirements of paragraph (b) of this Rule.

(4) When an appellee assigns cross-error in the brief in opposition:

(i) this Court will not grant any assignment of cross-error unless it first decides to grant some or all of the assignments of error contained in the appellant's petition for appeal.

(ii) the appellee shall not be permitted to present oral argument to a writ panel.

(iii) if the appellant withdraws the petition for appeal, the appeal will be dismissed without consideration of the cross-error assigned by an appellee.

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

Last amended by Order dated April 10, 2015; effective July 1, 2015.

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.

(b) When cross-error is assigned in a brief in opposition, the appellant may, without waiving oral argument, file with the clerk of this Court within 14 days after filing of the brief in opposition a reply brief not in excess of 10 pages or 1,750 words which addresses only the cross-error. Seven copies shall be filed.

Last amended by Order dated April 10, 2015; effective July 1, 2015.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
E. PERFECTING THE APPEAL

Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal, Refusal of Assignments of Cross-Error, or Disposition of an Original Jurisdiction Petition.

(a) *Scope.* – This Rule governs requests for rehearing of the refusal or dismissal of a petition for appeal filed pursuant to Rule 5:17, the refusal of one or more assignments of cross-error, or the disposition of an original jurisdiction petition filed pursuant to Rule 5:7, Rule 5:7A, or Rule 5:7B.

(b) *Time to File.* – (1) Petition for Rehearing After Refusal or Dismissal of Petition for Appeal. – When a petition for appeal is either refused or dismissed, in whole or in part, the clerk of this Court shall mail a copy of the order denying the appeal, in whole or in part, to counsel for the appellant and counsel for the appellee. Counsel for the appellant may, within 14 days after the date of such order, file in the office of the clerk of this Court a petition for rehearing. If the petition for appeal is granted but one or more assignments of cross-error are refused, counsel for the appellee may, within 14 days after the date of that order, file in the office of the clerk of this Court a petition for rehearing.

(2) Petition for Rehearing after Disposition of Original Jurisdiction Petition. – When a petition filed pursuant to this Court's original jurisdiction (habeas corpus, mandamus, prohibition, or actual innocence) is decided, the clerk of this Court shall mail a copy of the order to counsel for the petitioner and counsel for the respondent. Counsel for either party may, within 30 days after the date of this order, file in the office of the clerk of this Court a petition for rehearing.

(c) *Filing Requirements.* – Except for petitions for rehearing filed by pro se prisoners or with leave of this Court, a petition for rehearing shall be filed electronically.

(1) Requirements for Electronic Filing. – (i) The petition for rehearing shall be filed as a Portable Document Format (PDF) document attached to an e-mail addressed to scvpfr@vacourts.gov and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due.

(ii) The petition for rehearing must be formatted in compliance with the requirements of Rule 5:6(a) and must not exceed the greater of 10 pages or a word count of 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@vacourts.gov. 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.

(iii) 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.

(iv) The e-mail message to which the petition for rehearing is attached shall recite in the subject line the style of the case and the Supreme Court record number. The e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel. The message shall also state whether a copy of the petition for rehearing has been served by e-mail or another means on opposing counsel and the date of such service. If opposing counsel has an e-mail address, that address shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be forwarded to counsel seeking the rehearing.

(2) Requirements When Paper Filing is Allowed. – (i) The petition for rehearing shall not exceed the greater of 10 pages or 1,750 words in length and must be formatted in compliance with the requirements of Rule 5:6(a). The petition for rehearing shall state that a copy has been mailed or delivered to counsel for the appellee.

(ii) Two copies shall be filed.

(d) *Oral Argument and Responsive Brief.* – Oral argument on the petition for rehearing will not be allowed. No responsive brief shall be filed unless requested by this Court.

(e) *Incorporation of Facts or Arguments.* – Attempts to incorporate facts or arguments from the petition for appeal or original jurisdiction petition are prohibited.

(f) *Notification of Action on the Petition.* – The clerk of this Court shall notify counsel for all parties of the action taken by this Court on the petition for rehearing via e-mail, if e-mail addresses have been provided, or via U.S. Mail to any counsel or party who has not provided an email address.

(g) *Attorney's Fees.* – Upon denial of a petition for appeal and any petition for rehearing, any appellee who has received attorney's fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

Last amended by Order dated January 31, 2017; effective April 1, 2017.

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

[This Rule has been deleted by Order entered April 10, 2015; effective July 1, 2015.]

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
F. SPECIAL RULES

Rule 5:21. Special Rules Applicable to Certain Appeals of Right.

(a) *Appeals from the State Corporation Commission.* -

(1) Applicability. Paragraph (a) of this Rule applies to all appeals from the State Corporation Commission and supersedes all other Rules except as otherwise specified herein.

(2) Party to the Commission Proceeding. For the purposes of paragraph (a), the Commission, the Attorney General, the applicant or petitioner, and every person who made an appearance in person or by counsel in a capacity other than as a witness at any hearing in any proceeding before the Commission shall be the parties to such proceeding. Any party who is aggrieved by any final order, judgment, or finding of the Commission, or part thereof, is entitled to an appeal to this Court upon perfecting the appeal as provided by paragraph (a). Upon the request of any party, the clerk of the Commission shall prepare and certify a list of all parties (including their addresses and the names and addresses of their counsel) to a proceeding before the Commission. Service upon a party represented by counsel shall be made upon his counsel.

(3) Notice of Appeal. No appeal from an order of the Commission shall be allowed unless the aggrieved party files a notice of appeal in the office of the clerk of the Commission within 30 days after entry of the order appealed from. A copy of the notice of appeal shall be mailed or delivered to each party to the Commission proceeding, including the Attorney General of Virginia, and an acceptance of such service or a certificate showing the date of delivery or mailing shall be appended thereto. All appeals from the same order shall be deemed to be a consolidated case for the purpose of oral argument in this Court unless this Court shall order a severance for convenience of hearing.

(4) Record. The clerk of the Commission shall prepare and certify the record as soon as possible after a notice of appeal is filed and shall, as soon as it has been certified by him, transmit the record to the clerk of this Court within 4 months after entry of the order appealed from. In the event of multiple appeals in the same case or in cases tried together below, only one record need be prepared and transmitted.

(5) Contents of Record. The record on appeal from the Commission shall consist of all notices of appeal, any application or petition, all orders entered in the case by the Commission, the opinions, the transcript of any testimony received, and all exhibits accepted or rejected, together with such other material as may be certified

by the clerk of the Commission to be a part of the record. The record shall conform as nearly as practicable to the requirements of Rule 5:10.

(6) Petition for Appeal. Only a party who has filed a notice of appeal in compliance with paragraph (a)(3) of this Rule may file a petition for appeal. A party filing a notice of appeal shall file a petition for appeal, accompanied by the prescribed filing fee, in the office of the clerk of this Court within 120 days after entry of the final order, judgment or finding by the Commission and, prior to the filing of the petition shall mail or deliver a copy to every other party to the Commission proceeding. Except as provided herein, the provisions of Rule 5:17 do not apply to a petition filed pursuant to this subparagraph. The petition for appeal shall identify the order appealed from and the date of the order, contain assignments of error, and include the certificate required by Rule 5:17(i). Oral argument on the petition shall not be allowed nor will a brief in opposition be received. If the petition prays for a suspension of the effective date of the order appealed from, it shall contain an assignment of error regarding the effective date of the order appealed from and such statements of the facts and argument as shall be necessary for an understanding of this assignment of error. In that event, a brief in opposition will be received. The brief in opposition must be filed within 15 days of the filing of the petition for appeal, may be no longer than 10 pages or 1,750 words, and may only address the assignment of error regarding the effective date of the order appealed from. Oral argument on the assignment of error regarding the effective date of the order appealed from may be granted.

(7) Assignments of Error. The assignments of error shall be listed under a heading entitled "Assignments of Error." The assignments of error shall clearly and concisely and without extraneous argument identify the specific errors in the rulings below upon which the party intends to rely. A clear and exact reference to the pages of the transcript, written statement of facts, or record where the alleged error has been preserved shall be included with each assignment of error. Only errors so assigned will be noticed by this Court and no error not so assigned will be considered as grounds for reversal of the decision below. No ruling by the Commission will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. An assignment of error which merely states that the judgment is contrary to the law and the evidence is not sufficient.

(8) Award of Appeal. When the notice(s) of appeal, the record, and the petition(s) for appeal have been filed in the manner provided herein and within the time provided herein and by law, the clerk of this Court shall forthwith enter an order docketing the appeal, requiring such bond as the clerk shall deem proper. The clerk's action shall be subject to review by this Court.

(9) Notice of Participation in an Appeal. Within 21 days after an appeal from a Commission order has been docketed as provided in subparagraph (8), any party to the Commission proceeding who did not file a notice of appeal may file a notice of

participation with the clerk of this Court. The notice shall identify whether the party seeks to be an appellant or appellee. If there is more than one appellant, the notice of participation as an appellant must identify the specific appellant(s) with which the participating appellant will align. Participating parties shall follow the briefing schedule and requirements of subparagraph 10, except that a participating party may not raise any additional assignments of error or cross-error. The notice of participation as appellant or appellee shall be mailed or delivered to every other party to the Commission proceeding.

Every party who has not filed a notice of appeal or notice of participation, or having filed a notice of appeal does not file a petition as provided herein, shall not be a party to the appeal and no further papers shall be served on such party. Notwithstanding the foregoing provision, a necessary party who does not file a notice of appeal, petition or notice of participation shall be deemed an appellee. The Commission need not file a notice of participation and shall be deemed an appellee.

(10) Further Proceedings. Further proceedings in this Court shall conform to Rules 5:23 through 5:38 provided that (i) the time within which the appellee may file with the clerk of this Court a designation of the additional parts of the record that the appellee wishes included in the appendix (Rule 5:32(b)) shall be extended to 30 days after the date of the certificate of the clerk of this Court, pursuant to Rule 5:23, has been awarded; and (ii) the time within which the opening brief of the appellant(s) shall be filed in the office of the clerk of this Court shall be extended to 50 days after such date.

(11) Withdrawal or Settlement of Pending Appeal. A party who filed a notice of and petition for appeal may withdraw his appeal. Notice of withdrawal or settlement shall conform to Rule 5:38. Settlement or withdrawal of an appeal terminates that appellant's appeal and any participating party aligned with that appellant shall be deemed to have withdrawn its participation in the settled or withdrawn appeal.

(b) *Appeals from the Virginia State Bar Disciplinary Board or a Three-Judge Circuit Court Determination.*

(1) Applicability. Paragraph (b) of this Rule applies to appeals from the Virginia State Bar Disciplinary Board, pursuant to Part 6, § IV, Paragraph 13-26 of the Rules of the Supreme Court of Virginia, and to appeals from the decisions of a three-judge circuit court pursuant to Code § 54.1-3935. As used in this paragraph, "Respondent" is defined as the attorney who is appealing the decision of the disciplinary proceeding.

(2) Perfecting the Appeal.

(i) Provisions for Appeals from the Virginia State Bar Disciplinary Board. No appeal shall be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the Disciplinary System within 30 days after the Memorandum Order is served on the attorney by certified mail, return receipt requested, at the attorney's last address on record for membership purposes with the Virginia State Bar. At the same time the

Respondent files a notice of appeal and assignments of error, a copy of the notice of appeal and assignments of error must be sent to the counsel for the Bar and the Attorney General of Virginia. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the Memorandum Order shall be the date from which the time limits contained in Rule 5:11 shall run. This action within the time prescribed is mandatory. Upon timely compliance with these rules, the Clerk of the Supreme Court shall docket the appeal as provided in Rule 5:23.

(ii) Provisions for Appeals from a Three-Judge Circuit Court. No appeal shall be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the three-judge circuit court within 30 days after the entry of the final judgment and, at the same time, mails a copy of the notice of appeal and assignments of error to counsel for the Bar and the Attorney General of Virginia. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the judgment shall be the date from which the time limits contained in Rule 5:11 shall run. This action within the time prescribed is mandatory. Upon timely compliance with these rules, the Clerk of the Supreme Court shall docket the appeal as provided in Rule 5:23.

(3) Record on Appeal. The clerk of the Disciplinary System or the clerk of the three-judge circuit court shall compile and transmit the record as set out in Rules 5:10, 5:11, and 5:13. The clerk shall immediately notify by certified mail the Respondent, and the Respondent's counsel, if any, and the Attorney General of the date the record is filed with the clerk of this Court. At the time the record is filed, the clerk shall also notify the clerk of this Court and the Respondent whether the Attorney General or Bar Counsel will represent the interests of the Commonwealth as appellee.

(4) Time for Filing Briefs and Appendix. The parties shall designate the contents of the appendix pursuant to the requirements of Rule 5:32 and the Respondent shall be responsible for filing the appendix pursuant to that Rule. The Respondent shall file the opening brief in the office of the clerk of this Court within 40 days after the date the record is filed. The opening brief shall contain assignments of error and references to the pages of the appendix, transcript, written statement, or record where each assignment of error was preserved. The brief of the appellee shall be filed in the office of the clerk of this Court within 25 days after the filing of the Respondent's opening brief. The Respondent may file a reply brief within 14 days after the filing of the appellee's brief. All briefs and the appendix shall conform to the provisions of Rules 5:26 through 5:32.

(5) Stay Pending Appeal. The Respondent may file a motion with the clerk of this Court requesting a stay pending appeal of an order suspending or revoking the Respondent's license. The Respondent must file four copies of the motion for stay along with a copy of the order imposing the suspension or revocation and a copy of the Respondent's notice of appeal, which must contain the date stamp of the clerk showing the date the notice of appeal was filed. Any order of Admonition or Public Reprimand shall be automatically stayed prior to or during the pendency of an appeal of the order.

(6) Procedure on Appeal. Except as provided in this paragraph, further proceedings shall be as provided in this Court's procedure following the perfection of an appeal set out in Rules 5:23, 5:25, and Rules 5:33 through 5:38.

Last amended by Order dated March 24, 2017; effective July 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
F. SPECIAL RULES

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

(a) *Notice of Receipt of Record.* Upon receipt of a record pursuant to § 17.1-313 B, the clerk of this Court shall notify in writing counsel for the accused in the circuit court (who shall be deemed to be counsel for the appellant), the Attorney General (who shall be deemed to be counsel for the appellee), and the Director of the Department of Corrections of the date of its receipt. The date of the receipt of the record is the Filing Date and the case shall thereupon stand matured as if an appeal had been awarded to review the conviction and the sentence of death.

(b) *Stay of Sentence of Death.* Upon the Filing Date, the notice issued by the clerk of this Court shall be deemed to be the certificate of the clerk of this Court pursuant to Rule 5:23 that an appeal has been awarded, and the enforcement of the sentence of death shall thereby be stayed pending the final determination of the case by this Court.

(c) *Filing of Assignments of Error and of the Appendix.* Within 30 days after the Filing Date, counsel for the appellant shall file with the clerk of this Court assignments of error upon which the appellant intends to rely for reversal of the conviction or review of the sentence of death. Counsel for the appellant shall accompany the assignments of error with a designation of the parts of the record relevant to the review and to the assignments of error. Not more than 10 days after such assignments of error and designation are filed, counsel for the appellee may file with the clerk of this Court a designation of the additional parts of the record that he wishes included as germane to the review or to any assignments of error. Counsel for the appellant shall include in the appendix the parts so designated. The provisions of Rules 5:31 and 5:32 (except Rule 5:32(b)(1) and (b)(3)) shall apply to the appendix.

(d) *Assigning Error to the Sentence of Death.* With respect to the sentence of death, it shall be a sufficient assignment of error to state that the sentence was imposed under the influence of passion, prejudice, or other arbitrary factor or that the sentence is excessive or disproportionate to the penalty imposed in similar cases.

(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.

(f) *Compliance with Rules for Perfected Appeals*. Except to the extent that a conflict with this Rule may arise, in which case this Rule shall then be controlling, further proceedings in the case shall conform to the Rules relating to cases in which an appeal has been perfected.

(g) *Varying Procedure to Attain the Ends of Justice.* This Court may, on motion in a particular case, vary the procedure prescribed by this Rule in order to attain the ends of justice and the purpose of § 17.1-313.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

Rule 5:23. Perfection of Appeal; Docketing.

(a) *Grant of Petition for Appeal*. Promptly after a petition for appeal has been granted, the clerk of this Court shall certify this action to counsel for the appellant, counsel for the appellee, and the tribunal from which the appeal is taken. The case shall be considered mature for purposes of further proceedings from the date of such certificate.

(b) *Docketing.* Cases shall be placed on the docket when they mature. Precedence shall be given to the following cases:

(1) review of sentences of death;

(2) criminal cases;

(3) cases from the State Corporation Commission;

(4) cases of original jurisdiction;

(5) cases to be reheard; and

(6) any other cases required by statute to be given precedence.

This Court may, however, for good cause shown or for reasons appearing sufficient to the Court, give preference to other cases.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5:24. Security for Appeal.

(a) *Compliance With Forms.* — All security for appeal required under Code § 8.01-676.1 shall substantially conform to the forms set forth in the Appendix to this Part Five.

(b) *Procedure Concerning Defects.* — The time for initially filing the appeal bond or letter of credit prescribed by Code § 8.01-676.1(B) is not jurisdictional under Code § 8.01-676.1(P). No appeal shall be dismissed because of a defect in any appeal bond or irrevocable letter of credit unless an appellee, within 21 days after the issuance of the certificate pursuant to Rule 5:23, files with the clerk of this Court a statement in writing of the defects in the bond or irrevocable letter of credit, and unless the appellant fails to correct such defects, if any, within 21 days after such statement is filed. If the appellant fails to correct such defects within such period of 21 days, an appellee may move that the appeal be dismissed and it shall be dismissed unless the appellant satisfies this Court that the bond or irrevocable letter of credit, either as originally given or as amended, has been filed in the required form.

Promulgated by Order dated April 30, 2010; effective July 1, 2010.
Last amended by Order dated November 1, 2016; effective January 1, 2017.

Rule 5:25. Preservation of Issues for Appellate Review.

No ruling of the trial court, disciplinary board, or commission before which the case was initially heard will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. A mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

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

Rule 5:26. General Requirements for All Briefs.

(a) *Applicability.* This Rule, along with Rule 5:6, sets forth the general requirements for all briefs filed in this Court. Rule 5:22 sets forth the special rule for appeals in death penalty cases.

(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. Briefs of amici curiae shall comply with the page limits that apply to briefs of the party being supported. 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.

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

(1) The appellant shall 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 5:23.

(2) The brief of appellee shall be filed in the office of the clerk of this Court within 25 days after filing of the opening brief.

(3) 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.

(d) *Extension of Time*. Upon motion and with permission of a Justice of this Court, the time for filing any brief in this Court may be altered.

(e) *Copies for Filing.* An electronic version, in Portable Document Format (PDF), must be filed with the clerk of this Court and served on opposing counsel, unless excused by this Court for good cause shown. An electronic version of a brief amicus curiae shall be filed with the clerk of this Court and served on counsel for all parties and on any other counsel amicus curiae. The electronic version must be filed in the manner prescribed by the VACES Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at http://www.vacourts.gov/online/vaces/resources/guidelines.pdf. In addition, 3 printed copies of each brief (including a brief amicus curiae) shall be filed in the office of the clerk of this Court. All briefs shall contain a certificate evidencing the date and method of electronic transmission of the brief to opposing counsel.

(f) *Reference to Parties.* In their briefs, counsel should avoid reference to parties by such designations as "appellant" and "appellee." Clarity is promoted by the use of the names of the parties or descriptive terms such as "the employee," "the injured person," "the driver," "the wife," or the designations used in the lower court or commission.

(g) *Arguments Made by Reference.* Attempts to incorporate arguments made below by reference to pleadings, motions, memorandum, or other filings are prohibited.

(h) *Signature and Certificate.* All briefs shall contain the signature, which need not be in handwriting, of at least one counsel of record, counsel's Virginia State Bar number, address, telephone number, facsimile number (if any), and email address, and a certificate that there has been compliance with this Rule. If a word count is used, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(i) *Failure to File Complying Brief.* Any party who fails to file a brief in compliance with these Rules or otherwise fails to file a required brief may be subject to sanctions deemed reasonable by the Court, including, but not limited to, forfeiture of oral argument.

(j) *Technical problems with electronic filing of brief or appendix.* -- 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 brief or appendix, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to electronically file the brief or appendix, any error message received in response to the attempt, documentation that the brief or appendix was later successfully resubmitted, and a motion requesting that the Court accept the resubmitted brief or appendix.

Last amended by Order dated February 27, 2017; effective May 1, 2017.

Rule 5:27. Requirements for Opening Brief of Appellant.

The opening brief of the appellant shall comply with the requirements of Rules 5:6 and 5:26, and must contain the following:

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

(b) A statement of the case containing the material proceedings below and the facts, with references to the appendix.

(c) The assignments of error, with a clear and exact reference to the pages of the appendix where the alleged error has been preserved.

(d) The standard of review, the argument, and the authorities relating to each assignment of error. With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities – shall be stated in one place and not scattered through the brief. At the option of counsel, the argument may be preceded by a short summary.

(e) A short conclusion stating the precise relief sought.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5:28. Requirements for Brief of Appellee.

The brief of appellee shall comply with Rules 5:6 and 5:26, and must contain the following:

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

(b) A statement of the case if the appellee disagrees with the statement presented by the appellant. In an appeal of right to this Court from an order disciplining, suspending, or disbarring an attorney-at-law, the Virginia State Bar may include assignments of cross-error. In such cases, no cross-error not then assigned will be noticed by this Court.

(c) A statement of the facts necessary to correct or amplify the statement in the brief of appellant with appropriate references to the pages of the appendix. Any quotation from the record should be brief. 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 appellee's version of the facts.

(d) The standard of review, the argument, and the authorities relating to each assignment of error. With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities – shall be stated in one place and not scattered through the brief. At the option of counsel, the argument may be preceded by a short summary.

(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 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 – shall be stated in one place and not scattered through the brief.

(3) A statement of the precise relief sought.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5:29. Requirements for Reply Brief.

The reply brief, if any, shall comply with the requirements of Rules 5:6 and 5:26 and shall 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.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5:30. Briefs Amicus Curiae.

(a) *Stage of proceedings.*— Subject to the requirements outlined in this Rule, a brief amicus curiae may be filed during the petition, perfected appeal or rehearing stages of the appellate proceedings in this Court, and in proceedings invoking this Court's original jurisdiction.

(b) *Who May File a Brief Amicus Curiae Without Leave of Court.* —

(i) The United States of America; and

(ii) The Commonwealth of Virginia.

(c) *Who Needs Leave of Court to File a Brief Amicus Curiae.* — Except as provided in paragraph (b) of this Rule, any person or entity seeking to file a brief amicus curiae must obtain leave of Court by motion. Such motion shall:

(i) state whether the brief would be in support of the appellant(s) or appellee(s), or in support of none of the parties; and

(ii) certify that the applicant has sought to obtain consent of all parties to the appeal; and

(iii) state which, if any, of the parties has consented to the motion.

(d) *When a Brief Amicus Curiae Must Be Filed.* — A brief amicus curiae will be accepted only if filed on or before the date on which the brief of the party supported is required to be filed. A brief amicus curiae may be filed at the time of filing of the reply brief of the appellant only if an opening brief amicus curiae has been filed. If a person or entity is filing an amicus brief that is not in support of either party, it will only be accepted if filed on or before the date on which the appellant’s brief is required to be filed.

(e) *What a Brief Amicus Curiae Must Contain.* — A brief amicus curiae shall comply with the rules applicable to the brief of the party supported. If a person or entity is filing an amicus brief that is not in support of either party, its brief amicus curiae shall comply

with the rules applicable to the appellant.

(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.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.
Last amended by Order dated November 1, 2016; effective January 1, 2017.

