

HOW TO REPRESENT YOURSELF IN THE COURT OF APPEALS OF VIRGINIA

This guide is for people who do not have a lawyer but want to appeal their case to the Court of Appeals of Virginia (called “pro se litigants”). It explains:

- What kinds of decisions you can appeal
- How to start an appeal
- What ground rules you must follow

Everyone, both lawyers and non-lawyers, must follow the [Rules of the Supreme Court of Virginia](#). This guide is not legal advice. You are encouraged to seek the [advice of a lawyer](#) for specific questions about your case.

The goal of this guide is to make the appellate process more accessible for those representing themselves in this court.¹ Appeals are full of legal technicalities, rules, and requirements. Even this guide will include unfamiliar legal terms. There are also common words that will have different legal meanings. Many words are defined in the [glossary at the end of this guide](#).

For more information, you can visit:

- [Wex](#), an online legal dictionary and encyclopedia
- [ABA Virginia Free Legal Answers](#)
- Any sites and resources listed in the [Guide to Virginia Legal Information Resources](#)
- Public law libraries

If you ask one of the many available generative artificial intelligence (“AI”) services online for assistance, you should not submit any brief, motion, or other writing drafted by using AI without checking it for accuracy. Certain AI programs may produce factually or legally incorrect information. Do not use AI unless you verify the accuracy and completeness of the information it generates. In addition, do not rely on AI-generated content as the only source of reference or assume the information produced is truthful, credible, or unbiased.

Most Virginia public law libraries offer computers, internet access, and printing services. Many of these libraries have copies of legal dictionaries, the Virginia state code (statutes or laws in Virginia; also referred to as the “Code of Virginia”), legal encyclopedias, and more. There is a [list](#) of Virginia law libraries and their addresses, phone numbers, and

¹ The Court of Appeals thanks the L. Douglas Wilder School of Government and Public Affairs at the Virginia Commonwealth University for providing valuable assistance during the formulation of this guide.

websites at the end of this guide. For more information about a particular library's resources, call or visit in person or their website.

The Court of Appeals clerk's office may also provide information that can be helpful in the handling of your case, but court staff cannot provide legal advice. Court of Appeals staff **may** provide:

- Information about the status of your case.
- Locations for all court-approved forms and written instructions.
- Information about the Court's oral argument schedule and where you can hear recordings of past hearings.
- Locations where scheduled hearings will be held.

Court of Appeals staff may **not** do any of the following:

- Provide legal advice.
- Recommend a specific course of action.
- Perform legal research for litigants.
- Interpret how the law would apply to a specific situation.
- Predict the outcome of a particular strategy or action.
- Compute deadlines specified by statute or court rules.
- Assist in completing any forms.
- Serve pleadings on opposing parties for you.

Contact and Operational Information

Clerk of the Court
Court of Appeals of Virginia
109 North Eighth Street
Richmond, VA 23219-2321
Phone: (804) 786-5651
Hours of Operation
Monday through Friday: 8:15 a.m. - 4:45 p.m.

Electronic Filing in the Court of Appeals

You can file all pleadings electronically in this court. You can also file electronic records in all cases. Pleadings and records are filed by uploading these documents into [VIRGINIA APPELLATE COURTS ELECTRONIC SYSTEM \(VACES\)](#), under the Rules of the Supreme Court of Virginia.

You must register before you can submit pleadings electronically (eFiling) and can do so at this link: [REGISTRATION FOR ATTORNEYS, FIRMS OR PRO SE LITIGANTS](#).

COURT OF APPEALS OF VIRGINIA: AN OVERVIEW

In Virginia, the Court of Appeals is the intermediary appellate court because it is the “middle” court. The Court of Appeals is between the circuit courts and the Supreme Court of Virginia.

The Court of Appeals reviews a circuit court’s final decision through “appellate review.” Then, most decisions from the Court of Appeals can be appealed to the Supreme Court of Virginia.

While this Court has the power of appellate review, it cannot choose cases to review by itself. One of the parties in the case must file a [Notice of Appeal](#) in the circuit court to trigger appellate review. The Notice of Appeal starts the appellate process.

Typically, once a Notice of Appeal is filed, a panel of three judges on the Court of Appeals will decide the case. However, you have to identify the issues and argue those issues in your brief (see below). Unlike the circuit court, the Court of Appeals only corrects errors that the circuit court made in the case. The Court of Appeals does not retry the case as new. In general, this Court only considers issues that the circuit court actually ruled on.

When the three-judge panel decides your appeal, the decision binds the lower court. Based on that ruling, the lower court may have to rehear your case based on the appellate decision. If the three-judge panel rules against you, you may file a petition for rehearing asking the panel to reconsider its decision. You can also ask the full court to reconsider the panel’s decision. Additionally, you can appeal the Court of Appeals’ decision to the Supreme Court of Virginia.

Overall, this guide will cover:

- ❖ [What You Can and Cannot Appeal](#)
- ❖ [Process for Filing an Appeal](#)
- ❖ [Briefing](#)
- ❖ [Oral Argument](#)
- ❖ [The Decision and What Happens Next](#)
- ❖ [Checklist for the Appellate Process](#)
- ❖ [Glossary](#)
- ❖ [List of Virginia Public Law Libraries](#)

AN OVERVIEW OF A TYPICAL APPEAL OF RIGHT

(Please consult [Part Five A of the Rules of the Supreme Court](#) for more information)

Phase 1: Filing an Appeal (See Rules [5A:6–5A:10A](#))

1. The circuit court enters a **final judgment**. A final judgment is a judgment that resolves the entire case.
2. A Notice of Appeal must be filed in the circuit court **within 30 days** after entry of the **final judgment**; the person appealing (“appellant”) must also pay a filing fee. (See [Rule 5A:6](#))
3. Transcripts or a written statement of facts must be filed in the circuit court **within 60 days** after entry of the **final judgment**. (See [Rule 5A:8](#))
4. **Within 90 days** after entry of the **final judgment**, the circuit court clerk will send the record to the Court of Appeals. (See Rules [5A:10](#) and [5A:10A](#))

Phase 2: Filing Briefs (See Rule [5A:19–5A:22](#))

