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SUPREME COURT OF VIRGINIA



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Supreme Court of Virginia Press Release

Media Contact: Patricia L. Harrington, Clerk

Release Date: April 20, 2015

THE SUPREME COURT OF VIRGINIA REQUESTS PUBLIC COMMENT ON RULE REGARDING STATE CORPORATION COMMISSION APPEALS

RICHMOND - The Supreme Court of Virginia is considering modifying Rule 5:21(a) concerning appeals of right from the State Corporation Commission and is requesting comments on the proposed changes. The rule below shows additions to the current rule in bold. The proposed deletions to the current rule are indicated with a strike through line.

Comments on the proposed Rules must be received by **June 15, 2015** and must be forwarded to:

Patricia L. Harrington, Clerk
Supreme Court of Virginia
100 North Ninth Street
5th Floor
Richmond, VA 23219

OR via email with the subject line "comment on SCC rule" to:

scvclerk@courts.state.va.us

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 ~~this Rule 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 ~~or by counsel~~ 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. ~~Initially, the parties to an appeal from an order in a proceeding shall be the parties to that proceeding, but the number of parties to an appeal may thereafter be limited as hereinafter provided.~~ 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. ~~, counsel files in the office of the clerk of the Commission a notice of appeal.~~ A copy of the notice of appeal shall be mailed or delivered to each party to the ~~appeal~~ **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 ~~petitions for~~ 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 ~~the~~ **a notice of appeal** is filed and shall, as soon as it has been certified by him, transmit ~~it~~ **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) Alignment of Parties. Within 21 days after the notice of appeal shall have been filed in the office of the clerk of the Commission, each party who has not filed a notice of appeal and who intends to participate in the appeal shall file in the office of the clerk of the Commission and shall mail to every other party a notice that he intends to participate as an appellant or as an appellee. Every party who seeks reversal or modification of the order appealed from shall be deemed an appellant, and every party who seeks affirmance of the order appealed from shall be deemed an appellee. Every party who does not file such a notice and every party who, having filed such a notice as an appellant, does not thereafter file a petition for appeal shall be deemed no longer to be a party to the appeal, and no further papers need be served on him. Notwithstanding the foregoing provisions, (i) a necessary party who does not file such a notice or petition for appeal shall be deemed an appellee, and (ii) the Commission need not file such a notice and shall be deemed an appellee.~~

(67) **Petition for Appeal. A party filing a notice of appeal shall file a petition for appeal,** ~~The petition(s) for appeal,~~ accompanied by the prescribed filing fee, ~~shall be filed in the office of the clerk of this Court within 4 months 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. Each party deemed to be an appellant shall file a petition for appeal, as limited hereafter, and shall, before the petition is filed, mail or deliver a copy to every other party to the appeal. 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 need only~~ **shall identify the order appealed from and the date of the order, with its date, contain a prayer that the appeal be granted, 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-ness date** of the order appealed from, it shall contain such statements of the facts and argument as shall be necessary for an understanding of the assignments of error. In that event, a

brief in opposition will be received and oral argument may be granted.

~~(8) Award of Appeal. When the notice of appeal, the record, and the petition(s) for appeal appear to 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.~~

(79) Assignments of Error. Within 10 days after the issuance by the clerk of this Court of the certificate pursuant to Rule 5:23, each party appellant shall file assignments of error in the office of the clerk of this Court and mail a copy thereof to every other party to the appeal. Under a heading entitled **The assignments of error shall be listed under a heading entitled "Assignments of Error."** The assignments of error shall be listed, 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 appear to 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.

~~(11) Additional Brief. An appellant who seeks relief different from that sought by another appellant may file an answering brief at the time prescribed for filing the brief of appellee.~~