

## VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on* Friday *the* 10th *day of* April, 2015.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective July 1, 2015.

Amend Rule 5:6 to read as follows:

### **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 11 inch 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 be in at least 14-point font, must use either Courier, Arial, or Verdana font, 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.

Amend Rule 5:26 to read as follows:

**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 [www.courts.state.va.us/online/vaces/resources/guidelines.pdf](http://www.courts.state.va.us/online/vaces/resources/guidelines.pdf). In addition, 10 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.

Amend Rule 5:32 to read as follows:

**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 [www.courts.state.va.us/online/vaces/resources/guidelines.pdf](http://www.courts.state.va.us/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 material in the appendix, then, in order to maintain the confidentiality of the materials, counsel must designate the sealed material 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 [www.courts.state.va.us/online/vaces/resources/guidelines.pdf](http://www.courts.state.va.us/online/vaces/resources/guidelines.pdf).



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Amend Rule 5A:4 to read as follows:

**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 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 style of the case (with the name of the 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 shall be placed on the front cover.

(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.

Amend Rule 5A:19 to read as follows:

**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 [www.courts.state.va.us/online/vaces/resources/guidelines.pdf](http://www.courts.state.va.us/online/vaces/resources/guidelines.pdf). In addition, four 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.

Amend Rule 5A:20 to read as follows:

**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.

Amend Rule 5A:21 to read as follows:

**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.

Amend Rule 5A:25 to read as follows:

**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 four 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. 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 [www.courts.state.va.us/online/vaces/resources/guidelines.pdf](http://www.courts.state.va.us/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. The appellant shall include in the appendix the parts thus designated, together with any additional parts he 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 [www.courts.state.va.us/online/vaces/resources/guidelines.pdf](http://www.courts.state.va.us/online/vaces/resources/guidelines.pdf).

A Copy,

Teste:

*John L. Hamington*

Clerk