1. **Within 15 days after the record is filed** in the Court of Appeals, the appellant must file the preliminary statement of assignments of error. (See [Rule 5A:19\(b\)\(1\)](#))
2. **Within 10 days after the appellant files preliminary assignments of error**, the appellee may file preliminary assignments of cross-error (if any). (See [Rule 5A:19\(b\)\(1\)](#))
3. **Within 40 days after the record is filed** in the Court of Appeals, the appellant must file the opening brief. (See [Rule 5A:19\(a\)/\(b\)\(2\)](#))
4. **Within 30 days after the opening brief is filed**, the appellee may file a brief and include in it any assignments of cross-error. (See [Rule 5A:19\(a\)/\(b\)\(3\)](#) and [Rule 5A:21](#))
5. **Within 14 days after the appellee’s brief is filed**, the appellant may file a reply brief. (See [Rule 5A:19\(a\)/\(b\)\(4\)](#) and [Rule 5A:22](#))
6. **Within 14 days of appellant filing the reply brief**, the appellee may file a reply brief in support of any assignments of cross-error if the appellant addresses appellee’s assignments of cross-error in the appellant reply brief. (See [Rule 5A:19\(a\)/\(b\)\(5\)](#) and [Rule 5A:22](#))

Phase 3: Oral Argument, Decision, and Rehearing (See Rule [5A:28–35](#))

- The Court will provide at least 15 days’ notice of oral argument. (See [Rule 5A:28\(a\)](#))
- Oral argument will be limited to 15 minutes per side. (See [Rule 5A:28\(b\)](#))
- Notice of the Court’s decision will be sent promptly once the case is decided. (See [Rule 5A:29](#))
- After the decision, a party may request that the Court of Appeals rehear the case. (See [Rule 5A:33](#), [Rule 5A:34](#), and [Rule 5A:35](#))

WHAT YOU CAN AND CANNOT APPEAL

If you are unsuccessful before the circuit court, you may appeal a final decision from that court to the Court of Appeals of Virginia.

You may also directly appeal decisions from the Virginia Workers' Compensation Commission. *See* [Code § 17.1-405](#). Only appeals from the full commission are ready for review. The Court does not review a decision of a deputy commissioner of the Workers' Compensation Commission.

If you are appealing a decision from a **general district court**, or a decision from a **Virginia agency**, such as the Board of Zoning Appeals, or the outcome of an employee **grievance hearing**, you cannot appeal those decisions directly to the Court of Appeals of Virginia. You must first appeal those decisions to the circuit court. Then, if you are unsuccessful before the circuit court, you can appeal to the Court of Appeals of Virginia.

Certain cases need to be appealed directly to the Supreme Court of Virginia. These cases include appeals from:

- The State Corporation Commission
- The Judicial Inquiry and Review Commission
- Attorney disciplinary proceedings
- Petitions for a writ of habeas corpus

See [Code § 17.1-406\(B\)](#).

Any actual innocence claim based solely on biological testing also must go directly to the Supreme Court.

What is a final judgment?

A final judgment is a decision that resolves the entire case. A final judgment could include a motion to dismiss ruling. It could also include a motion for summary judgment ruling if the circuit court's ruling dismissed or denied every claim in the case. But if there are multiple defendants or claims in the case, and the circuit court issues a ruling only dismissing one defendant or one claim from the case, that order is not final because there are more parts of the case to still resolve.

Please note, however, any circuit court's ruling on motions that relate to discovery, scheduling, or any interim order, is not final and cannot be appealed until the end of the case. There is a very narrow exception to this rule for "interlocutory appeals," as explained in [Code §§ 8.01-267.8, 8.01-675.5, and 19.2-398](#).

To **preserve** issues for appeal in Virginia, think TSC:

- Ensure objections are **timely, specific, and clearly stated** in the circuit court. If you failed to take these actions in the trial court, your appeal will likely fail.
- Be aware of the exceptions to this rule but understand that they are rarely applied.

This approach will help ensure that the Court of Appeals can review the issues that you wish to raise on appeal.

What is issue preservation?

You must “preserve your issue” to properly appeal. To preserve an issue, you must clearly state your objections when the circuit court makes the decision. Simply stating that the decision goes against the law and the evidence is not enough to preserve the issue. The Court of Appeals generally will not consider an argument that you raise for the first time on appeal.

You must make a timely and specific objection in the circuit court. This means that you need to state the grounds for your objection when the judge makes a ruling. This is so that the trial judge knows the issue and has an opportunity to address it.

The Court of Appeals is strict on this rule: they will not overturn a ruling unless you object with reasonable certainty at the time of the ruling. This allows the circuit court the opportunity to correct errors when they occur.

To comply with the preservation rule, you need to check that the circuit court record shows that you raised the issue before or during the relevant proceeding. It is your responsibility to make sure that the record contains your objection to show that you preserved the issue for appellate review. The record may include:

- a motion or other paper that you filed in circuit court where you objected to the issue, or
- a transcript showing you orally objected at a hearing.

If there is no transcript of the hearing, you will need to prepare a written statement of facts that summarizes what happened at the hearing where you preserved the issue. The judge will need to sign that statement.

EXCEPTIONS FOR WHEN AN ISSUE IS NOT PRESERVED

There are two exceptions that may allow you to raise the argument for the first time on appeal:

- The “good cause exception”
- The “ends of justice exception”

If you did not have the opportunity to raise the objection during trial, or there is a serious injustice that needs correction, then these exceptions might apply, but they are rarely successful. If you are not sure if the issue was preserved, you can argue to the Court of Appeals that if the issue was not preserved, these exceptions should apply.

Finally, even if the issue was not raised in the circuit court, you can always appeal whether the circuit court or Court of Appeals has subject matter jurisdiction.

Cases about the “ends of justice” exception: [Gheorghiu v. Commonwealth, 280 Va. 678, 689-90 \(2010\)](#); [Commonwealth v. Bass, 292 Va. 19, 28-32 \(2016\)](#)

KEY RULES AND CASES

[Rule 5A:18](#): This rule defines what issues are considered “preserved” during trial for later appeal.

[Rules 1:1\(b\)](#) and [1:1B](#): These rules describe and discuss final orders and partial final orders.