Rule 5:31. Covers of Documents.

(a) *What Covers Must Be Used on Papers Filed with this Court.* To facilitate identification, documents shall bear covers colored as follows:

Document	**Color of Cover**
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Reply Brief of the Appellant	Green
Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow

(b) *Effect of failure to comply*. No appeal shall be dismissed for failure to comply with the provisions of this Rule.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

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

Rule 5:32. Appendix.

(a) *Responsibility of the Appellant.*

(1) Contents of the Appendix. The appellant must prepare and file an appendix. The appendix shall contain:

(i) the initial pleading (as finally amended), unless other versions are necessary to consider the assignments of error;

(ii) final judgments of all tribunals that have considered the case, including the judgment appealed from, and any opinion relating to such judgments;

(iii) testimony and other incidents of the case germane to the assignments of error;

(iv) exhibits necessary for an understanding of the case that can reasonably be reproduced;

(v) the granted assignments of error and cross-error;

(vi) other parts of the record to which the parties wish to direct this Court's attention; and

(vii) a table of contents as described in paragraph (d) below.

(2) Assumptions and Excluded Material. It will be assumed that the appendix contains everything germane to the granted assignments of error and, if any, assignments of cross-error. Memoranda of law in the trial court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by this Court or the parties even though not included in the appendix.

(3) Time to File; Number of Copies.

(i) Generally. The appellant must file 3 printed copies and an electronic copy of the appendix with the appellant's brief, and must serve an electronic copy on counsel for each party separately represented. This Court may by order require the filing or service of a different number. The appendix shall be filed in the manner prescribed by the Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at http://www.vacourts.gov/online/vaces/resources/guidelines.pdf .

(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.

(2) Sealed Materials in the Appendix. Appendices filed with this Court are a matter of public record. If counsel concludes it is necessary to include sealed materials in the appendix, then, in order to maintain the confidentiality of the materials, counsel must designate the sealed materials for inclusion in a supplemental appendix to be filed separately from the regular appendix, and must file a specific motion asking this Court to seal the supplemental appendix within the time stated for the designation of the appendix in paragraph (b)(1) of this Rule. A sealed volume of the appendix must be filed in the manner prescribed by the Guidelines and User's Manual. The Guidelines are located on the Court's website at http://www.vacourts.gov/online/vaces/resources/guidelines.pdf .

(3) Costs of Appendix. Unless the parties agree otherwise, the appellant must initially pay the cost of the appendix, but if the appellant in good faith considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the assignments of error, the appellant initially preparing the appendix may so advise the clerk of this Court and the appellee, and the appellee who designated the challenged material shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case, but if any party shall cause unnecessary material to be included in the appendix this Court sua sponte or upon motion may impose the cost of including such parts upon that party.

(c) *Appeal on the Original Record Without an Appendix.* This Court 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 the Court may order the parties to file. A motion may be made under this rule within 10 days of the issuance of a writ. The making of a motion under this paragraph does not excuse the filing of the proposed contents of an appendix under paragraph (b)(1).

(d) *Table of Contents and Form of Presentation.* The appendix must begin with a table of contents identifying the page at which each part begins. When the testimony of witnesses is included, the name of each witness who is testifying must be in the table of contents with a page number at which each portion of the testimony begins (direct, cross, redirect, etc.). Parts of the record should be in the appendix in chronological order.

Omissions in the text of papers or of the transcript must be indicated by asterisks. The index for exhibits should include a description of the exhibit sufficient to inform this Court of its nature rather than merely an exhibit number.

(e) *Effect of Non-Compliance with this Rule.* An appeal will not be dismissed for failure to file an appendix in compliance with this Rule. If an appendix is not filed within the time prescribed, or on its face fails to comply with this Rule, this Court may direct the filing of a proper appendix within a specific time and may require a non-complying attorney or unrepresented party to advance all or part of the cost of printing the appendix. This Court may dismiss an appeal for non-compliance with an order entered under this paragraph.

Last amended by Order dated April 17, 2017; effective immediately.

Rule 5:33. Oral Argument.

(a) *Notice.* Whenever an appeal lies as a matter of right or a petition for appeal has been granted, the clerk of this Court, except in extraordinary circumstances, shall give at least 15 days notice to counsel of the date, approximate time, and location for oral argument.

(b) *Length.* Except as otherwise directed by this Court, argument for a party shall not exceed 15 minutes in length. Such time may be apportioned among counsel for the same side at their discretion.

(c) *Appearance Pro Hac Vice.* Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court must comply with the requirements of Rule 1A:4.

(d) *Amicus Curiae.* No oral argument by amicus curiae is permitted except by leave of this Court. Leave may be granted upon the joint written request of amicus curiae and the party whose position amicus curiae supports. The request shall specify the amount of its allotted time the supported party is willing to yield to amicus curiae.

(e) *Waiver.* During oral argument, it shall not be necessary for any party to expressly reserve any argument made on brief, and the failure to raise any such argument shall not constitute a waiver. Any party may, without waiving the arguments made on brief, waive oral argument.

(f) *Demonstrative Exhibits.* No demonstrative exhibit shall be used by or on behalf of a party during oral argument without the prior consent of the Court. A party or counsel intending to use a demonstrative exhibit during oral argument shall notify the clerk of this Court by letter, with a copy to all other parties, at least five (5) business days prior to the scheduled date of the oral argument. The letter must describe the proposed demonstrative exhibit and the manner in which it will be used. The Court, in its discretion, may refuse to allow the use of the demonstrative exhibit. No demonstrative exhibit shall be brought into the courtroom unless the Court has consented to its use during oral argument.

Promulgated by Order dated Friday, April 16, 2018; effective June 15, 2018.

Rule 5:34. Notice of Decision.

Promptly after this Court has decided a case, the clerk of this Court shall send a copy of the decision to all counsel of record and to the court or commission from which the appeal proceeded.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
H. DECISION, COSTS, AND MANDATE

Rule 5:35. Attorney's Fees, Costs, and Notarized Bill of Costs.

(a) *To Whom Allowed.* Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by this Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs shall be allowed as ordered by this Court.

(b) *Attorney's Fees*. (1) *Refusal or Dismissal of Petition for Appeal.* Upon refusal or dismissal of a petition for appeal and any petition for rehearing, any appellee who has received attorney's fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

(2) *Attorney Fees in Domestic Relations and Other Family-Law Proceedings Where Authorized by Statute.*

(A) Attorney Fees in Domestic Relations and Family-Law Proceedings Where Authorized by Statute. – (1) In any case in which attorney fees are recoverable under Title 16.1, Title 20, or Title 63.2, a party may request an award of fees incurred in the appeal of the case by including a prayer for such recovery in the Opening Brief or the Reply Brief of Appellant, or in the Brief of Appellee.

(B) Upon the making of a request for attorney fees as set forth in (b) (1) above, and unless otherwise provided by the terms of a contract or stipulation between the parties, the Supreme Court may award to a party who has made such request, all of their attorney fees, or any part thereof, or remand the issue as directed in the mandate order for a determination thereof. Such fees may include the fees incurred by such party in pursuing fees as awarded in the circuit court.

(C) In determining whether to make such an award, the Supreme Court shall not be limited to a consideration of whether a party's position on an issue was frivolous or lacked substantial merit but shall consider all the equities of the case.

(D) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court shall consider all relevant factors, including but not limited to, the extent to which the party was a prevailing party on the issues, the nature of the issues involved, the time and labor involved, the financial resources of the

parties, and the fee customarily charged in the locality for similar legal services.

(c) *Taxable Costs.* Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, shall be taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. See, Code § 17.1-128.

(d) *Notarized Bill of Costs*. Counsel for a party who desires costs to be taxed shall itemize them in a notarized bill of costs, which shall be filed with the clerk of this Court within 14 days after the date of the decision in the case. Objections to the bill of costs must be filed with the clerk of this Court within 10 days after the date of filing the bill of costs.

(e) *Award.* The clerk of this Court shall prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate on request by the clerk of this Court to the clerk of the tribunal in which the case originated.

Last amended by Order dated October 30, 2015; effective January 1, 2016.

Rule 5:36. Mandate.

(a) *Time.* When there can be no further proceedings in this Court, the clerk of this Court shall forward its mandate promptly to the clerk of the circuit court or commission in which the case originated and to the clerk of the Court of Appeals if the case has been heard by that court.

(b) *Opinions.* If the judgment or order is supported by an opinion, a certified copy of the opinion shall accompany the mandate.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

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

(a) *Scope*. – This Rule does not apply to the refusal or dismissal of a petition for appeal, or the refusal or dismissal of an original jurisdiction petition. See Rules 5:20 and 5:20A.

(b) *Notice of Intent.* – A party intending to apply for a rehearing shall file written notice with the clerk of this Court within 10 days after the date of the order or opinion of this Court deciding the case. If such notice is given, the clerk of this Court shall withhold certification of the mandate until time for filing the petition for rehearing has expired and, if the petition is filed, until it is disposed of.

(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 a Portable Document Format (PDF) document attached to an e-mail addressed to scvpfr@vacourts.gov 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@vacourts.gov. 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.

(2) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Supreme Court record number. The e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and Virginia State Bar number of

counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be sent to counsel seeking the rehearing.

(e) *Grounds for Granting*. – No petition for rehearing shall be granted unless one of the Justices who decided the case adversely to the applicant determines that there is good cause for such rehearing. The proceedings upon such rehearing shall be in accordance with Code § 8.01-675.2. No oral argument will be permitted on applications for rehearing.

(f) *When a Rehearing is Granted.* – When a rehearing is granted, the Court will determine whether any additional briefing or argument is necessary. Thereafter, the Court may direct the respondent to electronically file a brief, in compliance with paragraph (d) of this Rule, that shall not exceed the longer of 15 pages in length or 2,625 words. After review of the petition for rehearing and the respondent's brief, if any is filed, the Court may set oral argument on the petition for rehearing at the next available session of the Court. Otherwise, the Court will issue a ruling on the rehearing without further briefing or oral argument.

Last amended by Order dated January 31, 2017; effective April 1, 2017.

Rule 5:38. Settlement or Withdrawal of Pending Appeal.

When a case has been settled or the appeal withdrawn at any time after the notice of appeal has been filed, it shall be 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, a single Justice may approve entry of an order of remand.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5:39. Delay in Issuing Mandate Upon Appeal or Petition to Supreme Court of the United States.

If a party intends to file an appeal with the Supreme Court of the United States or seek a writ of certiorari from that court, this Court may, upon motion filed within 15 days after the date of the order of this Court deciding the case, and upon compliance with such conditions as this Court may impose, defer the issuance of its mandate until proceedings in the Supreme Court of the United States have been terminated. Thereupon, the mandate shall issue forthwith.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
K. CERTIFICATION OF QUESTIONS OF LAW

Rule 5:40. Certification Procedures.

(a) *Power to Answer*. This Court may in its discretion answer questions of law certified to it by the Supreme Court of the United States, a United States court of appeals for any circuit, a United States district court, or the highest appellate court of any state, territory, or the District of Columbia. Such answer may be furnished, when requested by the certifying court, if a question of Virginia law is determinative in any proceeding pending before the certifying court and it appears there is no controlling precedent on point in the decisions of this Court or the Court of Appeals of Virginia.

(b) *Method of Invoking.* This Rule may be invoked only by an order of one of the courts referred to in paragraph (a) of this Rule. No party litigant in the foregoing courts may file a petition or motion for certification in this Court.

(c) *Contents of Certification Order*. A certification order shall set forth:

(1) the nature of the controversy in which the question arises;

(2) the question of law to be answered;

(3) a statement of all facts relevant to the question certified;

(4) the names of each of the parties involved;

(5) the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each of the parties involved;

(6) a brief statement explaining how the certified question of law is determinative of the proceeding in the certifying court; and

(7) a brief statement setting forth relevant decisions, if any, of this Court and the Court of Appeals of Virginia and the reasons why such decisions are not controlling.

(d) *Preparation of Certification Order*. The certification order shall be prepared by the certifying court, signed by the presiding justice or judge, and forwarded to this Court by the clerk of the certifying court under its official seal. This Court may require the original or copies of all or of any portion of the record before the certifying court to be filed, if, in the opinion of this Court, the record or portion thereof may be necessary in answering the certified question. This Court may in its discretion restate any question of law certified or may request from the certifying court additional clarification with respect to any question certified or with respect to any facts.

(e) *Notification of Acceptance or Rejection.* This Court, in its discretion, may decide whether to answer any certified question of law. This Court will notify the certifying court and counsel for the parties of its decision to accept or to reject any certified

question of law. A notice accepting a question will include a briefing schedule and, if this Court permits oral argument, a tentative date and the length of time allowed for such argument.

(f) *Revocation of Acceptance.* This Court, in its discretion, may revoke its decision to answer a certified question of law at any time. This Court will notify the certifying court and counsel for the parties of any such action.

(g) *Costs of Certification*. Fees and costs shall be the same as in civil appeals docketed in this Court and shall be paid as ordered by the certifying court in its order of certification.

(h) *Briefs*. The form, length, and time for submission of briefs shall comply with Rules 5:26 through 5:32 mutatis mutandis.

(i) *Opinion.* A written opinion or order of this Court stating the law governing each question certified will be rendered as soon as practicable after the submission of briefs and after any oral argument. The opinion or order will be sent by the clerk under the seal of this Court to the certifying court and to counsel for the parties and shall, if this Court so directs, be published in the Virginia Reports.

Promulgated by Order dated Friday, February 24, 2012; effective immediately.

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

C. *Transmission of Record.* In all appeals under this rule, the clerk of the court from which an appeal is taken shall transmit the record to the Clerk of the Supreme Court immediately upon the filing of the notice of appeal.

D. *Expedited Procedures.* Unless otherwise ordered by the Supreme Court, after the filing of the petition for appeal under this Rule, 48 hours shall be allowed for the filing of the brief in opposition. However, the Supreme Court may employ the expedited review provision in Rule 5:18(c). The Supreme Court shall act upon the petition within 72 hours of its filing. Should the Supreme Court grant a writ, the Supreme Court may, in its discretion, permit oral argument within 48 hours of granting the writ. The Supreme Court will issue an order within 24 hours of the argument or of its review of the case without oral argument. The Supreme Court has the authority to alter these time frames in any case.

E. *Oral Argument.* The Court shall hold any oral argument in appeals under this rule in a manner so as to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, and the general public. To this end, the Court may take measures including, but not limited to, ordering any oral argument to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment. If necessary, the Court may dispense with oral argument.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT

APPENDIX OF FORMS.

Notes:

1. **Each of the Part Five Forms 1 through 8 should be used in conjunction with the Form for Execution and Acknowledgment of All Bonds, set forth as Form 9.**

2. **As provided in Code §§ 1-205 and 8.01-676.1(S), if the party required to post an appeal or suspending bond tenders such bond together with cash in the full amount required, no surety shall be required.**

Adopted by Order dated February 15, 2017; effective May 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
APPENDIX OF FORMS

Form 1. Bond for Costs Alone — Appeal of Right From Circuit Court to Court of Appeals (including further appeal to the Supreme Court).

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, having appealed from a judgment of this Court rendered on _____, 2___, we _____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $____, to satisfy all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the Court of Appeals and in the Supreme Court, if it takes cognizance of the claim.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 2. Bond for Costs and Suspension — Appeal From Circuit Court to Appellate Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, (intending to appeal) (having appealed from) a judgment of this Court rendered on _____, 2___, we _____, as principal and

_____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s),_____, in the sum of $_____, to perform and satisfy the judgment, or such portion of the judgment as may be affirmed in whole or in part, or if the appeal is dismissed, refused, or not timely prosecuted, and to pay all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the (Court of Appeals and in the Supreme Court, if it takes cognizance of the claim) (Supreme Court).

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 3. Bond for Costs Alone Required by Appellate Court on Appeal From Circuit Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, appealed from a judgment of this Court rendered on _____, 2___, and the (Supreme Court of Virginia) (Court of Appeals of Virginia), on _____, 2___, awarded an appeal from the judgment on the condition that Appellant(s), or someone on Appellant's/Appellants' behalf, file an appeal bond with sufficient security in the clerk's office of this Court in the penalty of _____ within fifteen (15) days of the date of the certificate of appeal, with condition as the law directs. Accordingly, we _____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $_____, to pay all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the (Court of Appeals and Supreme Court, if it takes cognizance of the claim) (Supreme Court).

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 4. Bond for Suspension Alone Required by Appellate Court on Appeal From Circuit Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, appealed from a judgment of this Court rendered on _____, 2___, and (the Supreme Court of Virginia) (Court of Appeals of Virginia), on _____, 2___, suspended execution of the judgment on the condition that _____, or someone on (his) (her) (their) (its) behalf, file an appeal bond with sufficient security in the clerk's office of this Circuit Court, in the penalty of $_____, within fifteen (15) days of the date of the certificate of appeal, with condition as the law directs. Accordingly, we _____, as principal and ____ _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $_____, to perform and satisfy the judgment or such portion of the judgment as may be affirmed in whole or in part, and to pay all actual damages incurred in consequence of the suspension.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 5. Bond for Costs and Suspension Required by Appellate Court on Appeal From Circuit Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, appealed from a judgment of this Court rendered on _____, 2___, and (the Supreme Court of Virginia) (Court of Appeals of Virginia), on _____, 2___, awarded an appeal (and suspension) from the judgment on the condition that Appellant(s), or someone on Appellant's/Appellants' behalf, file a bond with sufficient security in the clerk's office of this Court in the penalty of $_____ within fifteen (15) days of the date of the certificate of appeal, with condition as the law directs. Accordingly, we _____, as principal and _____ _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $_____, to pay all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the (Court of Appeals and Supreme Court, if it takes cognizance of the claim) (Supreme Court), and all actual damages incurred in consequence of the suspension.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 6. Additional Bond Required by Appellate Court on Appeal From Circuit Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, appealed from a judgment of this Court rendered on _____, 2___, and (the Supreme Court of Virginia) (Court of Appeals of Virginia), on _____, 2___, required an additional bond to be filed in the clerk's office of this Court in the penalty of $_____, and with the following additional requirements:_____ _____, within fifteen (15) days of the date of that order, with condition as the law directs. Accordingly, we _____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $_____, to perform and satisfy the judgment or such portion of the judgment as may be affirmed in whole or in part, and to pay all actual damages incurred in consequence of the suspension.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 7. Bond for Costs Alone — Required by Supreme Court on Appeal of Right From State Corporation Commission.

(State Corporation Commission caption)

Petitioner	)	
v.	)	No. _____
Respondent	)	

The Appellant(s), _____, appealed from a final order of this Commission entered on _____, 2___, and the Supreme Court of Virginia, on _____, 2___, awarded an appeal on the condition that Appellant(s), or someone on Appellant's/Appellants' behalf, file an appeal bond with sufficient security in the clerk's office of this Commission, in the penalty of $_____ within fifteen (15) days of the date of the certificate of appeal, with condition as the law directs.

Accordingly, we _____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of

$_____, to pay all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the Supreme Court.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 8. Bond for Costs and Suspension — Required by Supreme Court on Appeal of Right From State Corporation Commission.

(State Corporation Commission caption)

Petitioner	)	
v.	)	No. _____
Respondent	)	

The Appellant(s), _____, appealed from a final order of this Commission entered on _____, 2___, and the Supreme Court of Virginia, on _____, 2___, awarded an appeal on the condition that Appellant(s), or someone on Appellant's/Appellants' behalf, file an appeal bond with sufficient security in the clerk's office of this Commission, in the penalty of $_____ within fifteen (15) days of the date of the certificate of appeal, with condition as the law directs. Accordingly, we _____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $_____, to perform and satisfy the Commission's order or the portion on which proceedings are stayed, in case such order or such part be affirmed in whole or in part, and to pay all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the Supreme Court.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 9. Form for Execution and Acknowledgment of All Bonds.

_____, as principal, and _____, as surety, hereby execute this instrument with our signatures and our seals.

Executed on: _____

_____
Principal

_____
Address
(SEAL)

Commonwealth of Virginia
City/County of _____
The foregoing instrument was acknowledged before me on
_____, 2___, by _____.

_____
Notary Public

My commission expires: _____

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 10. Irrevocable Letters of Credit.

(Name and Address of Bank)

_____, 20____

U.S. $_____

On all communications please refer to (No. of Letter of Credit)

(Name and address of appellee(s))

Dear _____:

We hereby establish our Irrevocable Letter of Credit No. _____ in your favor, for the account of (name and address of appellant(s)), and hereby undertake to honor your draft at sight on us, not exceeding in the aggregate U.S. $ ___(amount in words)___. A draft drawn under this letter of credit must be marked "Drawn under _(Name of Bank)__Letter of Credit No. _____ dated _____, 20____." Funds under this letter of credit will be available to you in a single drawing by presentation of your sight draft drawn on us, accompanied by:

(For Costs Alone)

1. The original of this letter of credit.

2. Your verified statement that _____(has)(have) failed to
appellant(s)
pay all damages, costs and fees assessed against (him)(her)(them)(it) in the Supreme Court of Virginia in the case of _____

3. A certified copy of an order or itemized statement of costs from the Supreme Court assessing such damages, costs and fees against _____.
appellant(s)

(For Suspension Alone)

1. The original of this letter of credit.

2. Your verified statement that _____(has)(have) failed to
appellant(s)
perform and satisfy the judgment rendered against (him)(her)(them)(it) on

_____ by the Circuit Court of _____ in

the case of _____, and (has)(have) failed to pay all actual damages incurred in consequence of the suspension of judgment.

3. A copy of the trial court judgment order, attested by its clerk.

4. A copy of an order of the Supreme Court of Virginia, attested by its clerk, affirming said judgment or refusing, dismissing or allowing withdrawal of the appeal of said judgment, or certification by the clerk of the Supreme Court that the appeal of said judgment was not prosecuted timely.

5. A copy of an order, if any, of the Supreme Court or trial court, attested by the clerk, assessing actual damages in consequence of the suspension of judgment.

(For Costs and Suspension)

1. The original of this letter of credit.

2. Your verified statement that _____(has)(have) failed to
appellant(s)
perform and satisfy the judgment rendered against (him)(her)(them)(it) on

_____ by the Circuit Court of _____ in

the case of _____, and (has)(have) failed to pay all damages, costs and fees assessed against (him)(her)(them)(it) in the Supreme Court of Virginia, and all actual damages incurred in consequence of the suspension of judgment.

3. A copy of the trial court judgment order, attested by its clerk.

4. A copy of an order of the Supreme Court, attested by its clerk, affirming said judgment or refusing, dismissing or allowing withdrawal of the appeal of said judgment, or certification by the clerk of the Supreme Court that the appeal of said judgment was not prosecuted timely.

5. A copy of an order, if any, of the Supreme Court, attested by its clerk, assessing damages, costs and fees against _____.
appellant(s)

6. A copy of an order, if any, of the Supreme Court or trial court, attested by the clerk, assessing actual damages in consequence of the suspension of judgment.

This letter of credit is valid until ____ p.m. local time _____, 20____, and a draft drawn hereunder, if accompanied by documents as specified above, will be honored if presented to (Presentation Address of Bank) on or before that date. However, this letter of credit automatically will be renewed for successive one (1) year periods from the initial expiration date or any renewal period expiration date hereunder, unless at least sixty (60) days prior to any such expiration date (Name of Bank) notifies you that it has elected not to renew this letter of credit for such additional one (1) year period. The notice required hereunder will be deemed to have been given when received by you.

In the event that (Name of Bank) elects not to renew this letter of credit as required above, the full amount of this letter of credit shall be payable to the Clerk of the Circuit Court of _____ upon presentation of your verified statement that:

1. A final order of the Supreme Court of Virginia has not been entered in

the case of _____ (or, where there has been suspension of judgment, a final order has not been entered by the Supreme Court or trial court assessing actual damages in consequence of the suspension).