[Rule 5A:8\(c\)](#): This rule addresses what is required to have a valid written statement of facts.

Cases about how specific to make your argument for the appellate court to consider it preserved: [Townsend v. Commonwealth, 270 Va. 325, 332 \(2005\)](#); [Lash v. County of Henrico, 14 Va. App. 926, 929 \(1992\) \(en banc\)](#)

Case discussing whether a party has preserved an issue for appeal even if they have no opportunity to object to a ruling or order at the time it is made: [Jacks v. Commonwealth, 74 Va. App. 783, 792 \(2022\) \(en banc\)](#).

PROCESS FOR FILING AN APPEAL

Introduction

To start an appeal, you **must** file a Notice of Appeal with the **circuit court clerk** within **30 days** of when the circuit court enters the final order.

You should also provide the Court of Appeals with a copy of the Notice of Appeal you filed in the circuit court.

The Court of Appeals charges a \$50 filing fee, unless you qualify as indigent (unable to pay).

You likely qualify as indigent if you receive state or federal assistance, or meet the income guidelines in this [chart](#). You will have to file a notarized statement attesting to your financial status to qualify for waiving the fee. You can call the clerk's office for help with this process.

You must also file transcripts and other documents in the circuit court within **60 days** of when the circuit court enters the order you are appealing.

Appeals follow strict rules. Only certain issues can be raised, and your appeal brief must meet specific criteria for clarity and detail.

Filing a Notice of Appeal

If you want to challenge a judgment or an order, you must file a notice of appeal with the circuit court clerk in the county or city where the judgment or order was entered.

You **MUST** first file a Notice of Appeal in the circuit court, and then file a courtesy copy in the Court of Appeals.

Steps to Begin an Appeal

Step One: File a Notice of Appeal in the circuit court.

- Fill out a [Notice of Appeal form](#), which appears after [Rule 5A:6](#) and is available in a fillable form [online](#).
- File it in the circuit court **within 30 days** after the entry of the final judgment or other appealable order. A final judgment is considered “entered” on the date the judge signs the order (not necessarily on the date of the hearing).
- If the appeal depends on what happened at a hearing in the circuit court, check the box or state that you will file a transcript or a written statement instead. See [Rule 5A:6\(b\)](#) (“The Notice of Appeal must contain a statement whether any transcript or statement of facts, testimony and other incidents of the case will be filed.”).
- **How does the 30-day period work?**

- Example: If my final order was entered on April 1 (the date next to the judge's signature), day 1 of the 30-day time limit is April 2. The 30-day period expires on May 1.
 - If the final day falls on a weekend or holiday, the filing deadline moves to the next business day under [Code § 1-210\(B\)](#).
- Include a [certificate of service](#) with the Notice of Appeal, as required by [Rule 5A:6\(d\)](#).

Step Two: Pay the filing fee.

- File a courtesy copy of the Notice of Appeal in the Court of Appeals.
- The Court of Appeals collects a \$50 filing fee for each case. Pay by card, check, or money order to the Clerk of the Court of Appeals. See [Code § 17.1-418\(1\)](#).
- The clerk must receive the fee **within 10 days** of when the Court of Appeals gets a copy of your Notice of Appeal.
- **NOTE:** The filing fee may be waived if you submit a [qualifying affidavit of indigence](#) with your Notice of Appeal, or if the circuit court already declared you indigent. If you fail to pay on time (without an applicable waiver), your case will be dismissed.

Step Three: Make sure you have a record for the Court of Appeals to review.

- The record on appeal includes:
 - the original papers and exhibits filed in the circuit court,
 - each order entered by the circuit court,
 - any opinion or memorandum decision from the judge in the circuit court, and
 - a transcript of any relevant hearings or written statement about what happened in a hearing if there is no transcript.
- The appellant (person filing the appeal) must make sure that a transcript or written statement in lieu of a transcript is filed in the circuit court **no later than 60 days** after the circuit court enters the order being appealed. See [Rule 5A:8](#).
- **Within ten days** of filing the transcript, the appellant must notify the opponent, in writing, of the date it was filed. See [Rule 5A:8\(b\)](#).
- Then, the circuit court will transmit the record to the Court of Appeals. The Court of Appeals only considers materials in the record sent by the circuit court. You should NOT submit exhibits to the Court of Appeals directly.
- The clerk's office will send you a notice of when it has received the circuit court's record. The briefing schedule (see below) starts on the date the Court of Appeals received the record.

Step Four: Designate Assignments of Error.

- Assignments of error determine what the Court of Appeals may review on appeal. You **must** specifically state **why** the circuit court's ruling was wrong. These assignments of error are the same as what you put in your brief.
- You **must** file a preliminary statement of the assignments of error within **15 days** after the clerk's office of the Court of Appeals receives the circuit court record. See [Rule 5A:19](#). The clerk's office will send you a notice of when it has received the circuit court's record.

Step Five: File Your Opening Brief.

- An opening brief is what the appellant files with the Court of Appeals to explain the legal reasons why the circuit court erred.
- You **must** file your opening brief no later than 40 days after the Court of Appeals receives the record.
- Your brief **must** identify the errors the circuit court made in the trial. These are your assignments of error. The Court of Appeals may only review these errors on appeal. You must specifically state why the circuit court's ruling was wrong.
- If you are defending an appeal (the circuit court's decision), you are the appellee. You must file your appellee brief no later than 30 days after the appellant files their opening brief or after the record is received, whichever is later.
- The appellant may file a reply brief no later than 14 days after the appellee brief is filed.
- If the appellee assigns a cross-error in the appeal, the appellant's reply brief can address that cross-error. If that occurs, the appellee may file a brief in support of the cross-error with 14 days of the appellant's reply brief. See [Rule 5A:19](#).

[Click here for a flowchart showing relevant deadlines](#)

Mistakes to Avoid in Filing an Appeal

1. Failing to File a Notice of Appeal on Time: You must file your Notice of Appeal with the circuit court, and send a copy to the opposing party, no later than 30 days after the circuit court signs the final order in your case. *See* [Rule 5A:6](#).