2. Thirty (30) days have elapsed since notice of non-renewal was given and appellant(s) (has)(have) not filed acceptable substitute security.

In the event of non-renewal, within fifteen (15) days after payment to the clerk under the previous paragraph, the appellant(s) or someone for (him)(her)(them)(it) shall file with said clerk an appeal bond in substantial conformance with the appropriate form in the Appendix to Part Five A of the Rules of the Supreme Court of Virginia. The bond shall be in the penalty of the amount paid to said clerk under this letter of credit, and said funds shall be in lieu of surety.

Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credits as most recently published by the International Chamber of Commerce.

Very truly yours,

_____Bank

By _____
Authorized Signature

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
APPENDIX OF FORMS

Form 11. Petition for a Writ of Actual Innocence

PETITION FOR A WRIT OF ACTUAL INNOCENCE

TO THE SUPREME COURT OF VIRGINIA

In re: _____
(FULL NAME OF PETITIONER)

_____
(PRISONER NO., IF APPLICABLE)

_____
(PETITIONER'S ADDRESS)

_____

_____

Record No. _____
(TO BE SUPPLIED BY THE CLERK OF THE SUPREME COURT)

Circuit Court
Case No.(s) _____

_____

_____

Pursuant to the provisions of Chapter 19.2 of Title 19.2 of the Code of Virginia, I,

_____
NAME OF PETITIONER

hereby petition this Court for a writ of actual innocence. In support of this petition, I state under oath that the following information is true:

1. On _____ , I was convicted or adjudicated delinquent in the
DATE

_____ Circuit Court of the following offense(s):
NAME OF COURT

Description of Offense	Virginia Code	Class of Felony	Plea
_____	_____	_____	_____
_____	_____	_____	_____

_____ _____ _____ _____

[ ] ATTACHED ADDITIONAL SHEET(S)

2. I am innocent of the offense(s) for which I was convicted or adjudicated delinquent.

3. My claim of innocence is based upon the following human biological evidence and scientific testing:

_____

_____

[ ] ATTACHED ADDITIONAL SHEET(S)

4. Check one:

[ ] This evidence was not known or available to either me or my attorney at the time the conviction or adjudication of delinquency became final in the circuit court.

[ ] This evidence was known at the time the conviction or adjudication of delinquency became final in the circuit court, but was not tested because

_____

[ ] ATTACHED ADDITIONAL SHEET(S)

5. This evidence was tested pursuant to the provisions of Virginia Code § 19.2-327.1 and the

results were obtained by me or my attorney on _____ .
DATE

This petition is filed within sixty days of obtaining those results and those test results are filed with this petition. Attached is a copy of the notice of the test results from the Department of Forensic Science.

6. The scientific evidence described in paragraph number 4 above will prove that no rational trier of fact would have found me to be guilty or delinquent beyond a reasonable doubt of the charge described above because

_____

_____

[ ] ATTACHED ADDITIONAL SHEET(S)

7. Check box if applicable and provide any additional information.

[ ] My conviction or adjudication of delinquency became final after June 30, 1996, and the scientific evidence described in paragraph number 4 above was not available for testing under Virginia Code § 9.1-1104 because:

_____

_____

[ ] ATTACHED ADDITIONAL SHEET(S)

8. This petition contains all relevant allegations of fact known to me at this time and all previous records, applications, petitions, appeals, and dispositions relating to this matter are attached. In support of this petition, the following documents are attached:

_____

_____

[ ] ATTACHED ADDITIONAL SHEET(S)

9. I understand that this petition must contain all relevant allegations of fact that are known to me at this time. I understand that it must include all previous records, applications, petitions, appeals, and their dispositions related to this conviction, as well as a copy of any test results of the scientific evidence described above. I understand that if this petition is not complete, this Court may dismiss the petition or return the petition to me pending the completion of such form. I understand that I am responsible for all statements contained in this petition. I understand that any knowingly or willfully made false statement shall be a ground for prosecution and conviction of perjury as provided in Virginia Code § 18.2-434. I understand that this Court shall not accept this petition unless it is accompanied by a duly executed return of service verifying that a copy of this petition and all attachments have been served on the attorney for the Commonwealth of the jurisdiction where the conviction occurred and on the Attorney General of Virginia.

10. Check box 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 and I have attached the completed affidavit to this effect.

Based on the above, I petition this Court pursuant to the provisions of Chapter 19.2 of Title 19.2 of the Code of Virginia for a writ of actual innocence.

_____ DATE

_____ SIGNATURE OF PETITIONER

FOR NOTARY PUBLIC'S USE ONLY:

State of …… [ ] City [ ] County of ……

Acknowledged, subscribed and sworn to before me this …… day of …… , 20 ……

…… NOTARY REGISTRATION NUMBER

_____ NOTARY PUBLIC

(My commission expires: ……)

AFFIDAVIT IN FORMA PAUPERIS

The petitioner, _____, being duly sworn, says,

1. I am unable to pay for counsel to prosecute this action;

2. My assets amount to a total of $ _____

_____ DATE

_____ SIGNATURE OF PETITIONER

FOR NOTARY PUBLIC'S USE ONLY:

State of …… [ ] City [ ] County of ……

Acknowledged, subscribed and sworn to before me this …… day of …… , 20 ……

…… NOTARY REGISTRATION NUMBER

_____ NOTARY PUBLIC
(My commission expires: ……)

Last amended by Order dated June 21, 2013; effective July 1, 2013.

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

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

(a) *Scope of Rules*. Part Five A governs all proceedings in the Court of Appeals of Virginia.

(b) *Citation*. These Rules may be cited generally as the "Rules of the Court of Appeals of Virginia" and specifically as "Rule 5A:___."

(c) *Definitions.*

(1) "clerk of the trial court" means clerk of the trial court from which an appeal is taken to the Court of Appeals, and shall include a deputy clerk and the clerk of the Virginia Workers' Compensation Commission when the context requires;

(2)"clerk of the Court of Appeals" includes a deputy clerk;

(3) "counsel" has the definition given in Rule 1:5 for Counsel of Record and in this Part Five A includes a party not represented by counsel and any attorney appointed as a guardian ad litem;

(4) "counsel for appellant" means one of the attorneys representing each appellant represented by an attorney, and each appellant not represented by an attorney;

(5) "counsel for appellee" means one of the attorneys representing each appellee represented by an attorney, and each appellee not represented by an attorney and shall include a guardian ad litem, unless the guardian ad litem is the appellant;

(6) "opposing counsel" means, depending on the context, "counsel for the appellant" or "counsel for the appellee";

(7) "judge" means judge of the trial court, unless the context otherwise requires, or if he be not available, any judge authorized to act under Rule 5A:9;

(8) "judgment" includes an order or decree from which an appeal is taken;

(9) "File with the clerk" or "files with the clerk" or "filed with the clerk" means deliver to the clerk specified a paper, a copy of which has been mailed or delivered to opposing counsel, and appended to which is either acceptance of service or a certificate showing the date of mailing or delivery. "File in the office of the clerk" or "files in the office of the clerk" or "filed in the office of the clerk" means, on the other hand, deliver a paper to the clerk specified;

(10) "trial court" means the circuit court from which an appeal is taken to the Court of Appeals;

(11) the "date of entry" of any final judgment or other appealable order or decree shall be the date the judgment, order, or decree is signed by the judge.

(d) *Service*. Unless service or notice is otherwise specified in a given Rule, any paper or object filed with this Court must have included within it or appended to it a certificate

of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count limitation is required, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(e) *Notice of Change of Address and Other Contact Information.* If an attorney has a change in mailing address, telephone number, facsimile number, or e-mail address any time after the filing of the notice of appeal, the attorney must immediately notify the clerk of this Court and all other counsel of record in writing. The notice must reference the style and record number of all cases pending before this Court.

(f) *Citing Unpublished Judicial Dispositions.* The citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as "unpublished," "not for publication," "non precedential," or the like, is permitted as informative, but shall not be received as binding authority. If the cited disposition is not available in a publicly accessible electronic database, a copy of that disposition must be filed with the brief or other paper in which it is cited.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

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

Rule 5A:1A. Penalties for Non-compliance; Show Cause; Dismissal.

(a) Penalties; Show Cause; Dismissal. This Court may dismiss an appeal or impose such other penalty as it deems appropriate for non-compliance with these Rules. Except as provided in Rule 5A:12(c)(1)(i)and(ii) regarding assignments of error, prior to the dismissal of an appeal for any defect in the filings related to formatting, curable failure to comply with other requirements, or the failure to meet non-mandatory filing deadlines, this Court may issue a show cause order to counsel or a party not represented by an attorney, prescribing a time in which to cure such defect or to otherwise show cause why the appeal should not be dismissed or other penalty imposed.

(b) Report to Virginia State Bar. If an attorney's failure to comply with these Rules results in the dismissal of an appeal, this Court may report the attorney to the Virginia State Bar in accordance with Rule 8.3 of the Virginia Rules of Professional Conduct.

Promulgated by Order dated Friday, May 16, 2014; effective immediately.

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

Rule 5A:2. Motions and Responses; Orders.

(a) *Motions and Responses.*

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

(2) Responses. Opposing counsel may have ten days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the ten days expire, if necessary.

(3) Number of Copies. An original and three copies of all motions or responses must be filed.

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

(b) *Motion for Review of Pre-trial Bail Orders in Criminal Cases*. When a circuit court has granted or denied pre-trial bail or set a bond or terms of recognizance or revoked bail, either party may move this Court to review the order. With the motion for review, the party seeking review shall submit copies of: (1) the warrant(s) or indictment(s) in the case; (2) the order granting, denying, or setting bond; and (3) a transcript of the bond hearing or a stipulation between counsel stating the evidence introduced at the bond hearing and the ruling of the circuit court. An order setting or denying bail or setting terms of a bond or recognizance shall be reviewable for abuse of discretion.

(c) *Motion for Review of Post-trial Bail Pending Appeal Orders in Criminal Cases.* When a notice of appeal has been filed in a criminal case, an appellant other than the Commonwealth may move this Court to review the trial court's order denying bail pending appeal or setting an excessive bail pending appeal. With the motion for review, the appellant shall submit copies of: (1) the sentencing order entered by the trial court; (2) a pre-sentence report when available; (3) the trial court's decision setting or denying bail; and (4) a transcript of the bail hearing or a stipulation between counsel stating the evidence introduced at the bail hearing and the reason the trial court gave for the bail decision. An order setting or denying bail pending appeal in a criminal case shall be reviewable for abuse of discretion. If this Court overrules a trial court decision denying bail pending appeal, this Court shall set the amount of the bail pending appeal or remand the matter to the trial court with directions to set bail pending appeal.

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

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
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.

(a) *Filing Deadlines and Extensions.* The times prescribed for filing the notice of appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), and a petition for rehearing (Rule 5A:33) and a request for rehearing en banc (Rule 5A:34) are mandatory. Except for the petition for appeal which is addressed in Rule 5A:12(a) and Code § 17.1-408, a single extension not to exceed thirty days may be granted if at least three judges of the Court of Appeals concur in a finding that an extension for papers to be filed is warranted upon a showing of good cause sufficient to excuse the delay. The time period for filing the notice of appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended by the trial court pursuant to Rule 1:1, in which case the time for filing shall be computed from the date of the final judgment entered following such modification, vacation, or suspension.

(b) *Extensions Generally.* Except as provided in paragraph (a) of this Rule, the times prescribed in these Rules for filing papers, except transcripts (Rule 5A:8(a)), may be extended by a judge of the court in which the papers are to be filed upon a showing of good cause sufficient to excuse the delay.

(c) *Motions for Extension*. A motion for extension of time is timely if filed:

(1) within the original filing deadline; or

(2) within the specified extension period – see Rules 5A:3(a) and 5A:12(a); or

(3) within any specific deadline governing motions to extend – see Rules 5A:8(a), 5A:13(a), 5A:14, 5A:19(b), and 5A:19(c).

Filing a motion for extension does not toll the applicable deadline or further extend the period of extension.

(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.

(e) *Inmate Filing*. A paper filed by an inmate confined in an institution 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 inmate confined in an institution may be established by (1) 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, (2) an official postmark dated on or before the last day for filing, or (3) 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.

Last amended by Order dated July 2, 2019; effective September 1, 2019.

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

Rule 5A:4. Forms of Briefs and Other Papers.

(a) *Paper Size, Line Spacing, Font, and Margins.* — Briefs, appendices, motions, petitions, and other documents may be printed or produced on screen by any process that yields a clear black image on a white background and, when printed, must be on pages 8-1/2 x 11 inch paper. All briefs, appendices, motions, petitions, and other documents must be in at least 12-point font. Text shall not be reduced, and must be double-spaced except for headings, assignments of error, quotations, and footnotes. Margins must be at least one inch on all four sides of each page. The use of condensed or multi-page transcripts is prohibited.

(b) *Binding and Cover.* — All briefs, appendices, petitions for rehearing, and petitions for rehearing en banc shall be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The front cover of all petitions for appeal, briefs, appendices, petitions for rehearing, and petitions for rehearing en banc shall contain the style of the case (with the name of the petitioner/appellant stated first) and the record number of the case and the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and email address of counsel submitting the document.

(c) *Effect of Non-compliance.* — No appeal shall be dismissed for failure to comply with the provisions of this Rule; however, the clerk of this Court may require that a document be redone in compliance with this Rule. However, failure to comply after notice of noncompliance may result in the dismissal of the case.

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

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.
Last amended by Order dated April 26, 2019; effective July 1, 2019.

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

Rule 5A:4A. Citation of Supplemental Authorities.

If pertinent and significant authorities come to a party's attention after the party's petition for appeal, brief in opposition, or brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made within 14 days and shall not exceed 350 words. The Court, in its discretion, may refuse to consider the supplemental authorities if they unfairly expand the scope of the arguments on brief, raise matters that should have been previously briefed, appear to be untimely, or are otherwise inappropriate to consider.

Promulgated by Order dated April 10, 2015; effective July 1, 2015.

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

Rule 5A:5. Original Proceedings.

(a) *Original Jurisdiction Proceedings Other Than Actual Innocence Petitions.* With the exception of petitions for the issuance of writs of actual innocence under paragraph (b) of this Rule, all proceedings before the Court of Appeals pursuant to its original jurisdiction shall be conducted in accordance with the procedure prescribed by Rule 5:7 of the Rules of the Supreme Court.

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

(1) *Scope.* -- Any person convicted of a felony or any person who was adjudicated delinquent by a circuit court of an offense that would be a felony if committed by an adult, may file in the Court of Appeals a petition under Code § 19.2-327.10 *et seq.* seeking a writ of actual innocence based on nonbiological evidence.

(2) *Form and Contents of Petition.* -- The petition must be filed using Form 10 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 orders of conviction, adjudication of delinquency, 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.

(3) *Parties.* -- All pleadings shall name as the petitioner the person convicted of a felony or adjudicated delinquent who is seeking relief. The pleadings shall identify the Commonwealth, represented by the Attorney General, as respondent.

(4) *Filing Fee.* -- The petition must be accompanied by either (i) a $50.00 filing fee, or (ii) an *in forma pauperis* affidavit demonstrating that the petitioner cannot afford the filing fee. An affidavit seeking *in forma pauperis* status shall list all assets and liabilities of petitioner, including the current balance of any inmate account maintained by correctional facility.

(5) *Appointment of Counsel.* -- If the Court does not summarily dismiss the petition, the Court shall appoint counsel for any indigent petitioner who requests the appointment of counsel and satisfies the indigency criteria of Code § 19.2-159. In the Court's discretion, counsel may be appointed at an earlier stage of the proceeding at the petitioner's request upon a showing of requisite indigency. All requests for the appointment of counsel shall be made on the form provided by the Court of Appeals.

(6) *Service of Petition and Return of Service.* -- Prior to filing a petition, the petitioner shall serve the petition, along with all attachments, on the Attorney General and on the Commonwealth's Attorney for the jurisdiction where the conviction or adjudication of delinquency occurred. When represented by counsel, the petitioner shall file with the petition either (i) a duly executed return of service in the form of a verification that a copy of the petition and all attachments have been served, or (ii) an acceptance of service signed by either or both of the parties to be served, or (iii) a combination of the two. When unrepresented by counsel, the petitioner shall file with the petition a certificate that a copy of the petition and all attachments have been sent, by certified mail, to the Attorney General and the Commonwealth's Attorney for the jurisdiction where the conviction or adjudication of delinquency occurred.

(7) *Response.* -- If the Court of Appeals does not summarily dismiss the petition, the court will provide written notice to all parties directing the Commonwealth, within 60 days after receipt of such notice, to file a response to the petition pursuant to Code § 19.2-327.11(C). For good cause shown, the 60-day deadline may be extended by the Court of Appeals. The Commonwealth's response may include any information pertinent to the petitioner's guilt, delinquency, or innocence, including proffers of evidence outside the trial court record and evidence previously suppressed at trial.

(8) *Reply.* -- The petitioner may file a reply to the Commonwealth's response only if directed to do so by the Court of Appeals.

(9) *Copies.* -- An original and any attachments to the petition, the Commonwealth's response, and the petitioner's reply, if any, shall be filed with the Court of Appeals.

(10) *Evidentiary Hearing.* -- The Court of Appeals may order the circuit court that entered the conviction or adjudication of delinquency to conduct an evidentiary hearing and to certify factual findings pursuant to Code § 19.2-327.12. Such findings, however, shall be limited to the specific questions addressed by the Court of Appeals in its certification order. In the circuit court, the petitioner and the Commonwealth shall be afforded an opportunity to present evidence and to examine witnesses on matters relevant to the certified questions.

(11) *Oral Argument.* -- Unless otherwise directed by the Court of Appeals, oral argument shall only be allowed on the final decision whether to grant or deny the writ under Code § 19.2-327.13.

(12) *Appeal.* -- The petitioner or the Commonwealth may petition for appeal to the Supreme Court from any adverse final decision issued by the Court of Appeals under Code § 19.2-327.13 to issue or deny a writ of actual innocence. Such an appeal shall be initiated by the filing of a notice of appeal pursuant to Rule 5:14.

Last amended by Order dated September 24, 2020; effective immediately.

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

Rule 5A:6. Notice of Appeal.

(a) *Filing Deadline; Where to File.* – No appeal shall be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court under Rule 5A:3(a), counsel files with the clerk of the trial court a notice of appeal, and at the same time mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the court announces a decision or ruling – but before the entry of such judgment or order – is treated as filed on the date of and after the entry. A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

Appeals from the Circuit Court. – Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order shall be moot and of no effect. A new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.

(b) *Content.* The notice of appeal shall contain a statement whether any transcript or statement of facts, testimony, and other incidents of the case will be filed.

(c) *Filing Fee.* A copy of the notice of appeal shall be filed in the office of the clerk of the Court of Appeals and, except as otherwise provided by law, must be accompanied by a check or money order in the amount of $50 payable to the "Clerk of the Court of Appeals" for the filing fee required by statute. The fee shall be due at the time the notice of appeal is presented. The clerk of the Court of Appeals may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal shall be dismissed.

(d) *Certificate.* The appellant shall include with the notice of appeal a certificate stating:

(1) the names and addresses of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each party, and the mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel; and

(2) that a copy of the notice of appeal has been mailed or delivered to all opposing counsel; and

(3) in a criminal case, a statement whether counsel for defendant has been appointed or privately retained; and

(4) that in the event a transcript is to be filed a copy of the transcript has been ordered from the court reporter who reported the case or is otherwise already in the possession of appellant, or was previously filed in the proceedings.

(e) *Separate Cases*. Whenever two or more cases were tried together in the trial court, one notice of appeal and one record may be used to bring all of such cases before this Court even though such cases were not consolidated by formal order.

(f) *Special Provision for Cases Involving a Guardian Ad Litem.* No appeal shall be dismissed because the notice of appeal fails to identify a guardian ad litem or to provide notice to a guardian ad litem. Upon motion for good cause shown or by sua sponte order of this Court, the notice of appeal may be amended to identify the guardian ad litem and to provide notice to such guardian.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order entered July 2, 2019; effective September 1, 2019.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
C. PROCEDURE FOR FILING AN APPEAL IN ALL CASES FROM THE TRIAL COURT

Form

NOTICE OF APPEAL FROM TRIAL COURT

(Rule 5A:6)

VIRGINIA: IN THE CIRCUIT COURT OF _____

(The style of the case in the Circuit Court shall be used.)

NOTICE OF APPEAL

_____, _____
(name(s) of party(ies)) (plaintiff, defendant or other designation in trial court)

_____ hereby appeals to the Court of Appeals of

Virginia from the _____
(final judgment or other appealable order or decree)

of this Court entered on _____.
(date)

[If applicable] A transcript or statement of facts, testimony, and other incidents of the case will be filed.

CERTIFICATE

The undersigned certifies as follows:

(1) The name(s) and address(es) of appellant(s) are:

(2) The name(s), address(es), and telephone number(s) of counsel for appellant(s) are:

(3) The name(s) and address(es) of appellee(s) are:

(4) The name(s), address(es), and telephone number(s) of counsel for appellee(s) are:

(5) [If applicable] Counsel for appellant has ordered from the court reporter who reported the case the transcript for filing as required by Rule 5A:8(a).

(6) [If applicable] _____, _____
(name of party) (appellant)

_____, is not represented by counsel. _____
(appellee) (his) (her)
address and telephone number are:

(7) [In criminal cases only] Counsel for defendant has been _____

_____.
(appointed) (privately retained)

(8) A copy of this Notice of Appeal has been mailed or delivered to all opposing counsel [and/or to unrepresented parties, if applicable] and to the Clerk of the Court of Appeals this _____ day of _____, 20____.

_____
(Signature of counsel or unrepresented party)

Rule 5A:7. Record on Appeal: Contents.

(a) *Contents.* The following constitute the record on appeal from the trial court:

(1) the documents and exhibits filed or lodged in the office of the clerk of the trial court, including any report of a commissioner in chancery and the accompanying depositions and other papers;

(2) each instruction marked "given" or "refused" and initialed by the judge;

(3) each exhibit offered in evidence, whether admitted or not, and initialed by the trial judge (or any photograph thereof as authorized by § 19.2-270.4 (A) and (C)). (All non-documentary exhibits shall be tagged or labeled in the trial court and the tag or label initialed by the judge.);

(4) each order entered by the trial court;

(5) any opinion or memorandum decision rendered by the judge of the trial court;

(6) any deposition and any discovery material encompassed within Part Four offered in evidence (whether admitted or rejected) at any proceeding; and

(7) the transcript of any proceeding or a written statement of facts, testimony, and other incidents of the case when made a part of the record as provided in Rule 5A:8, or the official videotape recording of any proceeding in those circuit courts authorized by the Supreme Court to use videotape recordings. This Court may require that any videotape proceedings be transcribed, in whole or in part, and made a part of the record as provided in Rule 5A:8, except that the transcript shall be filed within 60 days after the entry of the order requiring such transcript; and

(8) the notice of appeal.

(b) *Disagreement on Contents.* If disagreement arises as to the contents of any part of the record, the matter shall, in the first instance, be submitted to and decided by the trial court.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.
Last amended by Order entered April 10, 2015; effective July 1, 2015.

Rule 5A:8. Record on Appeal: Transcript or Written Statement.

(a) *Transcript.* The transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court no later than 60 days after entry of the final judgment. This deadline may be extended by a Judge of the Court of Appeals only upon a written motion filed within 90 days after the entry of final judgment. Timely motions will be granted only upon a showing of good cause to excuse the delay.

(b) *Notice of Filing Transcript.*

(1) Time for Filing. Within 10 days after the transcript is filed or, if the transcript is filed prior to the filing of the notice of appeal, within 10 days after the notice of appeal is filed, counsel for appellant shall:

(i) give written notice to all other counsel of the date on which the transcript was filed, and

(ii) file a copy of the notice with the clerk of the trial court.

There shall be appended to the notice either a certificate of counsel for appellant that a copy of the notice has been mailed to all other counsel or an acceptance of service of such notice by all other counsel.

(2) Multiple Transcripts. When multiple transcripts are filed, the 10-day period for filing the notice required by this Rule shall be calculated from the date on which the last transcript is filed or from the date on which the notice of appeal is filed, whichever is later. The notice of filing transcripts shall identify all transcripts filed and the date upon which the last transcript was filed.

(3) Notice of No Further Transcripts. If the notice of appeal states that no additional transcripts will be filed and identifies the transcripts that have been filed, if any, then no additional written notice of filing transcripts is required and the notice of appeal will serve as the notice of filing transcripts for purposes of Rule 5A:8(b).

(4) Effect of Non-compliance.

(i) Any failure to file the notice required by this Rule that materially prejudices an appellee will result in the affected transcripts being stricken from the record on appeal. For purposes of this Rule, material prejudice includes preventing the appellee from raising legitimate objections to the contents of the transcript or misleading the appellee about the contents of the record. The appellee shall have the burden of establishing such prejudice in the brief in opposition or, if no brief in opposition is filed, in a written statement filed with the clerk of this Court within twenty-one days after the record is received by the clerk.

(ii) When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission shall not be considered.

(c) *Written Statement in Lieu of Transcript.* A written statement of facts, testimony, and other incidents of the case becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of the trial court. The judge may sign the statement forthwith upon its presentation to him if it is signed by counsel for all parties, but if objection is made to the accuracy or completeness of the statement, it shall be signed in accordance with paragraph (d) of this Rule.

The term "other incidents of the case" in this subsection includes motions, proffers, objections, and rulings of the trial court regarding any issue that a party intends to assign as error or otherwise address on appeal.

(d) *Objections.* Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted shall be filed with the clerk of the trial court within 15 days after the date the notice of filing the transcript (paragraph (b) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (c) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. The clerk shall give prompt notice of the filing of such objections to the trial judge. Within 10 days after the notice of objection is filed with the clerk of the trial court, the judge shall:

(1) overrule the objection; or

(2) make any corrections that the trial judge deems necessary; or

(3) include any accurate additions to make the record complete; or

(4) certify the manner in which the record is incomplete; and

(5) sign the transcript or written statement.

At any time while the record remains in the office of the clerk of the trial court, the trial judge may, after notice to counsel and hearing, correct the transcript or written statement.

The judge's signature on a transcript or written statement, without more, shall constitute certification that the procedural requirements of this Rule have been satisfied.

Promulgated by Order dated October 31, 2018; effective January 1, 2019.

Rule 5A:9. Judge Authorized to Act.

The judge authorized to act in all matters relating to the record on appeal shall be any judge having authority to enter orders in the case or in the court in which the case was heard or, in a case heard by three judges, any one of them.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
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 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.

(b) *Form of the Record.*

(1) The record shall 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 shall 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 shall be identified by a tag. Each such volume or envelope shall include, on its cover or inside, a descriptive list of exhibits contained therein. Reference shall 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 shall 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 shall 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 shall 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 shall 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. The Court of Appeals may, however, consider other parts of the record to enable this Court to attain the ends of justice.

(d) *Transmission.* The clerk of the trial court shall retain the record for 21 days after the notice of appeal has been filed with him 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 shall retain the record for 21 days after the filing in his 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 shall retain the record for five days after the objection is acted upon by the trial judge. The clerk of the trial court shall 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 shall transmit the record sooner if requested in writing by counsel for all parties to the appeal and shall, 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 shall not be a ground for dismissal of the appeal by this Court.

(e) *Notice of Filing.* The clerk of this Court shall promptly notify all counsel of the date on which the record is filed in the office of the clerk of the Court of Appeals.

(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.

Last amended by Order dated April 10, 2015; effective July 1, 2015.

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

Rule 5A:10A. Digital Appellate Record: Preparation and Transmission.

(a) *Preparation*. A Digital Appellate Record may be created instead of a paper record, with substantially the same content as its paper counterpart. The clerk of the tribunal in which the proceeding originated shall be responsible for preparing the digital record, if the clerk chooses to transmit a digital record in place of the paper version.

(b) *Form of Record*. The digital record shall comply with the Digital Appellate Record Standards posted on the Supreme Court of Virginia website.

(c) *Exhibits.* Original exhibits should be scanned or imaged and retained by the clerk of the tribunal. The omission of any exhibit that cannot be scanned or imaged must be noted in a descriptive list of exhibits. On motion or sua sponte, this Court may order the tribunal to transmit any retained exhibit.

(d) *Transmission*. The clerk of the tribunal shall transmit the record to the clerk of this Court in the manner prescribed by the Digital Appellate Record Standards, using the Digital Records System created for this purpose. The same timing and dismissal rules apply to transmissions of digital records as apply to their paper counterparts in Rule 5A:10 and 5A:11.

(e) *Disposition of Record*. When the mandate is issued by this Court, the clerk of this Court shall return all tangible items, if any, to the clerk of the tribunal in which the proceeding originated. The digital record will not be returned. If necessary, the record shall be re-sent by that clerk upon the request of the clerk of this Court.

(f) *Public Record.* The publicly available digital record shall be the digital document prepared by the tribunal clerk with all information that is sealed or protected from public disclosure by law redacted or excluded.

Promulgated by Order dated April 10, 2015; effective July 1, 2015.
Last amended by Order dated October 30, 2015; effective January 1, 2016.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
D. PROCEDURE FOR FILING AN APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Rule 5A:11. Special Rule Applicable to Appeals From the Virginia Workers' Compensation Commission.

(a) *Non-Application of Other Rules.* Rules 5A:6 through 5A:10 do not apply to appeals from the Virginia Workers' Compensation Commission except as otherwise specified in this Part Five A.

(b) *Notice of Appeal.* No appeal from an order of the Commission shall be allowed unless, within 30 days after entry of the order appealed from, or within 30 days after receipt of notice by priority mail with delivery confirmation or equivalent mailing option of the order appealed from, counsel files with the clerk of the Virginia Workers' Compensation Commission a notice of appeal which shall state the names and addresses of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each party, and the mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel, and whether the appellant challenges the sufficiency of the evidence to support the findings of the Commission. A copy of the notice of appeal also shall be filed in the office of the clerk of this Court, and except as otherwise provided by law, must be accompanied by a check or money order in the amount of $50 payable to the "Clerk of the Court of Appeals," for the filing fee required by statute. The fee shall be due at the time the notice of appeal is presented. The clerk of this Court may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal shall be dismissed.

(c) *Record on Appeal.* The record on appeal from the Commission shall consist of the originals or copies of the notice of appeal, the employer's first report, medical reports, applications for hearings, the transcript of any hearing, depositions, interrogatories and answer to interrogatories, and opinions of a commissioner or deputy commissioner and opinions of the Commission, together with such other material as may be certified by the clerk of the Commission and shall conform as nearly as practicable to the requirements of Rule 5A:10 (b), provided, that, unless it is stated in the notice of appeal that the appellant challenges the sufficiency of the evidence to support the findings of the Commission, the clerk of the Commission need not prepare or certify the transcript of any hearing.

(d) *Transmission of Record*. The record shall, as soon as it is certified by the clerk of the Commission, be transmitted by him to the clerk of this Court. It shall be so transmitted within 30 days after filing of the notice of appeal.

(e) *Notice of Filing*. The clerk of this Court shall promptly notify all counsel of the date on which the record is filed in the office of the clerk of this Court.

(f) *Separate Cases.* Whenever two or more cases were tried together in the Virginia Workers' Compensation Commission, one notice of appeal and one record may be used to bring all such cases before this Court even though such cases were not consolidated by formal order.

(g) *Record Returned to Commission*. When the mandate is issued by this Court, the clerk of this Court shall return the record to the clerk of the Commission. The clerk of the Commission shall return the record upon request of the clerk of this Court.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
E. PROCEDURE ON PETITION FOR APPEAL IN CRIMINAL CASES AND TRAFFIC INFRACTIONS

Rule 5A:12. Petition for Appeal.

(a) *When the Petition Must be Filed.* When an appeal to the Court of Appeals does not lie as a matter of right, a petition for appeal must be filed with the clerk of this Court not more than 40 days after the filing of the record with the Court of Appeals. An extension of 30 days may be granted on motion in the discretion of this Court upon a showing of good cause sufficient to excuse the delay.

(b) *Copy to Opposing Counsel.* At the time the petition for appeal is filed, a copy of the petition shall be mailed or delivered to the Commonwealth's attorney or the city, county, or town attorney, as the case may be.

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

(1) Assignments of Error. Under a heading entitled "Assignments of Error," the petition shall 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 transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken shall 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 where the issue was preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(i) Effect of Failure to Assign Error. Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, the petition shall be dismissed.

(ii) Insufficient Assignments of Error. An assignment of error which does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. If the assignments of error are insufficient, the petition for appeal shall be dismissed.

(iii) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the petition for appeal contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in

subparagraph (c)(1) of this Rule, a rule to show cause will issue pursuant to Rule 5A:1A. If there is a deficiency in the reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken – including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) of the record where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s) – a rule to show cause will issue pursuant to Rule 5A:1A.

(2) Table of Contents and Table of Authorities. A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities shall include the year thereof.

(3) Nature of the Case and Material Proceedings Below. A brief statement of the nature of the case and of the material proceedings in the trial court or commission in which the case originated. This statement shall omit references to any paper filed or action taken that does not relate to the assignments of error.

(4) Statement of Facts. A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record, transcript, or written statement of facts. Any quotation from the record should be brief. When the facts are in dispute, the petition shall 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.

(5) Authorities and Argument. With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities – shall be stated in one place and not scattered through the petition. At the option of counsel, the argument may be preceded by a short summary.

(6) Conclusion. A short conclusion stating the precise relief sought.

(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.

(d) *Number of Copies to File.* Four copies of the petition shall be filed with the clerk of this Court.

(e) *Length.* Except by leave of a Judge of this Court, a petition shall not exceed 12,300 words. The word limit does not include the cover page, table of contents, table of authorities, and certificate.

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

(g) *Oral Argument.* When the appeal is not granted by the Judge of this Court to whom the petition for appeal is originally presented, the petitioner shall be entitled to state orally, in person or by conference telephone call, to a panel of this Court the reasons the petition for appeal should be granted. The appellant may waive the right to oral argument on the petition for appeal before a panel by notifying the clerk of this Court and opposing counsel in writing, or by filing a reply brief. Any lawyer not licensed to practice in Virginia who seeks to appear pro hac vice to present oral argument to this Court must comply with the requirements of Rule 1A:4.

(h) *Procedure for an Anders appeal.* If counsel for appellant finds his client's appeal to be without merit, he must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Akbar v. Commonwealth*, 7 Va. App. 611, 376 S.E.2d 545 (l989). In compliance therewith, counsel is required to file (1) a petition for appeal which refers to anything in the record which might arguably support the appeal and which demonstrates to the Court of Appeals counsel's conscientious examination of the merits of the appeal; (2) a motion for leave to withdraw as counsel; and (3) a motion for an extension of time to allow the appellant to file a supplemental petition for appeal. The petition for appeal and the motion for leave to withdraw as counsel should specifically cite to *Anders*. All three pleadings must be served on opposing counsel and upon the client and must contain a certificate providing evidence of such service. The Court of Appeals will rule upon the motion for extension of time upon its receipt, but will not rule on the motion to withdraw as counsel until this Court considers the case in its entirety, including any supplemental petition for appeal that may be filed.

Last amended by Order dated October 31, 2018; effective January 1, 2019.

Rule 5A:13. Brief in Opposition.

(a) *Filing Time.* A brief in opposition to granting the appeal may be filed with the clerk of this Court by the appellee within 21 days after the petition for appeal is served on counsel for the appellee. Within the same time he shall mail or deliver a copy to counsel for appellant. Four copies shall be filed. Motions for an extension to this briefing deadline shall be filed no later than 10 days after the expiration of the deadline.

(b) *Form and Content.* The brief in opposition shall conform in all respects to the requirements of the brief of appellee (Rule 5A:21).

(1) Length. Except by leave of a Judge of this Court, the brief shall not exceed 8,800 words.

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

(3) Criminal or Traffic Cases. In a criminal or traffic case, a brief may be filed by the Commonwealth's attorney, city, county, or town attorney, as the case may be.

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

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5A:14. Reply Brief.

When a brief in opposition to the petition for appeal has been filed, the appellant may, within 14 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to exceed 5,300 words in length. Four copies shall be filed. Motions for an extension to this briefing deadline shall be filed no later than 10 days after the expiration of the deadline.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5A:15. Denial of Petition for Appeal; Petition for Rehearing.

(a) *Denial by a Single Judge.* When a petition for appeal is denied by a Judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court shall send a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). The demand shall be filed in writing. Four copies must be filed with the clerk of this Court within fourteen days after the date of the order by which the petition was denied. The demand, which shall include a statement identifying how the one-judge order is in error, shall not exceed 350 words. Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). A petitioner who has previously requested oral argument may waive oral argument by so stating in the demand for review. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(a) when filing a demand for three-judge review pursuant to Code § 17.1-407(D).

(b) *Denial by a Three-Judge Panel.* When a petition for appeal is denied by a three-judge panel, the clerk of this Court shall send a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule may, within 14 days after the date of this notice, file a petition for rehearing in writing in the office of the clerk of this Court unless the denial was by a three-Judge panel after its consideration of a petition denied by a Judge of this Court pursuant to Code § 17.1-407. The petition for rehearing shall not exceed 5,300 words in length. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Four copies shall be filed. Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of this Court that considered the petition for appeal. 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. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(b) when filing a petition for a rehearing of an order of a three-judge panel denying a petition for appeal.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
E. PROCEDURE ON PETITION FOR APPEAL IN CRIMINAL CASES AND TRAFFIC INFRACTIONS

Rule 5A:15A. Denial of Petition for Appeal; Petition for Rehearing Filed by Electronic Means.

(a) *Proceedings After Denial of Petition by Single Judge*. – (1) When a petition for appeal is denied by a Judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court shall send a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. The appellant may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). Demands for three-judge review filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(a) shall be filed in accordance with the provisions of Rule 5A:15(a).

(2) Except for demands for three-judge review filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(a), the demand shall be filed as a single Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

(3) The demand, which shall include a statement identifying how the one-judge order is in error, must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 350 words. The demand must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate of service. The demand must also include a certificate of compliance with the word count limit. The demand will be considered filed on the date and time that it is received by cavpfr@vacourts.gov. If the demand does not meet the requirements of this rule as to format, the clerk of this Court shall so notify counsel and provide a specific amount of time for a corrected copy of the demand 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 Court of Appeals result in a failure to timely receive the electronically filed demand for three-judge review, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the demand by e-mail, any delivery failure notice received in response to the attempt, and a copy of the demand for three-judge review.

(4) The e-mail message to which the demand is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a demand for three-judge review is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the demand, as well as the law firm name, mailing

address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the demand. The message shall also state whether a copy of the demand has been served by e-mail or another means on opposing counsel and the date of such service. If the demand has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the demand for three-judge review in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

(5) Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). An appellant who has previously requested oral argument may waive oral argument by so stating in the demand for review.

(b) *Proceedings After Denial of Petition by Three-Judge Panel.* – (1) When a petition for appeal is denied by a three-judge panel, the clerk of this Court shall send a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may file a petition for rehearing in the office of the clerk of this Court unless the denial was by a three-judge panel after its consideration of a petition denied by a Judge of this Court pursuant to Code § 17.1-407. Petitions for rehearing filed by pro se prisoners or by those with leave of court to proceed under Rule 5A:15(b) shall be in accordance with the provisions of Rule 5A:15(b).

(2) Except for petitions for rehearing filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(b), the petition shall be filed as a single PDF document attached to an email addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

(3) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 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. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. Petitions filed by e-mail will be considered filed on the date and time that it is received by cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of this Court 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 Court of Appeals 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.

(4) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing

the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

(5) Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of this Court that considered the petition for appeal. 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 the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Last amended by Order dated January 31, 2017; effective April 1, 2017.

Rule 5A:16. Perfection of Appeal; Docketing.

(a) *Appeals as a Matter of Right.* In cases when an appeal lies as a matter of right to the Court of Appeals, such appeal shall be perfected by the timely filing of a notice of appeal pursuant to Rule 5A:6. Such case shall be considered mature for purposes of further proceedings from the date the record is filed in the office of the clerk of the Court of Appeals. A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

(b) *Grant of Petition for Appeal.* Promptly after a petition for appeal has been granted by the Court of Appeals, the clerk of the Court of Appeals shall certify this action to the trial court and all counsel. Such case shall be considered mature for purposes of further proceedings from the date of such certificate.

(c) *Docketing*. Cases shall be placed on the docket in the order in which they mature, provided that precedence shall be given to the following cases:

(1) criminal cases;

(2) cases from the Virginia Workers' Compensation Commission;

(3) cases involving termination of parental rights;

(4) cases of original jurisdiction;

(5) cases to be reheard; and

(6) any other cases required by statute to be given precedence.

The Court of Appeals may, however, for good cause shown or for reasons appearing sufficient to the Court, give preference to other cases.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5A:17. Security for Appeal.

(a) *Form for Security.* — All security for appeal required under Code § 8.01-676.1 shall substantially conform to the forms set forth in the Appendix to this Part Five A.

(b) *Security for Appeal; Defects.* — Whenever an appellant files an appeal bond or irrevocable letter of credit, he shall contemporaneously give notice in writing of said filing to counsel for appellee. The time for initially filing the appeal bond or letter of credit prescribed by Code § 8.01-676.1(A) and (B) is not jurisdictional under Code § 8.01-676.1(P). No appeal shall be dismissed because of defect in any appeal bond or irrevocable letter of credit unless an appellee, within 21 days after the giving of such notice, files with the clerk of the Court of Appeals a statement in writing of the defects in the bond or irrevocable letter of credit, and unless the appellant fails to correct such defects, if any, within 21 days after such statement is filed. If the appellant fails to correct such defects within 21 days, an appellee may move that the appeal be dismissed and it shall be dismissed unless the appellant satisfies the Court of Appeals that the bond or irrevocable letter of credit, either as originally given or as amended, has been filed as required by law.

Promulgated by Order dated April 30, 2010; effective July 1, 2010.
Last amended by Order dated November 1, 2016; effective January 1, 2017.

Rule 5A:18. Preservation of Issues for Appellate Review.

No ruling of the trial court or the Virginia Workers' Compensation Commission will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable the Court of Appeals to attain the ends of justice. A mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
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 shall exceed 12,300 words. No reply brief shall exceed 3,500 words. Briefs of amici curiae shall comply with the word limits that apply to briefs of the party being supported. Word limits under this Rule do not include appendices, or 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.

(b) *Filing Time: Appeal as a Matter of Right*. In cases when appeal lies as a matter of right to the Court of Appeals, briefs shall be filed as follows:

(1) The appellant shall file the opening brief in the office of the clerk of the Court of Appeals within 40 days after the date of the filing of the record in such office.

(2) The brief of appellee and the brief of the guardian ad litem shall be filed in the office of the clerk of the Court of Appeals within 25 days after filing of the opening brief.

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

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

(c) *Filing Time: Grant of Petition for Appeal.* In cases when a petition for appeal has been granted by the Court of Appeals, briefs shall be filed as follows:

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

(2) The brief of appellee shall be filed in the office of the clerk of the Court of Appeals within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of the Court of Appeals within 14 days after filing of the brief of appellee.

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

(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's Office, 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.

(e) *Arguments Made by Reference*. Attempts to incorporate arguments made below by reference to pleadings, motions, memorandum, or other filings are prohibited.

(f) *Copies*. An electronic version, in Portable Document Format (PDF), must be filed with the clerk of this Court and served on opposing counsel at the time of filing the brief with the Court, unless excused by this Court for good cause shown. An electronic version of a brief amicus curiae shall be filed with the clerk of this Court and served on counsel for all parties and on any other counsel amicus curiae. For purposes of this Rule, service by email shall be governed by Rule 1:17, which allows electronic transmission without the need of consent by opposing counsel. The electronic version must be filed in the manner prescribed by the VACES Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at http://www.vacourts.gov/online/vaces/resources/guidelines/pdf . In addition, 3 printed copies of each brief (including a brief amicus curiae) shall be filed in the office of the clerk of this Court. All briefs shall contain a certificate evidencing the date and method of electronic transmission of the brief to opposing counsel.

(g) *Technical problems with electronic filing of brief or appendix*. 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 Court of Appeals result in a failure to timely receive the electronically filed brief or appendix, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to electronically file the brief or appendix, any error message received in response to the attempt, documentation that the brief or appendix was later successfully resubmitted, and a motion requesting that the Court accept the resubmitted brief or appendix.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.
Last amended by Order dated February 27, 2017; effective May 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

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

The opening brief of appellant shall contain:

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

(b) A brief statement of the nature of the case and of the material proceedings in the trial court, which shall omit references to any paper filed or action taken that does not relate to the assignments of error.

(c) A statement of the assignments of error with a clear and exact reference to the page(s) of the transcript, written statement, record, or appendix where each assignment of error was preserved in the trial court.

(d) A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the transcript, written statement, record, or appendix. Any quotation from the record should be brief. When the facts are in dispute, the brief shall 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.

(e) The standard of review and the argument (including principles of law and authorities) relating to each assignment of error. When the assignment of error was not preserved in the trial court, counsel shall state why the good cause and/or ends of justice exceptions to Rule 5A:18 are applicable. With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities – shall be stated in one place and not scattered through the brief. At the option of counsel, the argument may be preceded by a short summary.

(f) A short conclusion stating the precise relief sought.

(g) The signature (which need not be in handwriting) of at least one counsel and counsel’s Virginia State Bar number, address, telephone number, facsimile number (if any), and email address.

(h) A certificate (which need not be signed in handwriting) stating (1) that Rule 5A:19(f) has been complied with, and (2) whether counsel desires to waive oral argument. The certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count). Additionally, any party may waive oral argument without leave of this Court by written notification to the clerk of this Court within 21 days after the date on which the appellee's brief is due to be filed or has been filed.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.
Last amended by Order dated April 10, 2015; effective July 1, 2015.

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

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

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

(b) A statement of the case if the appellee disagrees with the statement presented by the appellant and a statement of any additional assignments of error the appellee wishes to present with a clear and exact reference to the page(s) of the transcript, written statement, record, or appendix where each additional assignment of error was preserved in the trial court.

(c) A statement of the facts necessary to correct or amplify the statement in the brief of appellant with appropriate references to the pages of the transcript, written statement, record, or appendix. 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 appellee's version of the facts.

(d) The standard of review and the argument (including principles of law and authorities) relating to each assignment of error. For any additional assignment of error by appellee which was not preserved in the trial court, counsel shall state why the good cause and/or ends of justice exceptions to Rule 5A:18 are applicable. With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities – shall be stated in one place and not scattered through the brief. At the option of counsel, the argument may be preceded by a short summary.

(e) A statement of the precise relief sought, if any.

(f) The signature (which need not be in handwriting) of at least one counsel and counsel’s Virginia State Bar number, address, telephone number, facsimile number (if any), and email address.

(g) A certificate (which need not be signed in handwriting) stating (1) that Rule 5A:19(f) has been complied with, and (2) whether counsel desires to waive oral argument. The certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count). Additionally, any party may waive oral argument without leave of this Court by written notification to the clerk of this Court within 21 days after the date on which the appellee's brief is due to be filed or has been filed.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.
Last amended by Order dated April 10, 2015; effective July 1, 2015.

Rule 5A:22. Requirements for Reply Brief.

The reply brief, if any, shall 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 shall contain a certificate (which need not be signed in handwriting) that Rule 5A:19(f) has been complied with. The certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5A:23. Briefs Amicus Curiae.