- Unless the circuit court suspends or pauses its final order within 21 days of entering it, the 30 days start running when the circuit court signs the order. Day one of this 30-day period is the day after the order is signed. *See* [Rule 5A:3\(a\)](#), [5A:6\(a\)](#).
- A motion to reconsider must be filed in the circuit court within 21 days of the final order. *See* [Rule 1:1\(a\)](#).
- The 30-day period to file your Notice of Appeal continues to run even if you file a motion to reconsider the circuit court's judgment, unless the circuit court vacates or suspends the final order, **so do not miss the 30-day deadline to file a Notice of Appeal.**

2. Failing to File an Appeal Bond if Required: Only in a civil appeal. You must file an appeal bond of \$500 unless the circuit court finds you cannot afford to pay that amount. *See* [Code § 8.01-676.1](#). If so, you must file it in the circuit court when you file your Notice of Appeal. Failure to do so may result in dismissal of your appeal. *See* [Rule 5A:6\(a\)](#).

3. Failing to Make a Sufficient Record: The Court of Appeals can decide only the issues you raise based on the record of the circuit court proceedings below, and based on the items in that record.

- The record includes all the documents filed in the circuit court, evidence admitted at trial, and arguments recorded in a transcript of the trial. *See* [Rule 5A:7](#). You may not send items to the Court of Appeals that were not part of the record in the circuit court. Any documents must have been filed in the circuit court, whether or not admitted at trial. The clerk of the circuit court will transmit the record to the Court of Appeals. *See* [Rule 5A:10](#).
- If there was a court reporter for the hearings, you can order a transcript, and that transcript will become part of the record only if you file it with the circuit court within 60 days of the final judgment (you must also notify your opponent within 10 days of filing a transcript). *See* [Rules 5A:8\(a\) and \(b\)](#).
- If there was no court reporter, or if you do not want to pay for a transcript, you can file a *Written Statement in Lieu of a Transcript*, but there are strict rules that you must follow. *See* [Rule 5A:8\(c\)](#).
- You may ask for an extension of time to file your transcript but you must do so within 90 days of entry of final judgment. *See* [Rule 5A:8\(a\)](#).

4. Failing to Follow the Rules: Even as a non-lawyer, failing to follow these rules or failing to fix errors when the Court of Appeals directs you to may lead to your appeal being dismissed. For more information, *see* [Rules 5A:1A\(a\)](#), [5A:4\(c\)](#).

BRIEFING

A brief is a written document in which a party provides the legal arguments to support their position. Your brief is very important—the Court of Appeals will use it to evaluate your case. If you fail to file a brief, the Court of Appeals will not be able to consider your appeal, and your appeal may be dismissed.

Generally, there are three types of briefs that can be filed in a case: (1) opening briefs; (2) appellee briefs; and (3) reply briefs. There are major differences between the three, and each type is discussed in detail below.

Your brief should lay out your legal arguments in support of your position in a clear and concise manner. It should be properly formatted.

Your brief should not personally attack the opposing party, the opposing party's attorney, the judge, or court staff who made the decision below.

Make sure to carefully read the [Rules](#) and ensure your brief complies with them. Usually, the Court of Appeals will give you a second chance to fix errors in your brief, but a failure to follow the rules can result in your appeal being dismissed. If you need an extension of time to file your brief, you must file a motion with the Court of Appeals asking for more time within 10 days of when the original deadline expired. The motion should provide a good reason for the requested extension of time.

Formatting Requirements:

- Briefs must be on pages that are 8.5 x 11 inches in size, regardless of whether they are printed or electronic.
- The text of a brief must be double-spaced (except for quotations greater than 49 words, which can be single spaced), font size 14 point or larger, and in one of the fonts in [the font list on the Supreme Court of Virginia's website](#). See [Rule 5A:4\(a\)](#).
- Margins must be at least one inch on all four sides of each page.
- An opening brief or appellee brief can be up to 50 pages or 12,300 words, whichever is longer.
- A reply brief can be up to 20 pages or 3,500 words, whichever is longer.
- You may exceed the page or word count only if the Court of Appeals gives you permission to do so. See [Rule 5A:19\(a\)](#).

Type 1: Opening Briefs

The appellant must file the opening brief ([example](#) here). **The appellant must file the opening brief within 40 days of the day that the Court of Appeals receives the record from the clerk of the circuit court.** [Rule 5A:19\(b\)\(2\)](#). The Court of Appeals will notify you of the date it receives the circuit court record. The appellant is responsible for calculating the filing date of the opening brief. For example, if the Court of Appeals receives the circuit court record on April 1st, April 2nd is day one of the 40 days. If day 40 falls on a Saturday, Sunday, or a holiday, the due date will roll to the next business day.

An opening brief must contain:

- A table of contents, which outlines the sections of the brief.
- A table of authorities that includes all cases, statutes, and secondary sources referenced in the brief (listed in alphabetical order).
- A brief statement of the nature of the case and of the relevant proceedings in the circuit court, leaving out anything that does not relate to the assignments of error.
- A numbered list of the assignments of error, under a heading entitled “Assignments of Error.” Next to each error, you must cite an exact spot in the record where that assignment of error is preserved (usually by reference to the page number in the record).
 - This is very important. **You must list all the errors you think were made in the circuit court proceedings below AND cite to where your objections were preserved; the Court of Appeals will not consider any errors that were not listed and preserved in the circuit court.**
- A statement of facts.
- The standard of review (the legal standard the Court of Appeals should use in evaluating the error).
- The arguments related to each assignment of error.
- A short conclusion, indicating the relief you want the Court of Appeals to grant to you.
- Your signature at the bottom.
- A certificate of service, stating
 - (1) that the brief was served on opposing counsel,
 - (2) whether you would like to waive oral argument, and
 - (3) the total number of words in the brief (including headings, footnotes, and quotations, but not including the cover page, table of contents, table of authorities, signature blocks, and certificate). The certificate must be dated.

MISTAKES TO AVOID IN THE OPENING BRIEF

1. Failure to Name the Specific Rulings You Challenge:

When you file your opening brief, you must briefly state what rulings of the circuit court you are challenging, and why the circuit court’s ruling was wrong – these are called **assignments of error**.

- If your opening brief fails to include any assignments of error, your appeal may be dismissed. [Rule 5A:20\(c\)\(1\)](#).
- If your assignments of error do not address an error by the circuit court, your appeal may be dismissed. [Rule 5A:20\(c\)\(2\)](#)

2. Failure to Show Where You Preserved the Issues in the Circuit Court:

- You must cite to the record to show where your assignments of error were preserved during the proceedings below. If you do not, the Court of Appeals may not consider the assignment of error.
- If you are raising the argument for the first time on appeal because the issue was not preserved, you must argue that either the “ends of justice” or “good cause” exception applies, or the Court of Appeals cannot consider the issue. [Rule 5A:18](#).

3. Failure to State the Standard of Review:

You must tell the Court of Appeals what legal standard applies to determine if the circuit court made a mistake.

4. Failure to Adequately Develop an Argument:

If you fail to adequately explain your position on an issue, the Court of Appeals may treat that issue as waived. Likewise, if you fail to cite relevant cases or statutes as support for your argument, the Court of Appeals may treat that issue as waived.

5. Failure to Ask the Court to Take Action:

The Court of Appeals will only take action on issues that you raise. If you want relief from the circuit court’s decision, you must make a request specifically asking for it. For example, the circuit court erred in finding me guilty of grand larceny, that decision should be reversed and the charges dismissed.

6. Failure to File on Time: You must file the opening brief within 40 days of the day that the Court of Appeals receives the record from the clerk of the circuit court.

KEY RULE AND OPENING BRIEF TEMPLATE

[Rule 5A:20](#): This rule specifies what must be included in the opening brief to appeal a decision. In essence, it provides requirements that ensure appeals are clear, focused on specific legal issues, and properly documented with references to the trial record.

To help you meet this rule’s requirements, you can use [this model](#).

Type 2: Appellee Briefs

The appellee is the party who won in the circuit court and who will respond to the opening brief. The appellee can file an appellee’s brief to make that response, however, filing a brief is not required. If they choose to file the appellee’s brief, it must be filed **within 30 days after the appellant filed the opening brief, or within 30 days after the circuit court record is received in the Court of Appeals, whichever is later.** [Rule 5A:19](#).

An appellee brief must contain:

- A table of contents, which outlines the sections of the brief.
- A table of authorities, which includes all cases, statutes, and secondary sources referenced in the brief. The cases must be in alphabetical order.
- Appellee’s statement of the case, if the appellee disagrees with the statement provided by the opening brief.
- Any additional assignments of cross-error that you wish to present aside from those in the opening brief, with corresponding preservation citations.
- Appellee’s own statement of the facts, if necessary to correct or amplify the one provided in the opening brief.
- The standard of review (the legal standard the Court of Appeals should use).
- The arguments related to each assignment of error, including any new assignments of cross-error presented in the brief.
- A short conclusion, indicating the relief the appellee wants the Court of Appeals to grant.
- Appellee’s signature at the bottom.
- A certificate of service, stating
 - (1) that the brief was served on opposing counsel,
 - (2) whether appellee waives oral argument, and
 - (3) the total number of words in the brief (including headings, footnotes, and quotations, but not including the cover page, table of contents, table of authorities, signature blocks, and certificate). The certificate must be dated.

KEY RULE AND TEMPLATE

Rule 5A:21: This rule specifies what must be included in the appellee brief. To help you meet this rule’s requirements, you can use [this template](#).

Type 3: Reply Briefs

A reply brief is filed by the appellant in response to the appellee brief. It is not required, but if you do want to respond to assertions made in the appellee's brief, you would make those in this document. It must be filed **within 14 days of receiving the appellee brief**.

A reply brief must contain:

- Arguments in reply to the arguments presented in the appellee brief.
- A certificate of service, stating
 - (1) that the brief was served on opposing counsel,
 - (2) whether you would like to waive oral argument, and
 - (3) the total number of words in the brief (including headings, footnotes, and quotations, but not including the cover page, table of contents, table of authorities, signature blocks, and certificate). The certificate must be dated.

KEY RULE
<p>Rule 5A:22: This rule specifies what must be included in the reply brief.</p>

ORAL ARGUMENT

After the case is briefed, you may have the opportunity to orally present your argument in front of a three-judge panel. This is called an oral argument. These argument panels are scheduled at locations across the state. Some are at the Court of Appeals courtroom in Richmond while others are scheduled for predetermined locations. In some cases the Court may ask if the parties are agreeable to argue a case by videoconference (Microsoft Teams). If the appellee chose not to file a brief, then the appellee will not be permitted to argue. All hearings are open to the public.

Each side usually gets 15 minutes to speak. See [Rule 5A:28\(b\)](#).

If you are the appellant, you will argue first. You can decide to save some of your 15 minutes for a “rebuttal” argument to speak after the appellee presents their argument. Your rebuttal time is subtracted from your total 15-minute argument time. The presiding judge will ask the appellant at the beginning of oral argument if they would like to “reserve time for a rebuttal.” Most parties reserve rebuttal time ranging between 3 to 8 minutes.

You are not required to have an oral argument. You may choose to waive it. See [Rule 5A:28\(e\)](#). Even if you request oral argument, sometimes the Court of Appeals will decide that oral argument is not necessary under its rules and simply issue a decision in the case. If you would like to listen to the recording of your oral argument, or oral arguments from other cases, you can do so here: [Court of Appeals Oral Arguments \(vacourts.gov\)](http://vacourts.gov).

I. How Do I Prepare for Oral Argument?

About 15 to 30 days before the argument date, you will generally get a scheduling notice emailed to you telling you the date of the oral argument. See [Rule 5A:28\(A\)](#). If you do not have email, the Clerk’s Office will mail you a scheduling notice.

This notice will tell you:

- The date and time of your argument
- The location of the courtroom
- Any other important information you need

You should familiarize yourself with this scheduling notice. If you have a conflict with the day the argument is set for, you can email the court’s clerk and ask for the case to be continued to a different day. If you do not want to travel to make your argument in person, you can also ask for the argument to take place by videoconference. You should always ask the other party in the appeal if they agree with your request to continue the

argument, or to have the argument by videoconference, before you ask the court's clerk for a continuance. In your email to the clerk, you must include what the other party said about your request.