(a) A brief amicus curiae may be filed at the petition, perfected appeal and rehearing stages of the appellate proceedings, and in proceedings invoking this Court's original jurisdiction:

(1) on behalf of the United States or the Commonwealth of Virginia without the prior consent of this Court or counsel; and

(2) by any other person if it is accompanied by the written consent of all counsel; and

(3) otherwise only on motion (which may be accompanied by the proposed brief) and the consent of this Court.

(b) A brief amicus curiae will be accepted only if filed on or before the date on which the brief of the party supported is required to be filed. A brief amicus curiae may be filed at the time of filing of the reply brief of the appellant only if an opening brief amicus curiae has been filed.

(c) A brief amicus curiae shall comply with the rules applicable to the brief of the party supported.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, the Court of Appeals may request that a brief amicus curiae be filed at any time.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.
Last amended by Order entered April 10, 2015; effective July 1, 2015.

Rule 5A:24. Covers of Documents.

(a) To facilitate identification, documents shall bear covers colored as follows:

Document	**Color of Cover**
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Brief of Guardian Ad Litem (if separate from appellant and appellee)	Brown
Reply Brief of the Appellant	Green
Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow
Petition for Rehearing En Banc	Yellow

(b) No appeal shall be dismissed for failure to comply with the provisions of this rule; however, the clerk of the Court of Appeals may require that a document be redone in compliance with this Rule.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:25. Appendix.

(a) *When Required*. An appendix shall be filed by the appellant in all cases no later than the time of filing his opening brief.

(b) *Filing*. If the combined lengths of the appendix and the opening brief of the appellant do not exceed the limitation prescribed in Rule 5A:19, the appendix may be filed as an addendum to the opening brief and within the same cover. If the combined lengths of the appendix and the opening brief exceed the limitation prescribed in Rule 5A:19, the appellant shall file the appendix as a separate volume. The appellant must file 3 printed copies and an electronic version in Portable Document Format (PDF) of the appendix and must serve an electronic copy on counsel for each party separately represented at the time of filing the appendix with the Court. For purposes of this Rule, service by email shall be governed by Rule 1:17, which allows electronic transmission without the need of consent by opposing counsel. This Court may by order require the filing or service of a different number and may, 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 the Court may order the parties to file. The appendix shall be filed in the manner prescribed by the VACES Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at http://www.vacourts.gov/online/vaces/resources/guidelines.pdf.

(c) *Contents.* An appendix shall 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 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.

(d) *Determination of Contents.* Within ten days after the filing of the record with the Court of Appeals or, in a case in which a petition for appeal has been granted, within ten days after the date of the certificate of appeal issued by the clerk of the Court of Appeals, counsel for appellant shall file in the office of the clerk of the Court of Appeals 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 the absence of such an agreement, counsel for appellant shall file with the clerk of the Court of Appeals a statement of the assignments of error and a designation of the contents to be included in the appendix within fifteen days after the filing of the record or, in a case in which

a petition for appeal has been granted, within fifteen days after the date of the certificate of appeal; not more than ten days after this designation is filed, counsel for appellee shall file with the clerk of the Court of Appeals a designation of any additional contents to be included in the appendix and, in appeals of right, a statement of any additional assignments of error the appellee wishes to present. The appellant shall include in the appendix the parts thus designated, together with any additional parts the appellant considers germane.

(e) *Table of Contents; Form of Presentation.* At the beginning of the appendix there shall be a table of contents, which shall 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 shall 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 shall 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) shall 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 shall 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 shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case.

(g) *Penalty.* Nothing shall be included in the appendix that is not germane to an assignment of error. As examples, no pleadings (other than the basic initial pleading as finally amended) shall be included unless an assignment of error is presented relating to it, and then only the portion thereof to which the assignment relates; and testimony relating solely to the amount of damages shall not be included unless error is assigned relating to the amount of damages. If parts of the record are included in the appendix unnecessarily at the direction of a party, this Court may impose the cost of producing such parts on that party.

(h) *Assumptions.* It will be assumed that the appendix contains everything germane to the assignments of error. The Court of Appeals may, however, consider other parts of the record.

(i) *Sealed Materials in the Appendix.* Appendices filed with this Court are a matter of public record. If counsel concludes it is necessary to include sealed material in the appendix, then, in order to maintain the confidentiality of the materials, counsel must designate the sealed material for inclusion in a sealed supplemental appendix to be filed separately from the regular appendix. A sealed volume of the appendix must be filed in the manner prescribed by the VACES Guidelines and User's Manual. The Guidelines are located on the Court's website at http://www.vacourts.gov/online/vaces/resources/guidelines.pdf.

Last amended by order dated January 9, 2020; effective March 15, 2020.

Rule 5A:26. Effect of Noncompliance With Rules Regarding Briefs.

If an appellant fails to file a brief in compliance with these Rules, the Court of Appeals may dismiss the appeal. If an appellee fails to file a brief in compliance with these Rules, the Court of Appeals may disregard any additional assignments of error raised by the appellee. If one party has complied with the Rules governing briefs, but the other has not, the party in default will not be heard orally if the case proceeds to oral argument, except for good cause shown.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5A:27. Summary Disposition.

In cases in which appeal lies as a matter of right, if all the Judges of the panel of the Court of Appeals to which a pending appeal has been referred conclude from a review of the record and the briefs of the parties that the appeal is without merit, the panel shall forthwith affirm the judgment of the trial court or commission.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5A:28. Oral Argument.

(a) *Notice*. Whenever appeal lies as a matter of right or a petition for appeal has been granted, oral argument shall be permitted except in those cases disposed of pursuant to Rule 5A:27. The Clerk of the Court of Appeals, except in extraordinary circumstances, shall give at least 15 days notice to counsel of the date, approximate time, and location for oral argument.

(b) *Length.* Except as otherwise directed by the Court of Appeals, argument for a party shall not exceed 15 minutes in length. Such time may be apportioned among counsel for the same side at their discretion, except that only one counsel may present the opening argument for the appellant. If a guardian ad litem joins with either appellant or appellee, the guardian ad litem shall share the time for oral argument with the party. If a guardian ad litem requests additional time to argue, the guardian ad litem must state that application in its brief, subject to approval of this Court.

(c) *Appearance Pro Hac Vice.* Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court of Appeals must comply with the requirements of Rule 1A:4.

(d) *Amicus Curiae.* No oral argument is permitted by amicus curiae except by leave of this Court. Leave may be granted upon the joint written request of amicus curiae and the party whose position amicus curiae supports. The request shall specify the amount of its allotted time the supported party is willing to yield to amicus curiae.

(e) *Waiver*. During oral argument, it shall not be necessary for any party to expressly reserve any argument made on brief, and the failure to raise any such argument shall not constitute a waiver. Any party may, without waiving the arguments made on brief, waive oral argument. See Rules 5A:20(h) and 5A:21(g).

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5A:29. Notice of Decision.

Promptly after the Court of Appeals has decided a case, the clerk of the Court of Appeals shall send a copy of the decision to all counsel of record and to the court or commission from which the appeal proceeded.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
G. DECISION, COSTS, AND MANDATE

Rule 5A:30. Costs and Notarized Bill of Costs.

(a) *To Whom Allowed.* Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court of Appeals; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs shall be allowed as ordered by the Court of Appeals.

(b) *Attorney Fees.* (1) In any case where attorney fees are recoverable under Title 16.1 or Title 20 relating to affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2, a party may request an award of attorney fees incurred in the appeal of the case by making said request in the Opening Brief of Appellant, the Reply Brief of the Appellant, or in the Brief of Appellee.

(2) Upon the making of a request for attorney fees as set forth in (b) (1) above, and unless otherwise provided by the terms of a contract or stipulation between the parties, the Court of Appeals may award to a party who has made such request, all of their attorney fees, or any part thereof, or remand the issue to the circuit court as directed in the mandate order for a determination thereof. Such fees may include the fees incurred by such party in pursuing fees as awarded in the circuit court.

(3) In determining whether to make such an award, the Court of Appeals shall not be limited to a consideration of whether a party's position on an issue was frivolous or lacked substantial merit but shall consider all the equities of the case.

(4) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court shall consider all relevant factors, including but not limited to, the extent to which the party was a prevailing party on the issues, the nature of the issues involved, the time and labor involved, the financial resources of the parties, and the fee customarily charged in the locality for similar legal services.

(c) *Taxable Costs*. Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, shall be taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. See, Code § 17.1-128.

(d) *Notarized Bill of Costs.* Counsel for a party who desires costs to be taxed shall itemize them in a notarized bill of costs, which shall be filed with the clerk of this Court within 14 days after the date of the decision in the case. Objections to the bill of costs must be filed with the clerk of this Court within 10 days after the date of filing the bill of costs.

(e) *Award*. The clerk of this Court shall prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate on request by the clerk of this Court to the clerk of the trial court or the clerk of the Virginia Workers' Compensation Commission.

Last amended by Order dated October 30, 2015; effective January 1, 2016.

Rule 5A:31. Mandate.

(a) *Time*. When there can be no further proceedings in the Court of Appeals or in the Supreme Court with respect to a decision of the Court of Appeals, the clerk of the Court of Appeals shall forward its mandate promptly to the clerk of the court or commission from which the appeal proceeded.

(b) *Opinions.* If the judgment or order is supported by an opinion, a certified copy of the opinion shall accompany the mandate.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Rule 5A:32. Scope.

The provisions of Rules 5A:33 through 5A:35 do not apply to the denial of a petition for appeal.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
H. REHEARING

Rule 5A:33. Rehearing - On Motion of a Party After Final Disposition of a Case.

(a) *Requirements for Pro Se Prisoners and By Leave of Court*. – Pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall within 14 days following such decision or order, file seven copies of a petition for rehearing with the clerk of the Court of Appeals. The petition for rehearing shall not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (b) of this Rule when filing a petition for rehearing.

(b) *Requirements for All Others*. – Any party, other than pro se prisoners or those with leave of Court to proceed under paragraph (a) of this Rule, desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall, within 14 days following such decision, file a petition for rehearing with the clerk of the Court of Appeals.

(1) The petition shall be filed as a single Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.

(2) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 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. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate 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 cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals 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 Court of Appeals result in failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of the 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 copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail

message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition for rehearing.

(c) *Response.* – No response to a petition for rehearing will be received unless requested by the Court of Appeals.

(d) *No Oral Argument.* – No oral argument on the petition will be permitted.

(e) *Grounds.* – No petition for rehearing will be granted unless one of the Judges who decided the case adversely to the petitioner determines that there is good cause for such rehearing. The clerk of the Court of Appeals shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Promulgated by Order dated Friday, April 30, 2010.
Last amended by Order dated January 31, 2017; effective April 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
H. REHEARING

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

(a) *Who May File*. – Any party wishing to raise any issue decided by a panel of this Court must file a petition for rehearing en banc pursuant to this Rule.

(b) *Requirements for Pro Se Prisoners and By Leave of Court*. – A pro se prisoner or a party who has leave of Court to proceed under this paragraph of the Rule aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc within 14 days after the date of the order sought to be reheard. Twelve copies of any such petition shall be filed with the clerk of the Court of Appeals. The petition for rehearing en banc shall not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (c) of this Rule when filing a petition for rehearing en banc.

(c) *Requirements for All Others.*

(1) Except for petitions for rehearing en banc filed by pro se prisoners or by those with leave of Court to proceed under paragraph (b) of this Rule, the petition shall be filed as a single Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.

(2) The petition must be formatted to print on a page 8 1/2 x 12 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 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. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate 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 cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals 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 Court of Appeals result in failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of the 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 copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing en banc is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition.

(d) *Proceedings After Petition for Rehearing.* – No answer to a petition for a rehearing en banc will be received unless requested by the Court of Appeals. A rehearing en banc on motion of the Court of Appeals shall be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of the Court of Appeals shall promptly notify counsel for both parties of the action taken by this Court on the petition for rehearing en banc via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Last amended by Order dated January 31, 2017; effective April 1, 2017.

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.

(b) *Rehearing En Banc.* When all or part of a petition for rehearing en banc is granted, the clerk of this Court shall notify all counsel promptly. The mandate entered is stayed as to all issues decided by the panel pending the decision of the Court en banc. The appeal is reinstated on the docket of the Court for oral argument only as to issues granted. Briefing and oral argument shall proceed in the same order as before the three judge panel. The Court of Appeals may require any party to whom rehearing en banc has been granted to file 20 copies of an appendix, prepared in conformity with the provisions of Rule 5A:25, with the clerk of the Court within such time as the Court of Appeals shall specify.

(1) Issues Considered Upon Rehearing En Banc. Only issues raised in the petition for rehearing en banc and granted for rehearing or included in the grant by the Court on its own motion are available for briefing, argument, and review by the en banc Court. The Court may grant a petition in whole or in part. Any issue decided by a panel of this Court not subject to a petition for rehearing en banc remains undisturbed by an en banc decision.

(2) Appellant's Opening Brief Upon Rehearing En Banc. The party who was the appellant before the panel of this Court shall file in the office of the clerk 20 copies of a brief, which shall not exceed 12,300 words in length. Such brief shall be filed within 21 days following the date of the order of this Court granting rehearing en banc, and shall be accompanied by a certificate that three copies were mailed or delivered to opposing counsel on or before the date of filing. The brief shall bear a white cover.

(3) Appellee's Answering Brief Upon Rehearing En Banc. The party who was the appellee before the panel of this Court may file in the office of the clerk 20 copies of an answering brief not to exceed 12,300 words in length, within 14 days after the opening brief has been filed. Three copies of appellee's answering brief shall be mailed or delivered to opposing counsel on or before the date the answering brief is

filed. The brief shall bear a blue cover. Appellee may be heard orally whether or not the answering brief is filed.

(4) Appellant's Reply Brief Upon Rehearing En Banc. The party who was the appellant before the panel may file in the office of the clerk a reply brief, not to exceed 3,500 words, within 14 days after the answering brief has been filed. Twenty copies of the reply brief shall be filed. Three copies of such brief shall be mailed or delivered to opposing counsel on or before the date the answering brief is filed. The brief shall bear a green cover.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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

When a case has been settled or the appeal withdrawn at any time after the notice of appeal has been filed, it shall be the duty of counsel to notify the clerk of the Court of Appeals 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, a single Judge of the Court of Appeals may approve entry of an order of remand.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
I. SETTLEMENT, WITHDRAWAL, AND MEDIATION

Rule 5A:37. Appellate Settlement Conference in the Court of Appeals.

(a) *Settlement Conference.* Upon motion or sua sponte, this Court may order counsel, and clients in appropriate cases, to participate in a settlement conference. An informal motion requesting a settlement conference may be filed at any time while the matter is on appeal and should state briefly why a settlement conference would be useful. The motion shall state whether all parties concur. If a party objects, that party shall file within 7 days a short response explaining the grounds for the objection. All motions and responses may be in letter format addressed to the clerk of this Court. If this Court orders a settlement conference, it will ordinarily be held by telephone conference call and, in the discretion of the settlement judge, may be held in person at a convenient location.

(b) *Settlement Judge.* A senior or retired appellate judge will conduct all settlement conferences at no cost to the litigants.

(c) *Excluded Cases.* No settlement conference shall be conducted in appeals of criminal judgments or orders terminating parental rights or in any other case arising under this Court's original jurisdiction.

(d) *Conferences*. Prior to participating in a settlement conference, all counsel shall consult with their respective clients about settlement options and ask for express authority to settle within any parameters acceptable to the client. The settlement judge may conduct more than one conference if, in his discretion, he deems it advisable. During a conference, the settlement judge may consult ex parte with counsel, or with counsel and that counsel's client, but shall not consult ex parte with any represented client without counsel's agreement.

(e) *Conference Orders.* A settlement conference, if ordered in a case, shall not automatically affect any time deadline otherwise applicable. The settlement judge, however, may direct the clerk of court to enter orders tolling any non-mandatory time deadline before or after the deadline has passed. If any party advises the settlement judge that all or part of an appeal has been settled, the settlement judge shall direct the parties to prepare and sign a settlement agreement setting forth all agreed-upon terms. Upon receiving a copy of the settlement agreement, the settlement judge shall thereafter direct the clerk of court to enter an order dismissing with prejudice all or part of the appeal subject to the agreement.

(f) *Confidentiality.* The provisions of the settlement agreement shall not be considered confidential except to the extent the agreement specifically requires it. No confidentiality provision, however, shall prejudice any party's ability to seek judicial enforcement of a settlement agreement. In any case in which a settlement conference does not result in a settlement agreement, no statement made during a settlement conference or in motions requesting a settlement conference or responses to such motions shall be disclosed by the settlement judge, the parties, or counsel to any (i) appellate

judge who may be called upon to decide the merits of the appeal or any related appeal, or (ii) lower court judge who may be called upon to decide the merits of the case if remanded or the merits of any related case.

(g) *Cross-Appeals and Related Appeals.* Appeals and cross-appeals will ordinarily be addressed in a single settlement conference. At the discretion of the settlement judge, related appeals may be consolidated for settlement conference purposes.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

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

Rule 5A:38. Petition for Review Pursuant to Code § 8.01-626; Injunctions.

(a) *Time for Filing.* In every case in which the jurisdiction of this Court is invoked pursuant to Code § 8.01-626, a petition for review must be filed with the clerk of this Court within 15 days of an order of a circuit court that grants an injunction, refuses an injunction, or dissolves or refuses to enlarge an existing injunction.

(b) *Copy to Opposing Counsel.* At the time the petition for review is filed, a copy of the petition shall be served on counsel for the respondent. At the same time that the petition is served, a copy of the petition shall also be emailed to counsel for the respondent, unless said counsel does not have, or does not provide, an email address. With the agreement of the parties, the petition may be served on counsel for the respondent solely by email.

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

(i) Except by permission of a Judge 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 5A:12(c).

(ii) The petition shall 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 respecting the injunction (hereafter "the record"). The copy of the record shall constitute part of the petition for the purpose of paragraph (b), but shall not count against the petition size limit.

(iii) The petition for review shall contain a certificate:

(1) providing the names of all petitioners and respondents; the name, Virginia State Bar number, mailing address, telephone number, facsimile number (if any), and e-mail address of counsel for each party; and the mailing address, telephone number, facsimile number (if any), and e-mail address of any party not represented by counsel;

(2) certifying that a copy of the petition has been served on all

opposing counsel and all parties not represented by counsel, and specifying the date and manner of service.

(3) if a word count is used, certifying the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count);

(4) certifying that the copy of the record being filed is an accurate copy of the record of the circuit court and contains everything therefrom necessary for a review of the petition.

(d) *Number of Copies to File.* Four copies of the petition, including the record of the circuit court, shall be filed. Only one copy of the record need be filed if, upon filing the petition, counsel for the petitioner also files an electronic copy of the said record as an Adobe Acrobat Portable Document Format (PDF) document on a CD-ROM.

(e) *Filing Fee.* The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount required by statute. The clerk of this Court may file a petition for review that is not accompanied by such fee if the fee is received by the clerk within 5 days of the date the petition for review is filed. If the fee is not received within such time, the petition for review shall be dismissed.

(f) *Scope and Review.*

(i) a petition for review may be considered by this Court whether the circuit court's order, or that part of the order dealing with the injunction, is temporary or permanent. If review is sought from a final order that deals with injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses injunctive relief. All other issues shall be governed by the normal rules and timetables that apply to appeals. If both a petition for review under Code § 8.01-626 and an appeal under § 8.01-675.3 are filed to challenge the same final order, the clerk of this Court will assign separate record numbers to the two proceedings.

(ii) a petition for review may be considered by a single Judge of this Court, or by a three-judge panel.

(g) *Responsive Pleading.* A respondent may file a response to a petition for review within seven days of the date of service of same, unless the Court specifies a shorter time frame.

For the purpose of this rule, a petition for review is considered served 3 days from the date on which it was mailed, or 1 day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, the Court may act on a petition for review without awaiting a response; however, absent exceptional circumstances, the Court shall not grant a petition for review without affording the respondent an opportunity to file a responsive pleading.

(h) *Rehearing and Further Review.* The provisions of Rules 5A:15, 5A:15A, and 5A:33 through 5A:35 do not apply to proceedings under Code § 8.01-626.

Promulgated by Order dated April 10, 2015; effective July 1, 2015.

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

APPENDIX OF FORMS.

Notes:

1. **Each of the Part Five A Forms 1 through 7 should be used in conjunction with the Form for Execution and Acknowledgment of All Bonds, set forth as Form 8.**

2. **As provided in Code §§ 1-205 and 8.01-676.1(S), if the party required to post an appeal or suspending bond tenders such bond together with cash in the full amount required, no surety shall be required.**

Adopted by Order dated February 15, 2017; effective May 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
APPENDIX OF FORMS

Form 1. Bond for Costs Alone — Appeal of Right From Circuit Court to Court of Appeals (including further appeal to the Supreme Court).

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, having appealed from a judgment of this Court rendered on _____, 2___, we _____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $____, to satisfy all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the Court of Appeals and in the Supreme Court, if it takes cognizance of the claim.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 2. Bond for Costs and Suspension — Appeal From Circuit Court to Appellate Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, (intending to appeal) (having appealed from) a judgment of this Court rendered on _____, 2___, we _____, as principal and

_____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s),__ _____, in the sum of $_____, to perform and satisfy the judgment, or such portion of the judgment as may be affirmed in whole or in part, or if the appeal is dismissed, refused, or not timely prosecuted, and to pay all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the (Court of Appeals and in the Supreme Court, if it takes cognizance of the claim) (Supreme Court).

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 3. Bond for Costs Alone Required by Appellate Court on Appeal From Circuit Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, appealed from a judgment of this Court rendered on _____, 2___, and the (Supreme Court of Virginia) (Court of Appeals of Virginia), on _____, 2___, awarded an appeal from the judgment on the condition that Appellant(s), or someone on Appellant's/Appellants' behalf, file an appeal bond with sufficient security in the clerk's office of this Court in the penalty of _____ within fifteen (15) days of the date of the certificate of appeal, with condition as the law directs. Accordingly, we _____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $_____, to pay all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the (Court of Appeals and Supreme Court, if it takes cognizance of the claim) (Supreme Court).

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 4. Bond for Suspension Alone Required by Appellate Court on Appeal From Circuit Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, appealed from a judgment of this Court rendered on _____, 2___, and (the Supreme Court of Virginia) (Court of Appeals of Virginia), on _____, 2___, suspended execution of the judgment on the condition that _____, or someone on (his) (her) (their) (its) behalf, file an appeal bond with sufficient security in the clerk's office of this Circuit Court, in the penalty of $_____ within fifteen (15) days of the date of the certificate of appeal, with condition as the law directs. Accordingly, we _____, as principal and ____ _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $_____ , to perform and satisfy the judgment or such portion of the judgment as may be affirmed in whole or in part, and to pay all actual damages incurred in consequence of the suspension.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 5. Bond for Costs and Suspension Required by Appellate Court on Appeal From Circuit Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, appealed from a judgment of this Court rendered on _____, 2___, and (the Supreme Court of Virginia) (Court of Appeals of Virginia), on _____, 2___, awarded an appeal (and suspension) from the judgment on the condition that Appellant(s), or someone on Appellant's/Appellants' behalf, file a bond with sufficient security in the clerk's office of this Court in the penalty of $_____, within fifteen (15) days of the date of the certificate of appeal, with condition as the law directs. Accordingly, we

_____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s),

_____, in the sum of $_____, to pay all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the (Court of Appeals and Supreme Court, if it takes cognizance of the claim) (Supreme Court), and all actual damages incurred in consequence of the suspension.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 6. Additional Bond Required by Appellate Court on Appeal From Circuit Court.