In addition to knowing the logistics of oral argument, you should prepare by studying the facts and the law surrounding your case.

II. What Should I Expect the Day of Oral Argument?

When you arrive, you will go through security checks and present a valid photo ID. Some courts allow cellphones and laptops in the courtroom; you must check the specific location's rules before you arrive to find out what is allowed. Please ensure that you arrive early enough to go through security clearance and find your courtroom.

After security, you will enter your assigned courtroom and sit until your case is called. Everyone in the courtroom, unless physically unable, must rise when the judges enter and remain standing until a judge invites everyone to be seated.

Similarly, when oral argument ends or the judges take a break, everyone stands until the judges leave the courtroom. The security personnel in the courtroom will signal to everyone when to stand.

When your case is called, you will approach the front of the courtroom where you will stand at a podium for your oral argument. Typically, when facing the judges, the appellant sits at the table on the right, and the appellee sits at the table on the left. There will be a timer at the podium that will help you to keep track of your time. Usually people say, "May it please the Court," and then introduce themselves before starting their argument.

MISTAKES TO AVOID IN ORAL ARGUMENT

1. Failure to Read the Scheduling Notice:

The scheduling notice will include detailed information about oral argument. If you still have questions, please contact the clerk's office.

2. Failure to Show Respect to the Judges and Other Party:

Always be respectful of the other party, the judges, and others in the courthouse. Refer to a judge as "Your Honor" or "Judge [last name]," and do not interrupt a judge. Stop your argument when your time ends unless the presiding judge tells you that you have more time.

3. Failure to Answer the Judge's Questions:

An oral argument is like a conversation. Answer questions directly, then explain your answer. Come prepared to talk about the law because the judges will already be familiar

THE DECISION AND WHAT HAPPENS NEXT

Once the Court of Appeals has decided your case, the clerk's office will notify you in writing of the decision via email. See [Rule 5A:29](#) ("Promptly after this Court has decided a case, the clerk of this Court must transmit a copy of the decision to all counsel of record"). The decision will either be in the form of an order or opinion of the Court.

If you do not have email, the written decision will be mailed to you.

If the Court of Appeals issues an opinion in your case, and it is published, you can also view the opinion on the Court's website, [here](#).

If the Court issued an unpublished opinion for your case, you may also view the opinion [here](#).

After a case is decided, the Court will enter an order, called a mandate, reflecting the Court's decision. [Code § 8.01-682](#) requires that the Court award to an appellee damages where the circuit court's judgment is affirmed. The mandate will include this damages award (if any).

Much like appealing the decision of the lower court, you can ask the Court to rehear (reconsider) by filing:

- (1) A petition for rehearing before the same three-judge panel (filed within 14 days of the panel's decision or order). See [Rules 5A:33](#); [5A:34](#); [5A:35](#).
- (2) A petition for rehearing en banc before the full Court of Appeals (filed within 14 days of the panel's decision or order). See [Rules 5A:33](#); [5A:34](#); [5A:35](#).

Finally, you can ask the Supreme Court of Virginia to consider your case by filing a Notice of Appeal in the Court of Appeals asking the Supreme Court to consider your case. That notice must be filed within 30 days of the Court of Appeals' decision or order you are seeking review of. *See* [Rule 5:14](#). The Supreme Court of Virginia has simultaneous filing requirements within that same 30-day period after the Court of Appeals of Virginia decision, so you should consult the rules of the Court and call the Supreme Court of Virginia Clerk's Office for further guidance.

CHECKLIST FOR THE APPELLATE PROCESS

Prior to Appeal

	Determine whether the ruling you are challenging is appealable to the Court of Appeals.
	Make sure you have preserved your issue for appellate review.
	If you have not preserved your issue, prepare to show that the Court of Appeals should review your issue under the “good cause” or “ends of justice” exceptions.
	Research the legal issues in your appeal. Remember, public law libraries are at your disposal!

File Appeal

	File a Notice of Appeal in the circuit court that decided the case you are appealing (Rule 5A:6). <ul style="list-style-type: none"> • Due within 30 days after entry of the final judgment or other appealable order. • Attach certificate of service.
	Pay filing fee (\$50) unless you qualify as indigent. <ul style="list-style-type: none"> • Due within 10 days of the Court of Appeals’ receipt of the Notice of Appeal.
	Review the record and make sure it has everything you need. <ul style="list-style-type: none"> • Transcripts or written statement of facts must be filed in the circuit court no later than 60 days after entry of the final judgment (Rule 5A:8).

File Briefing

	File opening brief if you are appellant (Rule 5A:20). <ul style="list-style-type: none"> • Due within 40 days of filing the record (Rule 5A:19). • <u>Make sure you include assignments of error</u> and where they are preserved in the record. (Rule 5A:20)
	File appellee brief if you are appellee (Rule 5A:21). <ul style="list-style-type: none"> • Due within 30 days after the opening brief is filed, or within 30 days after the filing of the record, whichever is later.
	File reply brief if you are appellant (Rule 5A:22). <ul style="list-style-type: none"> • Due within 14 days of filing the appellee brief.
	Comply with formatting requirements. <ul style="list-style-type: none"> • Follow rules for font type and size requirements.

	<ul style="list-style-type: none"> • Include table of contents, table of authorities, statement of the nature of the case, list of assignments of error, preservation citations, statement of facts, standards of review, arguments, and conclusion. • Attach certificates of service.
	<ul style="list-style-type: none"> • If you need more time, ask for an extension of time no later than 10 days after the original deadline expired.

Prepare for, and Attend, Oral Argument

	Prepare to present a 15-minute argument of your case to a panel of three judges unless you have waived oral argument in your brief.
	Familiarize yourself with the scheduling notice to determine when and where your oral argument will be.
	Find your assigned courtroom.
	Wait for your case to be called.
	If you are the appellant, determine how much time to reserve for rebuttal.
	Answer the judges' questions.
	Show respect in the courtroom.

GLOSSARY

Appeal/Appellate Process

The legal process where a person asks a higher court, like the Court of Appeals of Virginia, to review a circuit court or administrative agency's decision on a matter. The purpose of an appeal is to find any mistakes in the original decision and determine if they are serious enough for the appellate court to modify or overturn the judgment. To initiate an appeal, you must file a Notice of Appeal with a certificate of service within the specified time frame.