(Circuit Court case caption)

Plaintiff/Petitioner	)	
v.	)	No. _____
Defendant/Respondent	)	

The Appellant(s), _____, appealed from a judgment of this Court rendered on _____, 2___, and (the Supreme Court of Virginia) (Court of Appeals of Virginia), on _____, 2___, required an additional bond to be filed in the clerk's office of this Court in the penalty of $_____, and with the following additional requirements:_____ _____, within fifteen (15) days of the date of that order, with condition as the law directs. Accordingly, we _____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $_____, to perform and satisfy the judgment or such portion of the judgment as may be affirmed in whole or in part, and to pay all actual damages incurred in consequence of the suspension.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 7. Bond for Costs Alone — Appeal of Right From Virginia Workers' Compensation Commission to Court of Appeals (including further appeal to the Supreme Court).

(Virginia Workers' Compensation Commission caption)

Petitioner	)	
v.	)	No. _____
Respondent	)	

The Appellant, _____, (intending to appeal) (having appealed from) an award of the Virginia Workers' Compensation Commission rendered on _____, 2___, we

_____, as principal and _____, as surety, bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, to Appellee(s), _____, in the sum of $_____, to pay all damages, costs, and fees that may be awarded against (him) (her) (them) (it) in the Court of Appeals and Supreme Court, if it takes cognizance of the claim.

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 8. Form for Execution and Acknowledgment of All Bonds.

_____, as principal, and _____, as surety, hereby execute this instrument with our signatures and our seals.

Executed on: _____

_____
Principal

_____
Address
(SEAL)

Commonwealth of Virginia
City/County of _____
The foregoing instrument was acknowledged before me on
_____, 2___, by _____.

_____
Notary Public

My commission expires: _____

Adopted by Order dated February 15, 2017; effective May 1, 2017.

Form 9. Irrevocable Letters of Credit.

(Name and Address of Bank)

_____, 20____

U.S. $_____

On all communications please refer to (No. of Letter of Credit)

(Name and address of appellee(s))

Dear _____:

We hereby establish our Irrevocable Letter of Credit No. _____ in your favor, for the account of (name and address of appellant(s)), and hereby undertake to honor your draft at sight on us, not exceeding in the aggregate U.S. $ ___(amount in words)___. A draft drawn under this letter of credit must be marked "Drawn under _(Name of Bank)__Letter of Credit No. _____ dated _____, 20____." Funds under this letter of credit will be available to you in a single drawing by presentation of your sight draft drawn on us, accompanied by:

(For Costs Alone)

1. The original of this letter of credit.

2. Your verified statement that _____(has)(have) failed to
appellant(s)
pay all damages, costs and fees assessed against (him)(her)(them)(it) in the Court of Appeals of Virginia in the case of _____

3. A certified copy of an order or itemized statement of costs from the Court of Appeals assessing such damages, costs and fees against _____.
appellant(s)

(For Suspension Alone)

1. The original of this letter of credit.

2. Your verified statement that _____(has)(have) failed to
appellant(s)
perform and satisfy the judgment rendered against (him)(her)(them)(it) on

_____ by the Circuit Court of _____ in

the case of _____, and (has)(have) failed to pay all actual damages incurred in consequence of the suspension of judgment.

3. A copy of the trial court judgment order, attested by its clerk.

4. A copy of an order of the Court of Appeals of Virginia, attested by its clerk, affirming said judgment or refusing, dismissing or allowing withdrawal of the appeal of said judgment, or certification by the clerk of the Court of Appeals that the appeal of said judgment was not prosecuted timely.

5. A copy of an order, if any, of the Court of Appeals or trial court, attested by the clerk, assessing actual damages in consequence of the suspension of judgment.

(For Costs and Suspension)

1. The original of this letter of credit.

2. Your verified statement that _____(has)(have) failed to
appellant(s)
perform and satisfy the judgment rendered against (him)(her)(them)(it) on

_____ by the Circuit Court of _____ in

the case of _____, and (has)(have) failed to pay all damages, costs and fees assessed against (him)(her)(them)(it) in the Court of Appeals of Virginia, and all actual damages incurred in consequence of the suspension of judgment.

3. A copy of the trial court judgment order, attested by its clerk.

4. A copy of an order of the Court of Appeals, attested by its clerk, affirming said judgment or refusing, dismissing or allowing withdrawal of the

appeal of said judgment, or certification by the clerk of the Court of Appeals that the appeal of said judgment was not prosecuted timely.

5. A copy of an order, if any, of the Court of Appeals, attested by its clerk, assessing damages, costs and fees against _____.
appellant(s)

6. A copy of an order, if any, of the Court of Appeals or trial court, attested by the clerk, assessing actual damages in consequence of the suspension of judgment.

This letter of credit is valid until ____ p.m. local time _____, 20____, and a draft drawn hereunder, if accompanied by documents as specified above, will be honored if presented to (Presentation Address of Bank) on or before that date. However, this letter of credit automatically will be renewed for successive one (1) year periods from the initial expiration date or any renewal period expiration date hereunder, unless at least sixty (60) days prior to any such expiration date (Name of Bank) notifies you that it has elected not to renew this letter of credit for such additional one (1) year period. The notice required hereunder will be deemed to have been given when received by you.

In the event that (Name of Bank) elects not to renew this letter of credit as required above, the full amount of this letter of credit shall be payable to the Clerk of the Circuit Court of _____ upon presentation of your verified statement that:

1. A final order of the Court of Appeals of Virginia has not been entered in

the case of _____ (or, where there has been suspension of judgment, a final order has not been entered by the Court of Appeals or trial court assessing actual damages in consequence of the suspension).

2. Thirty (30) days have elapsed since notice of non-renewal was given and appellant(s) (has)(have) not filed acceptable substitute security.

In the event of non-renewal, within fifteen (15) days after payment to the clerk under the previous paragraph, the appellant(s) or someone for (him)(her)(them)(it) shall file with said clerk an appeal bond in substantial conformance with the appropriate form in the Appendix to Part Five A of the Rules of the Supreme Court of Virginia. The bond shall be in the penalty of the amount paid to said clerk under this letter of credit, and said funds shall be in lieu of surety.

Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credits as most recently

published by the International Chamber of Commerce.

Very truly yours,

_____Bank

By _____
Authorized Signature

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
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)

_____
(PETITIONER'S ADDRESS)

_____

_____

Pursuant to the provisions of Chapter 19.3 of Title 19.2 of the Code of Virginia, I, _____
NAME OF PETITIONER
hereby petition this Court for a WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE. In support of this petition, I state under oath that the following information is true:

1. On _____ , I was convicted or adjudicated delinquent in the

_____ Circuit Court of the following offense(s):
JURISDICTION (CITY/COUNTY)

Description of Felony Offense	Virginia Code	Circuit Court Case No.	Plea
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. I am innocent of the offenses(s) that are the subject of this petition.

3. My claim of innocence is based upon the following evidence:

_____

_____

[ ] ATTACHED ADDITIONAL SHEET(S)

4. Check all that apply:

[ ] (a) This evidence was previously unknown or unavailable to either me or my attorney at the time the conviction(s) or adjudication(s) of delinquency became final in the circuit court; and/or

[ ] (b) This evidence was not subject to scientific testing because _____

_____

5. This evidence became known or available to me on _____.
DATE

6. The circumstances under which the evidence was discovered were

_____

_____

[ ] ATTACHED ADDITIONAL SHEET(S)

7. Check all that apply:

[ ] (a) This evidence could not have been discovered or obtained by the exercise of diligence before the expiration of 21 days following entry of the final order(s) of conviction or adjudication of delinquency by the court; and/or

[ ] (b) The testing procedure was not available at the time of the conviction(s) or adjudication(s) of delinquency became final in the circuit court.

8. The evidence upon which I base my claim is material and, when considered with all of the other evidence in the record, will prove that no rational trier of fact would have found me to be guilty or delinquent beyond a reasonable doubt of the charge(s) described above because

_____

_____

[ ] ATTACHED ADDITIONAL SHEET(S)

9. In support of this petition, I have attached the following documents:

_____

_____

[ ] ATTACHED ADDITIONAL SHEET(S)

10. I understand that this petition must contain all relevant allegations of facts that are known to me at this time.

11. I understand that it must include all previous records, applications, petitions, and appeals and their dispositions related to this/these conviction(s) or adjudication(s) of delinquency, as well as a copy of any documents or evidence in support of the facts that I assert above.

12. I understand that if this petition is not complete, this Court may dismiss the petition or return the petition to me pending the completion of such form.

13. I understand that I am responsible for all statements contained in this petition.

14. I understand that any knowingly or willfully made false statement shall be a ground for prosecution and conviction of perjury as provided for in Virginia Code § 18.2-434.

15. Counsel. Check the appropriate box.

[ ] I am being represented by an attorney on the filing of this petition. My attorney's name and address are

_____

_____

_____

_____

[ ] I am not being represented by an attorney on the filing of this petition.

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 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.

_____ _____

DATE SIGNATURE OF PETITIONER

Commonwealth/State of _____

[ ] City [ ] County of _____

Subscribed and sworn to/affirmed before me on this date by the above-named person.

_____ _____

DATE NOTARY PUBLIC

My commission expires: _____

_____ _____

DATE SIGNATURE OF ATTORNEY (IF APPLICABLE)

_____

VIRGINIA STATE BAR NUMBER

Pro se (self-represented) petitioners: You are required to send copies of the PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE and all attachments to the Commonwealth's Attorney of the jurisdiction where the conviction(s) or adjudication(s) of delinquency occurred and to the Attorney General of Virginia by certified mail. You must complete the form entitled Court of Appeals Form CAV-104, CERTIFICATE OF MAILING - PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE.

Petitioners represented by counsel: You are required to serve copies of the PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE and all attachments on the Commonwealth's Attorney of the jurisdiction where the conviction(s) or adjudication(s) of delinquency occurred and on the Attorney General of Virginia. You must include the forms entitled Court of Appeals Form CAV-103CA, ACCEPTANCE OF SERVICE OR RETURN OF SERVICE BY THE COMMONWEALTH'S ATTORNEY - PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE and Court of Appeals Form CAV-103AG, ACCEPTANCE OF SERVICE OR RETURN OF SERVICE BY THE ATTORNEY GENERAL - PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE.

Last amended by Order dated September 24, 2020; effective immediately.

RULES OF SUPREME COURT OF VIRGINIA
PART SIX
INTEGRATION OF THE STATE BAR

Section I. Unauthorized Practice Rules and Considerations

Part Six, § I of the Rules of the Supreme Court of Virginia Part Six are maintained on the Virginia State Bar's website. Rules and opinions pertaining to the unauthorized practice of law may be found at Virginia State Bar - Professional Regulation - Unauthorized Practice of Law

RULES OF SUPREME COURT OF VIRGINIA
PART SIX
INTEGRATION OF THE STATE BAR

Section II. Virginia Rules of Professional Conduct

Part Six, § II of the Rules of the Supreme Court of Virginia may be found at

Virginia State Bar - Professional Regulation - Professional Guidelines and Rules of Professional Conduct

RULES OF SUPREME COURT OF VIRGINIA
PART SIX
INTEGRATION OF THE STATE BAR

Section III. Canons of Judicial Conduct for the State of Virginia

Part Six, § III of the Rules of the Supreme Court of Virginia may be found at

Canons of Judicial Conduct for the State of Virginia

RULES OF SUPREME COURT OF VIRGINIA
PART SIX
INTEGRATION OF THE STATE BAR

Section IV. Organization and Government

Part Six, § IV of the Rules of the Supreme Court of Virginia may be found at

http://www.vsb.org/pro-guidelines/index.php/bar-govt/

RULES OF SUPREME COURT OF VIRGINIA
PART SIX
INTEGRATION OF THE STATE BAR

Section V. Bylaws of the Council of the Virginia State Bar

By order dated September 9, 1983, effective December 1, 1983, Part Six, § V of the Rules of the Supreme Court of Virginia was deleted.

RULES OF SUPREME COURT OF VIRGINIA
PART SIX
INTEGRATION OF THE STATE BAR

Section VI. Virginia State Bar Bylaws

By order dated September 9, 1983, effective December 1, 1983, Part Six, § VI of the Rules of the Supreme Court of Virginia was deleted.

RULES OF SUPREME COURT OF VIRGINIA
PART SIX
INTEGRATION OF THE STATE BAR

Section VII. Acts of the General Assembly (The Bar Act of 1938 and Appendix)

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:1. Scope.

Part Seven-A of the Rules shall apply to all proceedings in the General District Courts.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:2. Computation of Time.

Whenever a party is required or permitted under these Rules to do an act within a prescribed time after receipt or delivery of a paper and the paper is sent by mail, three days shall be added to the prescribed period.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:3. Counsel.

When used in these Rules, the word "counsel" or "attorney" includes a partnership, a professional corporation or an association of members of the Virginia State Bar practicing under a firm name.

"Counsel of record" in any case includes an attorney who has signed a pleading in the case or who has notified the clerk or judge that the attorney appears in the case and shall also include a party who appears in court pro se. Except as provided in § 16.1-69.32:1, counsel of record shall not withdraw from a case except by leave of court with such notice as the court may require to the client of the time and place of a motion for leave to withdraw.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:4. Reporters and Transcripts of Proceedings in Court.

Reporters, when present, shall be first duly sworn to take down and transcribe the proceedings faithfully and accurately to the best of their ability and shall be subject to the control and discipline of the judge.

When a reporter is present and takes down any proceeding in a court, any person interested shall be entitled to obtain a transcript of the proceedings or any part thereof upon terms and conditions to be fixed in each case by the judge.

The proceedings may be taken down by means of any recording device approved by the judge.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:5. Discretion of Court.

All steps and procedures in the clerk's office touching the filing of pleadings and the maturing of suits or actions may be reviewed and corrected by the court.

The time allowed for filing pleadings may be extended by the court in its discretion and such extension may be granted although the time fixed already has expired.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:6. Preservation of the Record.

A court may authorize the use of electronic or photographic means for the preservation of the record or parts thereof.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:7. Filing Format and Procedure.

(a) Except as provided in subdivision (c) of this Rule and Rule 1:17 pertaining to Electronically Filed Cases,

(1) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or Statutes shall be 8-1/2 by 11 inches in size. All typed material shall be double spaced except for quotations.

(2) Subdivision (a)(1) of this Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(b) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.

(c) *Electronic Filing*. In any general district court which has established an electronic filing system pursuant to Rule 1:17:

(1) Any proceeding may be designated as an Electronically Filed Case upon consent of all parties in the case.

(2) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other instruments in an Electronically Filed Case shall be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.

(i) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(e)(5).

(ii) Any contract or deed.

(iii) Any prenuptial agreement or written settlement agreement, including any property settlement agreement.

(iv) Any check or other negotiable instrument.

(v) Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.

(vi) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.

(vii) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:8. General Provisions as to Pleadings.

(a) Counsel of Record tendering a pleading gives assurances that it is filed in good faith and not for delay.

(b) A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted.

(c) Counsel of Record who files a pleading shall sign it and state counsel's address and phone number.

(d) The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such exhibit a part of the pleading.

Rule 7A:9. Amendments.

No amendment shall be made to any pleading after it is filed with the clerk, except by leave of court. Leave to amend shall be liberally granted in furtherance of the ends of justice.

In granting leave to amend, the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:10. Copies of Pleadings and Requests for Subpoenas Duces Tecum to be Furnished.

All pleadings not otherwise required to be served and requests for subpoenas duces tecum shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing.

At the foot of such pleadings and requests shall be appended either acceptance of service or a certificate of counsel that copies were served as this rule requires, showing the date of delivery, dispatching, transmitting or mailing.

Rule 7A:11. Endorsements.

Drafts of orders shall be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing to all counsel of record who have not endorsed them. Compliance with this rule and with Rule 7A:10 may be modified or dispensed with by the court in its discretion. In an Electronically Filed Case, endorsement and specification of any objections to the draft order shall be accomplished as provided in Rule 1:17.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:12. Requests for Subpoenas for Witnesses and Records.

(a) *Subpoenas for Witnesses:*

(1) Requests for subpoenas for witnesses should be filed at least ten days prior to trial.

(2) Requests for subpoenas for witnesses not timely filed should not be honored except when authorized by the court for good cause.

(b) *Subpoenas Duces Tecum:*

(1) Requests for subpoenas duces tecum should be filed at least 15 days prior to trial.

(2) Requests for subpoenas duces tecum not timely filed should not be honored except when authorized by a judge for good cause.

(c) *Meaning of Filed:* The term filed as used in this Rule means received in the appropriate clerk's office or by an appropriate magistrate.

(d) *Exception:* This Rule does not apply to subpoenas for witnesses and subpoenas duces tecum issued by attorneys in civil cases as authorized by Virginia Code §§ 8.01-407 and 16.1-89.

Rule 7A:13. What Constitutes Noting an Appeal.

All appeals shall be noted in writing. An appeal is noted only upon timely receipt in the clerk's office of the writing. An appeal may be noted by a party or by the attorney for such party. In addition, in civil cases, an appeal may be noted by a party's regular and bona fide employee or by a person entitled to ask for judgment under any statute.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:14. Continuances.

(a) *Continuances Granted for Good Cause.* Continuances should not be granted except by, and at the discretion of, a judge for good cause shown, or unless otherwise provided by law. The judge may, by order, delegate to the clerk the power to grant continuances consented to by all parties under such circumstances as are set forth in the order. Such an order of delegation should be reasonably disseminated and posted so as to inform the bar and the general public.

(b) *All Parties Agree to Continuance.* If all parties to a proceeding agree to seek a continuance, the request may be made orally by one party as long as that party certifies to the judge that all other parties know of the request and concur. Such a request should be made as far in advance of the scheduled hearing or trial as is practicable. If granted, the moving party shall be responsible for assuring that notice of the continuance is given to all subpoenaed witnesses and that they are provided with the new court date. This obligation may be met by (i) an agreement between the parties that each side will notify its own witnesses; or (ii) any other arrangement that is reasonably calculated to get prompt notice to all witnesses.

(c) *All Parties Do Not Agree to Continuance.* If a request for continuance is not agreed to by all parties, such request should be made to the court prior to the time originally scheduled for the hearing or trial. If the court determines that a hearing on the request should be conducted prior to the time originally scheduled for the trial, all parties shall be given notice of such hearing by the requesting party.

(d) *Continuances Requested At the Time of Hearing.* Where a request for a continuance has not been made prior to the hearing or trial and other parties or witnesses are present and prepared for trial, a continuance should be granted only upon a showing that to proceed with the trial would not be in the best interest of justice.

(e) *Parties.* For purposes of this Rule, the term "parties" shall mean all plaintiffs, defendants and third party defendants in a civil case and the prosecution and the defendant in a criminal or traffic infraction case.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:15. General Information Relating to Each Court.

The chief judges of the general district courts shall, on or before December 31 of each year, furnish the Executive Secretary of the Supreme Court current general information relating to the management of the courts within each district. This information shall be assembled and published electronically by the Executive Secretary.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN A
GENERAL DISTRICT COURTS – IN GENERAL

Rule 7A:16. Isolation Proceedings under Article 3.01 of Title 32.1 of the Code of Virginia; Communicable Diseases of Public Health Significance.

A. Upon any petition by the State Health Commissioner, or that official's designee, for an order that a person or persons appear before the court to determine whether isolation is necessary to protect the public health from the risk of infection with a communicable disease of public health significance, the provisions of §§ 32.1-48.03, 32.1-48.04, and related sections of Article 3.01 of Title 32.1 of the Code of Virginia shall be followed.

B. The court shall hold hearings under this rule in a manner to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, witnesses, and the general public. To this end, the court may take measures including, but not limited to, ordering the hearing to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN B
GENERAL DISTRICT COURTS – CIVIL

Rule 7B:1. Scope.

These Rules apply to all civil cases in the General District Courts.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN B
GENERAL DISTRICT COURTS – CIVIL

Rule 7B:2. Specific Rule for Pleadings in General District Courts.

The judge of any General District Court may require the plaintiff to file and serve a written bill of particulars and the defendant to file and serve a written grounds of defense within the periods of time specified in the order so requiring; the failure of either party to comply may be grounds for awarding summary judgment in favor of the adverse party. Upon trial, the judge may exclude evidence as to matters not described in any such pleading.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN B
GENERAL DISTRICT COURTS – CIVIL

Rule 7B:3. General Provisions as to Pleadings.

(a) A party asserting either a claim, counterclaim, cross-claim or a defense may plead alternative facts and theories of recovery against alternative parties, provided that such claims, defenses, or demands for relief so joined arise out of the same transaction or occurrence. Subject to the jurisdictional limits of the General District Court, a party may also state separate related claims or defenses regardless of consistency and whether based on legal or equitable grounds.

(b) The warrant, summons or complaint or an attachment thereto shall contain a statement, approved by the Committee on District Courts, explaining how any party may object to venue.

(c) The warrant, summons or complaint, or an attachment thereto shall contain a statement, approved by the Committee on District Courts, explaining that if the case is contested, how a trial date will be set.

(d) All civil warrants and complaints shall contain on their face language in substantially the following form: "The defendant is not required to appear pursuant to this document, but if the defendant does not appear, judgment may be granted in favor of the plaintiff."

Rule 7B:4. Trial of Action.

(a) *Method of bringing action.* A civil action in a general district court may be brought by warrant, summons or complaint directed to the sheriff or to any other person authorized to serve process, requiring such individual to summon the person against whom the claim is asserted to appear before the court on a certain day to answer the complaint of the plaintiff set out in the warrant, summons or complaint.

(b) *When action heard.* If all parties appear and are ready for trial on the return date of the warrant, summons or complaint, the court may proceed with the trial of the case.

Rule 7B:5. Production of Written Agreement.

When a suit is brought on a written contract, note or other instrument, the original document shall be tendered to the court for entry of judgment thereon unless the production of the original is excused by the court for good cause or by statute.

Rule 7B:6. Verification.

If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed. In an Electronically Filed Case, verification shall be subject to the provisions of Rule 1:17.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

Rule 7B:7. Appearance by Plaintiff.

Except as may be permitted by statute, no judgment for plaintiff shall be granted in any case except on request made in person in court by the plaintiff, plaintiff's attorney, or plaintiff's regular and bona fide employee.

Rule 7B:8. Failure of Plaintiff to Appear.

(a) If neither the plaintiff nor the defendant appears, the Court shall dismiss the action without prejudice to the right of the plaintiff to refile.

(b) If the defendant, but not the plaintiff, appears on the return date and the case is not before the Court for trial, the Court shall dismiss the action without prejudice to the right of the plaintiff to refile.

(c) If the defendant, but not the plaintiff, appears on the trial date and:

(1) The defendant admits owing all or some portion of the claim, the Court shall dismiss the action without prejudice to the right of the plaintiff to refile; but if

(2) The defendant denies under oath owing anything to the plaintiff, the Court shall enter judgment for the defendant with prejudice to the right of the plaintiff to refile.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN B
GENERAL DISTRICT COURTS – CIVIL

Rule 7B:9. Failure of Defendant to Appear.

Except as may be provided by statute, a defendant who fails to appear in person or by counsel is in default and;

(a) Waives all objections to the admissibility of evidence; and

(b) Is not entitled to notice of any further proceeding in the case, except that when service is by posting pursuant to § 8.01-296(2)(b), the ten day notice required by that section shall be complied with; and

(c) On request made in person in court by the plaintiff, plaintiff's attorney, plaintiff's regular and bona fide employee, or any other person authorized by law, judgment shall be entered for the amount appearing to the judge to be due. If the relief demanded is unliquidated damages, the court shall hear evidence and fix the amount thereof.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN B
GENERAL DISTRICT COURTS – CIVIL

Rule 7B:10. Third-Party Practice and Consolidation of Actions.

(a) *When Defendant May Bring in Third Party:* Whenever a party is served with a warrant, summons, complaint, counterclaim or cross-claim, such party may within 10 days after service or up to the trial date, whichever is sooner, file a third-party civil warrant or complaint on a person not a party to the action who is or may be liable to the party for all or part of the claim being asserted against such party. After such time period, such third-party claim may be asserted only with leave of court.

Any party may move to strike the third-party warrant or complaint, or move for its severance for a separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) *Consolidation of Actions:* The Court may, in its discretion, consolidate for trial separate suits which could be treated as counterclaims, cross-claims, and third-party claims. The judge may enter such orders as may be appropriate to effect a prompt and fair disposition of such cases.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN B
GENERAL DISTRICT COURTS – CIVIL

Rule 7B:11. Motions to Transfer.

(a) When a written motion to transfer objecting to venue is filed by any party, the party objecting shall mail a copy of such motion to all counsel of record. Failure to comply with this requirement shall not be a ground for denying the motion, but the court may grant a deferral of any hearing on the motion to transfer if it finds that the interest of justice would be served by such deferral.

(b) If any party who has filed a motion to transfer objecting to venue is not present when the court rules on such motion:

(1) If the motion is granted, the Clerk shall transmit the files in accordance with such order and shall send a copy of the letter of transmittal or order of transfer to all parties along with information as to any costs awarded under § 8.01-266; or

(2) If the motion is denied, the court shall set a date for the trial of the case and the Clerk shall notify the absent objecting party by first class mail of such date and of any costs awarded any other party under § 8.01-266.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN C
GENERAL DISTRICT COURTS –CRIMINAL AND TRAFFIC

Rule 7C:1. Scope.

These rules shall apply to all criminal and traffic cases [infractions and others] in the General District Courts.

Rule 7B:12. Appeal by One Party; Separate Notices of Appeal by Other Parties.

A. In civil cases, the filing of a timely notice of appeal by one party from a judgment relating to a claim, counterclaim, cross-claim or third party claim, or another appealable order of the general district court, does not constitute an appeal by any other party with respect to the matter appealed – or with respect to any other claim, counterclaim, cross-claim, third-party claim, judgment or other order of the general district court.

B. A separate and timely notice of appeal must be filed by any party in order to appeal any rulings as to other claims, counterclaims, cross-claims, third-party claims, judgments, or other appealable orders that have not been appealed by the opponent.

Promulgated by Order dated November 1, 2019; effective January 1, 2020.

Rule 7C:2. Venue.

Questions of venue must be raised before a finding of guilty or venue shall be deemed waived.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN C
GENERAL DISTRICT COURTS –CRIMINAL AND TRAFFIC

Rule 7C:3. The Complaint, Warrant, Summons and Capias.

(a) The complaint shall consist of sworn statements of a person or persons of facts relating to the commission of an alleged offense. The statements shall be made upon oath before a judicial officer empowered to issue arrest warrants. The judicial officer may require the sworn statements to be reduced to writing if the complainant is not a law-enforcement officer.

(b) More than one warrant, summons or capias may issue on the same complaint. A warrant may be issued by a judicial officer if the accused fails to appear in response to a summons.

(c) A separate warrant, summons or capias shall be issued for each charge, except as provided in §§ 33.2-503, 46.2-819.1, 46.2-819.3, and 46.2-819.3:1.

(d) A summons, whether issued by a judicial officer or a law-enforcement officer, shall command the accused to appear at a stated time and place before a court of appropriate jurisdiction. It shall (i) state the name of the accused or, if this name is unknown, set forth a description by which he can be identified with reasonable certainty, (ii) describe the offense charged and state whether the offense is a violation of state, county, city or town law, and (iii) be signed by the magistrate or the law-enforcement officer, as the case may be.

(e) If the warrant has been issued but the officer does not have the warrant in his possession at the time of the arrest, he shall (i) inform the accused of the offense charged and that a warrant has been issued, and (ii) deliver a copy of the warrant to the accused as soon thereafter as practicable.

Last amended by Order dated September 30, 2016, effective immediately.

Rule 7C:4. Trial Together of More Than One Accused or More Than One Offense and Joint Preliminary Hearings.

(a) *More Than One Accused / Joinder of Defendants.* On motion of the Commonwealth, for good cause shown, the court, in its discretion, may order persons charged with participation in related acts or occurrences or in a series of acts or occurrences constituting an offense or offenses to be tried jointly unless such joint trial would constitute prejudice to a defendant.

(b) *More Than One Accused / Severance of Defendants.* If the court finds that a joint trial would constitute prejudice to a defendant, the court shall order severance as to that defendant or provide such other relief as justice requires.

(c) *An Accused Charged With More Than One Offense.* The Court may direct that an accused be tried at one time for all offenses then pending against him, if justice does not require separate trials and (a) the offenses are based on the same act or transaction, or on two or more acts or transactions that are connected or constitute parts of a common scheme or plan, or (b) the accused and the Commonwealth's Attorney consent thereto.

(d) *Joint Preliminary Hearing.* Upon motion of the Commonwealth's Attorney, preliminary hearings for persons alleged to have participated in contemporaneous and related acts or occurrences or in a series of such acts or occurrences constituting an offense or offenses may be heard jointly, if jurisdiction over each person and offense lies in the same court, unless the court finds that such joint preliminary hearing would constitute prejudice to a defendant.

RULES OF SUPREME COURT OF VIRGINIA
PART SEVEN C
GENERAL DISTRICT COURTS –CRIMINAL AND TRAFFIC

Rule 7C:5. Discovery.

(a) *Application of Rule.* This Rule applies only to the prosecution for a misdemeanor which may be punished by confinement in jail and to a preliminary hearing for a felony.

(b) *Definitions.* For purposes of discovery under this Rule 1) the prosecuting attorney is the attorney for the Commonwealth or the city attorney, county attorney, or town attorney, who is responsible for prosecuting the case; 2) if no prosecuting attorney prosecutes the case, the representative of the Commonwealth shall be the law enforcement officer, or, if none, such person who appears on behalf of the Commonwealth, county, city or town in the case.

(c) *Discovery by the Accused.* Upon motion of an accused, the court shall order the prosecuting attorney or representative of the Commonwealth to permit the accused to hear, inspect and copy or photograph the following information or material when the existence of such is known or becomes known to the prosecuting attorney or representative of the Commonwealth and such material or information is to be offered in evidence against the accused in a General District Court:

(1) any relevant written or recorded statements or confessions made by the accused, or copies thereof and the substance of any oral statements and confessions made by the accused to any law enforcement officer; and

(2) any criminal record of the accused.

(d) *Time of Motion.* A motion by the accused under this Rule shall be made in writing and filed with the Court and a copy thereof mailed, faxed, or otherwise delivered to the prosecuting attorney and, if applicable, to the representative of the Commonwealth at least 10 days before the day fixed for trial or preliminary hearing. The motion shall include the specific information or material sought under this Rule.

(e) *Time, Place and Manner of Discovery and Inspection.* An order granting relief under this Rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(f) *Failure to Comply.* If at any time during the course of the proceedings, it is brought to the attention of the court that the prosecuting attorney or representative of the Commonwealth has failed to comply with this Rule or with an order issued pursuant to this Rule, the court shall order the prosecuting attorney or representative of the Commonwealth to permit the discovery or inspection of the material not previously disclosed, and may grant such continuance to the accused as it deems appropriate.

Rule 7C:6. Pleas.

(a) A court shall not accept a plea of guilty or nolo contendere to any misdemeanor charge punishable by confinement in jail without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea. Before accepting a plea to such a charge, the court shall inform the accused that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(b) Upon rejecting a plea agreement, a judge shall immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

(c) A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

Last amended July 1, 2014.

Rule 7C:7. Service and Filing of Papers.

(a) *Copies of Written Motions to be Furnished.* All written motions and notices not required to be served otherwise shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile, or mailing, a copy to him on or before the day of filing.

Service pursuant to this Rule shall be effective upon such delivery, dispatch, transmission or mailing, except that papers served by facsimile transmission completed after 5:00 p.m. shall be deemed served on the next day that is not a Saturday, Sunday, or legal holiday.

At the foot of such pleadings and requests shall be appended either acceptance of service or a certificate of counsel that copies were served as this Rule requires, showing the date of delivery and method of service, dispatching, transmitting, or mailing.

(b) *Filing.* Pleadings, motions, notices, and other materials required to be served shall be filed with the clerk. In an Electronically Filed Case, the provisions of Rule 1:17 shall be applicable.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:1. Scope.

Part Eight of the Rules shall apply to all proceedings in the Juvenile and Domestic Relations District Courts.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:2. Definitions.

(a) *Statutory Definitions.* The definitions stated in § 16.1-228 are applicable to this Part.

(b) *Additional Definitions.* The following words and phrases used in this Part are defined as follows:

(1) "Counsel" or "attorney" includes a partnership, a professional corporation or an association of members of the Virginia State Bar practicing under a firm name or governmental agency name.

(2) "Counsel of Record" in any pending case includes an attorney who has signed a pleading in the case or who has notified the clerk or judge that the attorney appears in the case and shall also include a guardian ad litem and a party who appears in court pro se. Except as provided by statute, counsel of record shall not withdraw from a case except by leave of court with such notice as the court may require to the client of the time and place of a motion for leave to withdraw.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:3. Contents of Petitions in Certain Proceedings.

(a) *Proceedings for the Ordering of Services*.

(1) Motion or Petition. When a party to a matter pending before the court, or a petition filed for the purpose, proposes that the court enter an order pursuant to § 16.1-278, directing that a governmental officer, employee, agency, or institution render information, assistance, services or cooperation, the petition or motion shall contain:

a) The information, assistance, services, or cooperation sought;

b) The state or federal law or regulation or city, county, or town ordinance that provides for the rendering of such information, assistance, services, or cooperation sought; and

c) The officer, employee, agency, or institution to whom the order should be directed.

(2) Notice. The motion or petition prescribed in paragraph (a)(1) of this Rule shall be served on the governmental officer, employee, agency, or institution in question pursuant to § 16.1-264.

(3) Hearing. The governmental officer, employee, agency, or institution against whom an order is sought shall be entitled to a hearing on the issues raised by the petition or motion. The hearing may be held at such time as the court deems appropriate.

(b) *Proceedings for Judicial Consent to Emergency Surgical or Medical Treatment for a Juvenile.* When a petition is filed for the purpose of seeking judicial consent for emergency surgical or medical treatment of a juvenile, the petition shall contain:

(1) The juvenile's name, date of birth, residence, and a statement as to whether or not the juvenile has ever been married;

(2) The names and residence of the juvenile's parents, guardian or legal custodian;

(3) The name and residence of the nearest known relative if no parent or guardian can be found;

(4) The name and address of the physician petitioning the court for authorization of surgical or medical treatment for the juvenile;

(5) The name and address of the hospital or medical facility petitioning for authorization of surgical or medical treatment for the juvenile;

(6) A statement of the diagnosis of the juvenile's physical condition, and the recommended medical, surgical, and nursing care; and

(7) A statement of the willingness of the physician and the hospital or medical facility to provide the necessary medical, surgical, and nursing care if judicial consent is given as requested.

(c) *Proceedings for Support.* Except for temporary child support orders issued pursuant to Va. Code § 16.1-279.1, when a petition is filed seeking a court order for support of a spouse or child, the petition shall contain:

(1) The name and residential address of the person seeking support;

(2) The name and residential address of the person from whom support is sought;

(3) The name, date of birth, and residential address of the person or persons for whom support is sought and the relationship of that person or those persons to the respondent;

(4) A statement whether the Division of Child Support Enforcement is involved in the case;

(5) If child support is at issue, a statement whether or not the petitioner and respondent are presently or have ever been married to each other and, if not, whether paternity has ever been adjudicated;

(6) If child support is at issue, a statement whether the child's custody has been adjudicated;

(7) If known, the name, date of birth, and social security number of each parent or spouse and, if different and if known, the name, date of birth, and social security number of the person responsible for support and, unless otherwise ordered, the residential and, if different, mailing address, residential and employer telephone number, driver's license number, and the name and address of the employer of each such parent or responsible person;

(8) As an attachment, a copy of the most recent court order, if any, concerning support of the person for whom support is sought in this petition; and

(9) A statement whether either or both parents hold a license, certificate, registration, or other authorization to engage in a profession, trade, business, occupation or recreational activity issued by the Commonwealth and, if so, the type of authorization held.

In the case of a petition for support, if a protective order has been issued or if a party asserts that the party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be required on the petition; however, the information shall be provided to the court and shall not be disclosed except by order of the court.

Rule 8:4. Service of Process - Motion to Reduce Support Arrearages to Judgment.

Any motion to enter judgment for support arrearages pursuant to § 16.1-278.18 shall be served upon the respondent in accordance with the provisions of §§ 8.01-296, 8.01-327, 8.01-329, or by (1) certified mail, return receipt requested, and (2) first class mail. Upon sufficient showing that a diligent effort was made to ascertain the location of a party, that party may be served with any required notice by delivery of the written notice to that party's residential or business address as filed with the court pursuant to Code § 20-60.3 or the Department of Social Services, or if changed, as shown in the records of the Department of Social Services.

Rule 8:5. Court-Ordered Reports.

Copies of all studies and reports pursuant to §§ 16.1-269.2, 16.1-273, 16.1-274, 16.1-275 and 63.2-1524, when received by the court shall be furnished by the court to counsel of record, and upon request shall be mailed to such counsel. Counsel of record shall return such reports to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion of either.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:6. The Roles of Counsel and of Guardians Ad Litem When Representing Children.

The role of counsel for a child is the representation of the child's legitimate interests.

When appointed for a child, the guardian ad litem shall vigorously represent the child, fully protecting the child's interest and welfare. The guardian ad litem shall advise the court of the wishes of the child in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child's interest and welfare.

Rule 8:7. Format for Filing.

(a) Except as provided in Rule 8:8(F) and Rule 8:8A, and Rule 1:17 pertaining to Electronically Filed Cases,

(1) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or statutes shall be 8-1/2 by 11 inches in size. All typed material shall be double spaced except for quotations.

(2) Subdivision (a)(1) of this Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(b) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.

Last amended by Order dated March 1, 2016; effective immediately.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:8. Pleadings.

(a) *General.* Counsel of record tendering a pleading gives assurances that it is filed in good faith and not for delay, and counsel of record who files a pleading shall sign it and state counsel's address and telephone number. A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted. The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such an exhibit a part of the pleading.

(b) *Denial, Admission, Objection.* A party respondent need not file a pleading or may file a pleading denying or admitting all or any facts alleged in the petition, motion, or summons, or the respondent may file a motion raising objections. Any allegation not admitted is deemed denied. If a respondent fails to file a pleading, the failure will be taken as a denial of the allegations in the petition, motion, or summons.

(c) *Amendment of Written Pleading.* Except as hereinafter provided, or as provided pursuant to §§ 16.1-129.2, 16.1-93 and 16.1-259, no amendment shall be made to any pleading after it is filed with the clerk, except by leave of court. Leave to amend a pleading shall be liberally granted in furtherance of the ends of justice. In granting leave to amend, the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper.
In delinquency, child in need of services, child in need of supervision, and status offense proceedings, the court may permit amendment of the written pleading at any time before adjudication, provided that the amendment does not change the nature or character of the matter alleged. If the amendment is made after the respondent pleads or is made after any evidence is heard, the amended pleading shall be read to him and he shall be allowed to change his plea. If the court finds that the amendment operates as a surprise to the respondent, it shall upon request grant a continuance for a reasonable time.

(d) *Bill of Particulars.* The court may direct the filing of a bill of particulars at any time before trial.

(e) *Copies of Pleadings to be Furnished*. Except as provided in subdivision (f) of this Rule, all pleadings not otherwise required to be served shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing. At the foot of such pleadings shall be appended either acceptances of service or a certificate that copies were served as this Rule requires, showing the date of delivery, dispatching, transmitting or mailing.

(f) *Electronic Filing*. In any juvenile and domestic relations district court which has established an electronic filing system pursuant to Rule 1:17:

(1) Any proceeding may be designated as an Electronically Filed Case upon consent of all parties in the case.

(2) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other instruments in an Electronically Filed Case shall be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.

(i) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(e)(5).

(ii) Any contract or deed.

(iii) Any prenuptial agreement or written settlement agreement, including any property settlement agreement.

(iv) Any check or other negotiable instrument.

(v) Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.

(vi) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.

(vii) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF THE SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT

Rule 8:8A. Filing Documents Electronically.

(a) Upon consultation with the Committee on District Courts, the Executive Secretary of the Supreme Court may authorize a state agency to file electronically any pleadings, motions, briefs and any other documents in the juvenile and domestic relations district courts, except where otherwise expressly provided by statute or the Rules of Court, or where the court orders otherwise in an individual case for good cause shown.

(b) The definitions set forth in Rule 1:17(b) shall be applicable, with the exception of the definition for "Electronically Filed Case."

(c) Where applicable, the system operational standards for any electronic system developed to enable a state agency to file documents electronically pursuant to this Rule shall be in accordance with Rule 1:17(c).

(d) With respect to a person's signature on a document, or where a document is to be notarized, sworn, attested, verified or otherwise certified or if any sworn signatures, stamps, seals or other authentications relating to the document are required by any statute or Rule, the provisions of Rule 1:17(e)(5) and (6) shall be applicable.

Promulgated by Order dated March 1, 2016; effective immediately.

Rule 8:9. Discretion of Court.

All steps and procedures in the clerk's office touching the filing of pleadings and the maturing of suits or actions may be reviewed and corrected by the court.

The time allowed for filing pleadings may be extended by the court in its discretion, and such extension may be granted although the time fixed already has expired.

Rule 8:10. Motions to Transfer Venue.

A motion to transfer venue shall be made in writing or in court with the parties present. When a written motion is filed, it shall be set for hearing, and the motion and notice of hearing shall be served on all other parties or on counsel of record, if any.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:11. Reporters and Transcripts of Proceedings in Court.

Any party shall have the right to have a court reporter present to take down or record the proceedings. In all proceedings not open to the public it shall be within the sound discretion of the judge as to whether a court reporter may take down or record the proceedings on behalf of a person not a party. In all other proceedings, any person not a party may bring a court reporter to take down the proceedings. Court reporters, when present, shall be first duly sworn to take down and transcribe the proceedings faithfully and accurately to the best of their ability and shall be subject to the control and discipline of the judge.

In proceedings open to the public, when a court reporter is present and takes down or records the proceeding, any interested person shall be entitled to obtain a transcript, unless the court records remain confidential pursuant to § 16.1-305. In proceedings not open to the public, when a court reporter is present and takes down or records the proceeding, a party shall be entitled to obtain a transcript without prior court order, but the court may limit the circulation of the transcript by a party. In such proceedings not open to the public, other than (i) proceedings closed for good cause pursuant to subsection C of § 16.1-302 and which result in an adjudication of delinquency of a juvenile, who was fourteen years or older at the time of the offense, on the basis of an act which would be a felony if committed by an adult or (ii) proceedings resulting in a subsequent adjudication of delinquency as described in subsection B1 of § 16.1-305, all other interested persons shall only be entitled to a transcript by order of court which shall state for whom such transcript shall be prepared and what restrictions, if any, are imposed on the use and distribution of the transcript, its contents or any part. In delinquency proceedings which are closed for good cause pursuant to subsection C of § 16.1-302 and which result in an adjudication of delinquency of a juvenile, who was fourteen years or older at the time of the offense, on the basis of an act which would be a felony if committed by an adult, when a court reporter is present and takes down or records the proceeding, any interested person shall be entitled to a transcript, except for those transcripts or portions of transcripts which the judge has ordered shall remain confidential pursuant to subsection B1 of § 16.1-305. In proceedings resulting in an adjudication of delinquency which is subsequent to a prior adjudication of delinquency of a juvenile who was fourteen years or older at the time of the prior offense and whose prior adjudication was on the basis of an act which would be a felony if committed by an adult, when a court reporter is present and takes down or records the proceeding, any interested person shall be entitled to obtain a transcript, except for those transcripts or portions of transcripts which the judge has ordered shall remain confidential pursuant to subsection B1 of § 16.1-305.

The proceedings may be taken down by means of any recording device approved by the court.

Rule 8:12. Preservation of the Record.

A court may authorize the use of electronic or photographic means for the preservation of the record or parts thereof.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:13. Requests for Subpoenas for Witnesses and Records.

(a) *Subpoenas for Witnesses.*

(1) Requests for subpoenas for witnesses should be filed at least ten days prior to hearing.

(2) Requests for subpoenas for witnesses not timely filed should not be honored except when authorized by the court for good cause.

(b) *Subpoenas Duces Tecum.*

(1) Requests for subpoenas duces tecum should be filed at least 15 days prior to hearing.

(2) Requests for subpoenas duces tecum not timely filed should not be honored except when authorized by a judge for good cause.

(c) *Meaning of Filed.* The term "filed" as used in this Rule means received in the appropriate clerk's office or by an appropriate magistrate.

(d) *Copies of Requests for Subpoenas Duces Tecum.* All requests for subpoenas duces tecum shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing. At the foot of such requests shall be appended either acceptance of service or a certificate that copies were served as this Rule requires, showing the date of delivery, dispatching, transmitting or mailing.

(e) *Exception.* This Rule does not apply to subpoenas for witnesses and subpoenas duces tecum issued by attorneys in civil cases as authorized by Virginia Code §§ 8.01-407 and 16.1-265.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:14. Continuances.

(a) *Continuance Granted for Good Cause.* Continuances should not be granted except by, and at the discretion of, a judge for good cause shown, or unless otherwise provided by law. The judge may, by order, delegate to the clerk the power to grant continuances consented to by all parties under such circumstances as are set forth in the order. Such an order of delegation should be reasonably disseminated and posted so as to inform the bar and the general public.

(b) *All Parties Agree to Continuance.* If all parties to a proceeding agree to seek a continuance, the request may be made orally by one party as long as that party certifies to the judge that all other parties know of the request and concur. Such a request should be made as far in advance of the scheduled hearing or trial as is practicable. If granted, the moving party shall be responsible for assuring that notice of the continuance is given to all subpoenaed witnesses and that they are provided with the new court date. This obligation may be met by (i) an agreement between the parties that each side will notify its own witnesses; or (ii) any other arrangement that is reasonably calculated to get prompt notice to all witnesses.

(c) *All Parties Do Not Agree to Continuance.* If a request for continuance is not agreed to by all parties to a proceeding, such request should be made to the court prior to the time originally scheduled for the hearing or trial. If the court determines that a hearing on the request should be conducted prior to the time originally scheduled for the trial, all parties shall be given notice of such hearing by the requesting party.

(d) *Continuances Requested at the Time of Hearing.* Where a request for a continuance has not been made prior to the hearing or trial and other parties or witnesses are present and prepared for trial, a continuance should be granted only upon a showing that to proceed with the trial would not be in the best interest of justice.

(e) *Parties.* For purposes of this Rule, the term "parties" shall mean all plaintiffs, petitioners, the prosecution, defendants, respondents and any person who is the subject of the proceeding.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:15. Discovery.

(a) *Adult Criminal Case.* In any cases involving adults charged with crime, the provisions of Rule 7C:5 shall govern discovery.

(b) *Juvenile Delinquency Cases.* In juvenile delinquency cases, when the juvenile is charged with an act that would be a felony if committed by an adult, or in a transfer hearing or a preliminary hearing to certify charges pursuant to § 16.1-269.1, the court shall, upon motion timely made by the juvenile or the Commonwealth's Attorney, and for good cause, enter such orders in aid of discovery and inspection of evidence as provided under Rule 3A:11.

In juvenile delinquency cases when the juvenile is charged with an act that would be a misdemeanor if committed by an adult, the court shall, upon motion timely made and for good cause, enter such orders for discovery as provided under Rule 7C:5.

(c) *Other Cases.* In all other proceedings, the court may, upon motion timely made and for good cause, enter such orders in aid of discovery and inspection of evidence as permitted under Part Four of the Rules, except that no depositions may be taken.