Appeal Bond

An appeal bond must be paid when a Notice of Appeal is filed in a civil case. It costs \$500 unless the circuit court finds you cannot afford that amount. If you want to stop the judgment of the circuit court from taking effect during your appeal, you also have to file a suspension bond. See [Code § 8.01-676.1](#). Bond forms can be found [here](#).

Affirm

To confirm or validate a decision or judgment made by a trial or circuit court. This happens when an appellate court agrees with and upholds the previous court's decision without changing it.

Appellant

The person appealing a decision. This person is dissatisfied with the decision made by the circuit court. They are asking the Court of Appeals to review the decision and potentially modify or reverse it. Regardless of whether you were the plaintiff or the defendant in the circuit court, in the Court of Appeals you are called the appellant if you are the one who is appealing.

Appellate Court

A court that reviews an appeal from a case that has been decided by a lower court.

Virginia has two appellate courts:

- the Court of Appeals of Virginia, the “intermediary” court between the circuit court and the Supreme Court of Virginia, and
- (2) the Supreme Court of Virginia, the highest court in Virginia.

Appellate Jurisdiction

Jurisdiction is the power of a court to hear a case. Appellate jurisdiction refers to the power of an appellate court to hear a case. Only certain cases in Virginia can be appealed to the Court of Appeals of Virginia, including final decisions of a circuit court in civil cases and criminal cases, and final decisions of the Virginia Workers' Compensation Commission. See [Code §§ 17.1-405](#) and [-406](#) for a more complete explanation of the jurisdiction of the Court of Appeals of Virginia.

Appellate Review

An appellate court's examination of the circuit court's decision on appeal.

Appellee

The person against whom the appeal is filed. The appellee responds to the appellant's opening brief. The appellee typically wants the appellate court to uphold the decision made by the circuit court. Regardless of whether you were the plaintiff or the defendant in the circuit court, in the Court of Appeals you are called the appellee if you are responding to an appeal filed by your opposition.

Appellee Brief

A written document filed by the appellee in appellate court proceedings. It presents the appellee's arguments and responses to the appellant's claims and assignments of error—this responsive brief aims to persuade the Court of Appeals to affirm the lower court's decision or dismiss the appeal.

Assignment of Error

A statement made by the appellant identifying specific legal mistakes they believe the lower court made. These errors form the basis of the appeal and are presented to the appellate court to argue for a change or reversal of the lower court's decision. Each assignment of error typically addresses a particular issue or legal point that the appellant believes affected the outcome of the case. Assignments of error are followed by "preservation citations," which indicate the exact spots in the record (by reference to the record page number) where that assignment of error is preserved.

Bind

A "binding" decision is one that must be followed by lower courts in the same jurisdiction. When the Court of Appeals renders a decision, the circuit court must follow that decision and apply the legal rules in that decision in future cases.

Case

A civil or criminal proceeding in any court. A “case” is another word for a “lawsuit,” or an “action.”

Certificate of Service

A document filed with a court by a party to a case stating that a copy of a filed document (e.g., motion, brief, or notice) has been properly served on all other parties involved. It includes the date, method of service (e.g., U.S. mail, hand delivery), and the names of the parties served. This ensures that all parties are notified of court filings and comply with procedural rules. The form can be found [here](#).

Circuit Court Clerk

The circuit court clerk is a state employee who performs various administrative tasks for criminal and civil cases that are filed in the circuit court for their jurisdiction. This person will receive the Notice of Appeal and transcript and will prepare the record to be transmitted to the Court of Appeals.

Citation

A reference to a legal authority such as a case that has been reported (or published) by the Court of Appeals, a statute, the state or federal constitution, or a Rule of the Supreme Court of Virginia. A citation may also refer to a page in the transcript or record. Citations to the record are primarily used in briefs to support a party’s statement of the facts of the case; citations to legal resources are used to support the legal arguments that support a party’s position.

Cross-Error

Refers to an assignment of error by an appellee. If an appellee is dissatisfied with a decision the lower court made, they can assign error and have that decision reviewed on appeal. An appellee who wishes to assign cross-error should do so in their appellee brief. The same preservation rules apply to assignments of cross-error as assignments of error.

En banc

Refers to a situation where all the judges of the Court of Appeals participate in a hearing and review the case together, instead of using a smaller panel of three judges. This typically occurs in appellate courts when a case involves a particularly important or complex issue, or when the Court of Appeals wants to review a prior decision made by a smaller panel of judges.

Final Judgment
Refers to the final decision by the circuit court. This decision resolves all the issues presented to the circuit court or administrative agency.
Intermediary Court
Typically refers to the appellate court that is in the “middle” of the trial court and the highest court of that state. In Virginia, the Court of Appeals is the “intermediary” court that reviews decisions that are appealed from the circuit court and whose decisions parties may appeal to the Supreme Court of Virginia.
Legal advice
Professional opinion or guidance about a legal course of action, or which explains an area of law or how the law would apply to one’s case. Parties may not seek legal advice from clerks of the court or other court staff.
Lower Court
The court where a case starts—usually the “circuit court” or the “trial court.”
Motion
A formal written request a party files with a court, asking a court to make a specific ruling, take a particular action, or provide an exception to the Rules. For example, a party may file a motion asking the Court of Appeals to extend the time for filing the opening brief. Motions must be filed in accordance with procedural rules. After a motion is filed, the opposing party has ten days to respond to it.
Notice of Appeal
A formal document filed with the circuit court by a party (appellant) filing an appeal. It notifies the appellate court and other parties involved that the appellant intends to appeal the lower court’s decision. The Notice of Appeal must be filed in the circuit court within a specific time after the circuit court’s decision, and a copy must also be filed in the Court of Appeals.
Opening Brief

A written document filed by the appellant summarizing the facts of the case, outlining the issues on appeal, and presenting legal arguments supported by citations to relevant laws and court decisions, explaining why a judgment should be modified or reversed.

Opinion

A written explanation of the Court of Appeals' decision. It explains how the law applies to the facts of a case and provides the reasoning for either affirming or reversing the lower court's decision.