(d) In proceedings concerning civil support, the judge may require parties to file a statement of gross income together with documentation in support of the statement.

Rule 8:16. Arraignment in Juvenile Delinquency Cases.

Arraignment in a delinquency proceeding shall consist of reading to the juvenile the charge on which the juvenile will be tried and calling on the juvenile to plead thereto, and it shall be conducted in court. Arraignment may be waived by the juvenile in court, or by counsel.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:17. Notification and Waiver of Trial Rights of Parties.

Upon a juvenile's first appearance in court in a delinquency case, the juvenile shall be advised by the judge of the following trial rights: the right to counsel, to a public hearing, to the privilege against self-incrimination, to confront and cross-examine witnesses, to present evidence, and the right to appeal a final decision of the court. In determining whether a waiver of the right to counsel, of the right to a public hearing, and of the privilege against self-incrimination, is knowingly, voluntarily, and intelligently made, the court must find after a thorough inquiry that the juvenile is capable of making an intelligent and understanding decision in light of the child's age, mental condition, education, and experience, considering the nature and complexity of the case. Such waiver of trial rights shall be made orally in open court, and the waiver of the right to counsel shall also be reduced to writing, signed by the juvenile and filed with the court records of the case.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:18. Pleas.

(a) *Permissible Pleas by Child.* A child may admit the allegations of the petition or summons by pleading guilty, or the child may plead not guilty, nolo contendere, or enter no plea. If the child enters no plea, the court will proceed as if a denial were entered to the allegations of the petition or summons.

(b) *Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by a Juvenile.* The court shall not accept a plea of guilty or nolo contendere to a charge of delinquency by a child without first determining that the plea is made voluntarily with an understanding of the nature of the allegations in the petition or summons and the consequences of the plea, including that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(c) *Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by an Adult.* In any case involving an adult charged with a crime, the court shall not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

(d) Upon rejecting a plea agreement in any criminal or delinquency matter, a judge shall immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

Last amended July 1, 2014.

Rule 8:19. Endorsements of Orders.

Drafts of orders prepared by counsel of record shall be endorsed by all counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing to all counsel of record who have not endorsed them. Compliance with this Rule may be modified or dispensed with by the court in its discretion. In an Electronically Filed Case, endorsement and specification of any objections to the draft order shall be accomplished as provided in Rule 1:17.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:20. Appeals.

All appeals shall be noted in writing. An appeal is noted only upon timely receipt in the clerk's office of the writing. An appeal may be noted by a party or by the attorney for such party.

Rule 8:21. Violations of Court Orders.

Rule stricken by Order dated March 1, 2011; effective May 2, 2011.

Rule 8:22. Judicial Consent.

In any instance where the court is called upon in an emergency situation to give judicial consent as provided for by statute, the request and court consent may be oral, but a written request shall be filed in the clerk's office within five days of such consent, and the consent of the court shall also be reduced to a written order as soon as reasonably possible.

RULES OF SUPREME COURT OF VIRGINIA
PART NINE
JUDICIAL PERFORMANCE EVALUATION PROGRAM

Rule 9:1. Purpose and Operation.

As provided by § 17.1-100 of the Code of Virginia, the Supreme Court of Virginia hereby establishes a judicial performance evaluation program that will provide both a self-improvement mechanism for judges and a source of information for the reelection process. The Program shall be maintained by the Office of the Executive Secretary who may engage a third party contractor to conduct surveys and prepare evaluations.

Promulgated by Order dated October 31, 2014; effective immediately.

RULES OF SUPREME COURT OF VIRGINIA
PART NINE
JUDICIAL PERFORMANCE EVALUATION PROGRAM

Rule 9:2. Confidentiality.

All surveys, responses, evaluations, and other records created or maintained by or on behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge are confidential and may only be shared with the subject judge, or a facilitator judge assigned by the program to assist with the evaluation, and shall not be disclosed to any third party; except that any report provided to the General Assembly pursuant to this section shall be a public record that is open to inspection as provided in § 17.1-100.

Promulgated by Order dated October 31, 2014; effective immediately.

RULES OF SUPREME COURT OF VIRGINIA
PART TEN
PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER

Rule 10. Provision of Legal Services Following Determination of Major Disaster.

(a) *Determination of existence of major disaster.* -- Solely for purposes of this Rule, the Chief Justice of this Court shall determine when, as a result of a major disaster, an emergency affecting the justice system has occurred in:

(1) this jurisdiction and, if so, whether that emergency affects the entirety or only a part of this jurisdiction, or

(2) another jurisdiction, but only if such a determination and its geographical scope have previously been made by the highest court of that jurisdiction.

(b) *Temporary practice in this jurisdiction following major disaster.* -- Following a determination, pursuant to paragraph (a) of this Rule, of an emergency affecting the justice system in this jurisdiction that warrants the assistance of lawyers from outside this jurisdiction, or a determination by the Chief Justice that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of *pro bono* services and the assistance of lawyers from outside of this jurisdiction is warranted to help provide such assistance, a Foreign Lawyer may provide *pro bono* legal services in this jurisdiction on a temporary basis. Those legal services shall be assigned and supervised through an established bar association *pro bono* program, not-for-profit bar association, an approved legal assistance organization, a public defender's office, or through any organization(s) specifically designated by the Chief Justice.

(c) *Temporary practice in this jurisdiction following major disaster in another jurisdiction.* -- Following the determination of a major disaster pursuant to (a)(2), a Foreign Lawyer who is authorized to practice law and who principally practices in the geographic area of the other jurisdiction determined to be affected may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or geographic area of that jurisdiction, where the major disaster occurred.

(d) *Duration of authority for temporary practice.* -- The authority to practice law in this jurisdiction granted by paragraphs (b) and (c) of this Rule shall end when the Chief Justice determines that the conditions caused by the major disaster in this or another affected jurisdiction have ended, except that a lawyer then representing clients in this jurisdiction pursuant to paragraphs (b) or (c) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation. However, the lawyer shall not accept new clients or new unrelated matters for an existing client after the Chief Justice has determined that the conditions caused by the major disaster have ended.

(e) *Court appearances.* -- The authority granted by this Rule does not include appearances in court except:

(1) pursuant to a court's *pro hac vice* admission rule; or

(2) if the Chief Justice, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b).

When authority to appear in any court is granted under either paragraph (e)(1) or (e)(2), any *pro hac vice* admission fees shall be waived.

(f) *Disciplinary authority and registration requirement.* -- Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the *Rules of Professional Conduct* of this jurisdiction as provided in Rule 8.5 of the *Rules of Professional Conduct.* Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

(g) *Notification to clients.* -- Foreign Lawyers who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limitations of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

(h) *Definitions*. -- For purposes of this rule:

(1) "Foreign Lawyer" is a person with an active and unrestricted license to practice law issued by the bar or highest court of any State or Territory of the United States or the District of Columbia, but neither licensed by the Supreme Court of Virginia or authorized under its rules to practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice.

(2) "*Pro bono*" means that legal services are provided without compensation, expectation of compensation, or other direct or indirect pecuniary gain to the lawyer.

Comment

[1] A major disaster, including, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency, or an event caused by terrorists or acts of war, in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services. This emergency may continue for a sustained period of time, interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to

continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a *pro bono* basis through entities authorized by this Rule.

[2] Under paragraph (a)(1), the Chief Justice shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this Rule. The Chief Justice may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event.

[3] Restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability status, or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this Rule. Foreign Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis pursuant to Part 6 § I (C) of the Rules of the Supreme Court of Virginia and Rule 5.5(d)(4)of the Rules of Professional Conduct.

[4] Under paragraph (c), the phrase "arise out of and reasonably related to" requires that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors evidence such a relationship. The Foreign Lawyer's client may have been previously represented by the Foreign Lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the Foreign Lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the Foreign Lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Foreign Lawyer in assessing the relative merits of each. In addition, the services may draw on the Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[5-7] *ABA Model Rule* comments not adopted.

Promulgated by Order dated October 30, 2015; effective January 1, 2016.

RULES OF SUPREME COURT OF VIRGINIA
PART TEN
THE SUPREME COURT
APPENDIX OF FORMS

Form 1. Registration Statement For Lawyer Engaging In Temporary Practice Following Determination Of Major Disaster.

IN THE SUPREME COURT OF VIRGINIA

REGISTRATION STATEMENT FOR LAWYER ENGAGING IN TEMPORARY PRACTICE FOLLOWING DETERMINATION OF MAJOR DISASTER

Pursuant to Virginia Supreme Court Rule 10(f), the undersigned shall complete the following and file it with the **Clerk of the Supreme Court of Virginia, 100 North 9th Street, 5th Floor, Richmond, Virginia 23219 <u>within 30 days of the commencement of the provision of legal services</u>. The attorney's oath must be administered by a <u>Judge or Justice of a court of record</u>.**

1. Name

Lawyer's full name.

_____

Name of lawyer's firm.

_____

2. Home State Information

Lawyer's residential address in home state.

_____

Lawyer's business address in home state.

_____

Lawyer's telephone number in home state.

_____

Lawyer's e-mail address.

_____

3. Virginia Information

Lawyer's residential address in Virginia.

_____

Lawyer's business address in Virginia.

_____

Lawyer's telephone number in Virginia.

_____

Lawyer's e-mail address.

_____

4. Bar admission

List the courts before which you have been admitted to practice, the respective periods of admission, and your registration or bar numbers.

_____

_____

_____

Is your license to practice currently subject to disbarment, suspension, or restrictions in any jurisdiction?

[ ] Yes [ ] No

If yes, explain the proceedings on a separate page and attach copies of all related documents.

5. Temporary Practice Following Determination of Major Disaster

(Check all that apply)

Specify whether you will engage in temporary practice pursuant to:

[ ] Virginia Supreme Court Rule 10(b) (pro bono legal services)

[ ] Virginia Supreme Court Rule 10(c) (legal services reasonably related to lawyer's practice of law in jurisdiction or area where the disaster occurred)

I agree that I am subject to the disciplinary authority of Virginia and the Virginia Rules of Professional Conduct, as set forth in Rule 8.5 of the Virginia Rules of Professional Conduct.

[ ] Yes [ ] No

ATTORNEY CERTIFICATION

I certify under penalty of perjury and pursuant to the laws of the Commonwealth of Virginia that the preceding is true and correct. I also certify under penalty of perjury that I have taken the required attorney oath and have attached the motion and oath documents, signed by the Judge or Justice of a court of record who administered the oath.

I certify under penalty of perjury and pursuant to the laws of the Commonwealth of Virginia that I am licensed and in good standing and authorized to practice law in each jurisdiction listed above and my license is not subject to suspension or restriction in any jurisdiction.

_____ _____

DATE SIGNATURE

Form 2. Motion And Oath For Temporary Admission After Major Disaster.

TEMPORARY ADMISSION
FOR FOREIGN LAWYERS
AFTER MAJOR DISASTER
(MOTION)

I WISH TO PRESENT _____,

A MEMBER OF THE BAR OF THE STATE OF _____

(OR THE DISTRICT OF COLUMBIA), WHO IS ELIGIBLE TO PRACTICE

LAW IN THE COMMONWEALTH OF VIRGINIA ON A TEMPORARY

BASIS PURSUANT TO RULE 10 OF THE RULES OF THE SUPREME

COURT OF VIRGINIA AND THE DETERMINATION BY THE CHIEF

JUSTICE THAT A MAJOR DISASTER AFFECTING THE JUSTICE

SYSTEM HAS OCCURRED. I NOW MOVE HIS/HER TEMPORARY

ADMISSION AS COUNSEL, PURSUANT TO RULE 10, TO THE BAR OF

THE SUPREME COURT OF VIRGINIA.

_____
Signature of Sponsor

_____ #_____
Printed Name of Sponsor and Virginia Bar Number

_____
Signature of Judge Administering Oath

_____
Printed Name of Judge Administering Oath

_____ _____
Name of Court Date

I do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the Commonwealth of Virginia, and that I will faithfully, honestly, professionally, and courteously demean myself in the practice of law and execute my office of attorney at law to the best of my ability, so help me God.

(Print Full Name) _____

(Signature) _____

(Address) _____

(Phone) _____

Sponsor's Name and Virginia bar number:

_____ # _____

RULES OF THE SUPREME COURT OF VIRGINIA
PART ELEVEN
ACCESS TO JUDICIAL RECORDS

Rule 11:1. Scope.

(a) Public access to records of the Virginia Judiciary, including records of judicial officers, is governed by this Part Eleven. The purpose of this Part Eleven is to provide the public with reasonable access to records of the judicial branch of government. At the same time, in order to protect privacy, confidentiality, the administration of justice, and the best interests of the Commonwealth, public access to some judicial records may be restricted in accordance with this Part Eleven or other provisions of law. In addition, this Part Eleven is intended to provide direction to judicial officers and court personnel in responding to public records requests.

(b) This Part shall apply to records of judicial officers and administrative records. This Part shall not apply to case records, including the records maintained by the clerks of the courts of record, as defined in Virginia Code § 1-212, and courts not of record, as defined in Virginia Code § 16.1-69.5. Such records are open to inspection as provided for in Titles 16.1 and 17.1 of the Code of Virginia, subject to any prohibitions or restrictions of any applicable law or court order.

(c) The provisions of this Part Eleven shall apply regardless of where and in what format the record is created or maintained.

Promulgated by Order dated April 18, 2019; effective June 17, 2019.

RULES OF THE SUPREME COURT OF VIRGINIA
PART ELEVEN
ACCESS TO JUDICIAL RECORDS

Rule 11:2. Definitions.

As used in this Part Eleven:

(a) "Administrative record" means any document, information, data, or other item created, collected, received, or maintained by the Virginia Judiciary pertaining to the administration of the judicial branch of government and not associated with any particular case.

(b) "Case record" means any document, information, data, or other item created, collected, received, or maintained by clerks of court in connection with a particular case, including the information and records in a case management system, or online case information system, maintained by the Office of the Executive Secretary of the Supreme Court of Virginia.

(c) "Court personnel," for purposes of these Rules, means all persons employed by (i) the Office of the Executive Secretary of the Supreme Court of Virginia; (ii) a court of record, as defined in Virginia Code § 1-212, except for the clerks of those courts and their employees; (iii) a court not of record, as defined in Virginia Code § 16.1-69.5, except for the clerks of those courts and their employees; and (iv) all other persons working under the supervision of any judicial officer, judge or justice of any Virginia court.

(d) "Judicial officer" means any justice, judge, or magistrate, including active, retired and senior justices and judges of any court of record, as defined in Va. Code § 1-212, and any court not of record, as defined in Va. Code § 16.1-69.5, substitute judges appointed pursuant to Va. Code § 16.1-69.9:1, special justices appointed pursuant to Va. Code § 37.2-803, judges pro tempore authorized under Va. Code § 17.1-109, Commissioners in Chancery appointed pursuant to Va. Code § 8.01-607, and Commissioners of Accounts appointed pursuant to Va. Code § 64.2-1200.

(e) "Sealed" means access to the record is restricted to the judge, court personnel as required to perform their official duties, and persons authorized by law or written order of the court.

(f) "Virginia Judiciary" includes all judicial officers, the Office of the Executive Secretary of the Supreme Court of Virginia, all district courts, all circuit courts, the Court of Appeals of Virginia, the Supreme Court of Virginia, the State Law Library, the Judicial Conference of Virginia, the Judicial Conference of Virginia for District Courts, the Judicial Council, the Committee on District Courts, and all work groups, advisory committees, commissions and any other committees or subcommittees of any of these entities. For purposes of these Rules, "Virginia Judiciary" shall not include the clerks of the courts of record, as defined in Virginia Code § 1-212, and clerks of the courts not of record, as defined in Virginia Code § 16.1-69.5.

Promulgated by Order dated April 18, 2019; effective June 17, 2019.

RULES OF THE SUPREME COURT OF VIRGINIA
PART ELEVEN
ACCESS TO JUDICIAL RECORDS

Rule 11:3. Records of Judicial Officers.

(a) In order to protect the administration of justice, the deliberative process, and the privacy and safety interests of judicial officers, court personnel, jurors, and the public, records of judicial officers are not publicly accessible.

(b) Records of judicial officers include, but are not limited to (i) memoranda, notes, or drafts prepared by or under the direction of any judicial officer that relate to the adjudication, resolution, or disposition of any past, present, or future case, controversy, or legal issue; (ii) legal research and analysis prepared or circulated by judicial officers or court personnel; (iii) written communications or discussions relating to procedural, administrative, or legal issues that have or may come before any judicial officer; (iv) information entered into and maintained in an electronic system used to create and issue judicial process; (v) subject to applicable state and federal laws and policies, personnel information concerning identifiable individuals; (vi) telephone numbers, telephone records and email addresses for justices and judges; (vii) documents or information that would compromise the safety of judicial officers, court personnel, jurors, or the public, or jeopardize the integrity of judicial facilities or any information technology or recordkeeping systems; (viii) communications among court personnel and judicial officers, and communications among judicial officers; (ix) legal documents created or received by magistrates that have not been filed with the appropriate clerk of court; and (x) records, documents, information, data or other items that are sealed, confidential, privileged, or otherwise protected by federal or state law, common law, court rule, or court order.

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RULES OF THE SUPREME COURT OF VIRGINIA
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Rule 11:4. Records of the Office of the Executive Secretary.

(a) Except as otherwise provided by law or by this Part Eleven, administrative records maintained by the Office of the Executive Secretary of the Supreme Court of Virginia shall be publicly accessible. Copies of administrative records may be requested as provided in Rule 11:5, and may include: (i) financial records, including but not limited to travel expense vouchers, purchase orders, and records of payments to court-appointed attorneys, guardians *ad litem*, and experts; (ii) statistical information derived from the aggregation of a subset of individual case records; (iii) policies other than those determined to be confidential pursuant to subsection (b)(ii) of this Rule; and (iv) court forms. Such records are to be provided in a format approved by the Executive Secretary.

(b) In order to protect the administration of justice, the deliberative process, and the privacy and safety interests of judicial officers, court personnel, jurors, and the public, the following administrative records maintained by the Office of the Executive Secretary shall not be publicly accessible: (i) legal research, analysis and work product of any attorney, law clerk, or intern working for any person or entity within the Virginia Judiciary; (ii) records or information collected, notes, correspondence, memoranda, drafts, and work product generated in the process of developing policies or providing guidance relating to the operation of the Virginia Judiciary, and all policies determined to be confidential by the Executive Secretary in consultation with the Chief Justice of the Supreme Court of Virginia; (iii) preliminary and draft versions of reports, documents, records, evaluations, investigations, and audits or compliance reviews, including materials prepared by a consultant; (iv) written communications among court personnel, including those maintained either in the Office of the Executive Secretary, or in chambers or offices of judicial officers; (v) subject to applicable state and federal laws and policies, personnel information concerning identifiable individuals; (vi) telephone numbers, telephone records or email addresses for justices and judges; (vii) infrastructure records that expose vulnerability in security of critical systems, including building security, personnel, recordkeeping, information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems; (viii) training materials, test questions, scoring keys, examination data, and other materials used for employment or certification purposes; (ix) test scores of a person if the person is identified by name and has not consented to the release of his or her scores; (x) information created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § 17.1-100; (xi) records, documents, information, data, or other items that are sealed, confidential, privileged, or otherwise protected from disclosure by federal or state law, common law, court rule, or order.

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RULES OF THE SUPREME COURT OF VIRGINIA
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Rule 11:5. Procedure for Public Access to Records of the Office of the Executive Secretary.

(a) All requests for publicly accessible records maintained by the Office of the Executive Secretary of the Supreme Court of Virginia shall be in writing and shall describe with reasonable specificity the record(s) requested. All requests shall be addressed to: Office of the Executive Secretary, Attn. Director of Legislative and Public Relations, 100 N. 9th Street, Richmond, VA 23219. The Office of the Executive Secretary may require the requester to provide his or her name and legal address. The Office of the Executive Secretary shall respond, pursuant to this Rule, within five working days of receiving a written request.

(b) The Office of the Executive Secretary shall notify the requester if the requested records cannot be found or do not exist. If the Office of the Executive Secretary does not have custody or control of the record(s) requested, the requester shall be notified and furnished the name and contact information of the person or entity having custody of the records, if known. The Office of the Executive Secretary shall not be required to compile information or create a record if one does not exist.

(c) The Office of the Executive Secretary may assess reasonable charges not to exceed its actual costs incurred in accessing, duplicating, supplying, reviewing or searching for the requested records. All charges for the supplying of requested records shall be estimated in advance upon the request of the requester. Any charges shall be assessed at the hourly rate of the person(s) engaged in any work necessary to respond to a request for records, even if no records are found. If the Office of the Executive Secretary determines in advance that charges for producing the requested records are likely to exceed $200, it may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. Such deposit shall be credited toward the final cost of supplying the requested records. If the final charge exceeds the amount of the deposit, the difference shall be charged to the requester, and if the final charge is less than the amount of the deposit, the difference shall be refunded to the requester.

(d) A response denying, in whole or in part, production of the requested records, shall be in writing and shall include a statement of the specific reason for withholding of the records.

(e) If it is not practically possible to provide the requested records or to determine whether they are available within the five-working-day period, the response shall specify the conditions that make a response impossible. The Office of the Executive Secretary shall have an additional seven working days in which to provide a response.

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RULES OF THE SUPREME COURT OF VIRGINIA
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Rule 11:6. Access to Records of Other Entities of the Virginia Judiciary.

(a) Except as otherwise provided by law or court order, records that have been submitted to or approved by the Committee on District Courts, the Judicial Conference of Virginia for District Courts, the Judicial Council, and the Judicial Conference of Virginia, shall be publicly accessible, with the exception of records related to matters discussed in closed sessions. All other records of these judicial policy-making bodies shall be governed by Rule 11:6(b).

(b) Except as otherwise provided under these Rules, records of all work groups, conferences, advisory committees, and commissions established or chaired by the Chief Justice or the Executive Secretary shall not be publicly accessible absent a contrary determination by the Chief Justice.

(c) The Chief Justice may authorize the public release of any final report or recommendations submitted to the Supreme Court by any work group, conference, advisory committee, commission, or judicial policy-making body described in subsections (a) and (b) of this Rule 11:6.

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RULES OF THE SUPREME COURT OF VIRGINIA
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Rule 11:7. Reconsideration of Denial of Public Access to Records of the Office of the Executive Secretary.

(a) A request for reconsideration of a decision denying public access to a record maintained by the Office of the Executive Secretary of the Supreme Court of Virginia may be made to the Executive Secretary of the Supreme Court of Virginia. Such request shall be made in the form of a detailed letter, within 30 days from the date of the letter denying access. Failure to submit a request for reconsideration on or before the 30-day deadline shall result in denial of the request for reconsideration.

(b) If the Executive Secretary sustains the decision denying public access, a request for reconsideration may be made to the Chief Justice for three Justices of the Supreme Court of Virginia to review the matter. The request shall be made in the form of a letter to the Clerk of the Supreme Court of Virginia, within 10 days from the date of the Executive Secretary's letter denying access. Failure to submit a request for reconsideration on or before the 10-day deadline shall result in denial of the request for reconsideration.

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RULES OF THE SUPREME COURT OF VIRGINIA
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Rule 11:8. Reconsideration of Denial of Public Access to Records of Judicial Officers or Other Entities of the Virginia Judiciary.

A request for reconsideration of a decision denying public access to a record of a judicial officer or other entities of the Virginia Judiciary may be made to the Chief Justice for three Justices of the Supreme Court of Virginia to review the matter. Such request shall be made in the form of a letter to the Clerk of the Supreme Court of Virginia, within 30 days from the date of the letter denying access. Failure to submit a request for reconsideration on or before the 30-day deadline shall result in denial of the request for reconsideration.

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