Oral Argument

A type of court hearing where parties in a case present their arguments orally before judges. During oral arguments, attorneys for both sides, or pro se litigants, summarize their positions, clarify points from their written briefs, and respond to questions from the judges. Oral arguments usually occur after all written briefs have been submitted.

Order

A document setting out a court's decision. The Court of Appeals issues orders when it grants motions, decides an issue, or resolves a case. Orders are often shorter than opinions.

Panel

A convening of a sub-set of appellate judges who are selected to hear and consider a particular case. In the Court of Appeals of Virginia, appeals are typically heard and considered by panels of three judges.

Parties

The parties to a case are the individuals who form each side of the legal dispute. In the Court of Appeals, the parties include the appellant, who appeals from the decision of the lower court, and the appellee, who responds to the argument of the appellant.

Pleadings

Documents filed in court including petitions, complaints, objections, answers, responses, notices, statements of interest, motions, and briefs.

Preservation Citations

References to the exact spots in the record where an assignment of error is preserved.

Pro Se Litigant

A party who represents themselves in court proceedings without the assistance of an attorney. Pro se litigants are responsible for performing all of the functions of a lawyer, including filing documents, making arguments, and adhering to procedural rules.

Record on Appeal

The complete collection of all of the documents that make up the official file of a court case. It includes all the papers filed with the circuit court, court orders, transcripts, and admitted exhibits. The Court of Appeals will only consider the record on appeal and the law. The record documents the case's history and is essential for appellate review and presenting legal arguments.

Reply Brief

A written document filed by the appellant in response to the appellee's brief. The reply brief allows the appellant to address arguments made in the appellee's brief and to respond to any new issues or arguments raised by the appellee.

Reverse

When an appellate court changes the decision of a lower court.

Rule

To "rule" on a matter is to make a decision.

Service

The formal delivery of legal documents to a party involved in a lawsuit. In civil appeals, service ensures that all parties are notified of actions taken in the case and have an opportunity to respond. Service must comply with specific rules and procedures to be considered valid, which often include personal delivery, U.S. mail, or electronic methods, depending on the court's requirements.

Standard of Review

The legal standard an appellate court uses to review a case on appeal. It determines how much deference the appellate court will show to the lower court's decision.

Statement of Facts

If your case does not have a transcript of a hearing that was important, you must get a written statement of facts about what happened at that hearing and get it signed by the judge. [Rule 5A:8](#) explains what to do.

Stay

A court order that temporarily halts the enforcement or execution of a court judgment or other court order. In the context of an appeal, a stay can prevent the lower court's judgment from being executed while the appellate court reviews the case.

Trial Court

The "lower" court that hears the case first. Only after a decision has been rendered by a trial court will a party be able to file an appeal. In Virginia, this is known as the "circuit court."

Transcript

A complete written record of everything said during court proceedings, including hearings, trials, and oral arguments. Transcripts contain word-for-word statements by judges, attorneys, witnesses, and parties involved. Transcripts are created by court reporters and are used to review court proceedings, prepare legal arguments, and file appeals.

VIRGINIA PUBLIC LIBRARIES

Alexandria Law Library
520 King Street, Room LL34
Alexandria, Virginia 22314
(703) 746-4077

Arlington Law Library
1425 North Courthouse Road, Suite 1700
Arlington, VA 22201
(703) 228-7005

Bristol Law Library
City Hall
497 Cumberland Street
Bristol, Virginia 24201

Central Rappahannock Law Library
1201 Caroline Street
Fredericksburg, Virginia 22401
(540) 372-1144 ext. 7234

Chesapeake Law Library
298 Cedar Road, 2nd Floor
Chesapeake, Virginia 23322
(757) 410-7153

Danville Public Law Library
511 Patton Street, First Floor
Danville, Virginia 24541
(434) 799-5118

Fairfax Public Law Library
Fairfax County Courthouse 4110 Chain Bridge Road, Suite 115
Fairfax, Virginia 22030
(703) 246-2170

Fauquier County Law Library
11 Winchester Street
Warrenton, VA 20186
(540) 422-8500

George Wythe Law Library
4207 Victoria Blvd, 2nd Floor
Hampton, Virginia 23669
(757) 727-1312

Henrico Law Library
1901 Starling Drive
Henrico, Virginia 23229
(804) 501-1910, ext. 5

Lynchburg Public Law Library
900 Church Street
Lynchburg, Virginia 24504
(434) 455-3820

Newport News Public Law Library
2501 Washington Avenue
Newport News, Va. 23607
(757) 926-8678

Norfolk Law Library
City of Norfolk Courthouse, 2nd Floor
150 St. Paul's Blvd.
Norfolk, Virginia 23510
(757) 622-2910

Portsmouth Public Law Library
601 Court Street
Portsmouth, Virginia 23704
(757) 393-8501

Prince William Public Law Library
9311 Lee Avenue
3rd Floor, Room 304
Manassas, Virginia 20110
(703) 792-6262

Roanoke Law Library
706 S. Jefferson Street, SE – 2nd floor
Roanoke VA 24016
(540) 853-2268

Rockingham-Harrisonburg Public Law Library
174 S Main Street
Harrisonburg, Virginia 22801
(540) 434-4475

Wahab Public Law Library
Court Support Bldg., 10B 2425 Nimmo Parkway
Virginia Beach, Virginia 23456-9062
(757) 385-4419

Washington County Public Law Library
205 Oak Hill Street
Abingdon, VA 24210
(276) 676-6233

**Chesterfield County
Public Law Library**

7051 Lucy Corr
Blvd. Chesterfield,
VA 23832
(804) 748-1774

**Loudoun County
Public Law Library**

18 East Market
Street Leesburg,
Virginia 20176
(703) 777-0695

**Richmond Public
Law Library**

101 E. Franklin Street
Richmond, VA 23219
(804) 646-6500

The Virginia State Law Library at the Supreme Court of Virginia is also available to litigants who have a case pending in the Court of Appeals. The library is at 100 N. 9th Street, Richmond, VA 23219. To contact the library, please email LawLibrary@vacourts.gov or call 804-786-2075.