

Friday 24th February, 2012.

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 immediately.

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

PART FIVE
THE SUPREME COURT

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K. CERTIFICATION OF QUESTIONS OF LAW.

Rule 5:40. Certification Procedures.

(a) *Power to Answer.* - This Court may in its discretion answer questions of law certified to it by the Supreme Court of the United States, a United States court of appeals for any circuit, a United States district court, or the highest appellate court of any state, territory, or the District of Columbia. Such answer may be furnished, when requested by the certifying court, if a question of Virginia law is determinative in any proceeding pending before the certifying court and it appears there is no controlling precedent on point in the decisions of this Court or the Court of Appeals of Virginia.

(b) *Method of Invoking.* - This Rule may be invoked only by an order of one of the courts referred to in paragraph (a) of this Rule. No party litigant in the foregoing courts may file a petition or motion for certification in this Court.

(c) *Contents of Certification Order.* - A certification order shall set forth:

(1) the nature of the controversy in which the question arises;

(2) the question of law to be answered;

(3) a statement of all facts relevant to the question certified;

(4) the names of each of the parties involved;

(5) the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each of the parties involved;

(6) a brief statement explaining how the certified question of law is determinative of the proceeding in the certifying court; and

(7) a brief statement setting forth relevant decisions, if any, of this Court and the Court of Appeals of Virginia and the reasons why such decisions are not controlling.

(d) *Preparation of Certification Order.* - The certification order shall be prepared by the certifying court, signed by the presiding justice or judge, and forwarded to this Court by the clerk of the certifying court under its official seal. This Court may require the original or copies of all or of any portion of the record before the certifying court to be filed, if, in the opinion of this Court, the record or portion thereof may be necessary in answering the certified question. This Court may in its discretion restate any question of law certified or may request from the certifying court additional clarification with respect to any question certified or with respect to any facts.

(e) *Notification of Acceptance or Rejection.* - This Court, in its discretion, may decide whether to answer any certified question of law. This Court will notify the certifying court and counsel for the parties of its decision to accept or to reject any certified

question of law. A notice accepting a question will include a briefing schedule and, if this Court permits oral argument, a tentative date and the length of time allowed for such argument.

(f) *Revocation of Acceptance.* - This Court, in its discretion, may revoke its decision to answer a certified question of law at any time. This Court will notify the certifying court and counsel for the parties of any such action.

(g) *Costs of Certification.* - Fees and costs shall be the same as in civil appeals docketed in this Court and shall be paid as ordered by the certifying court in its order of certification.

(h) *Briefs.* - The form, length, and time for submission of briefs shall comply with Rules 5:26 through 5:32 mutatis mutandis.

(i) *Opinion.* - A written opinion or order of this Court stating the law governing each question certified will be rendered as soon as practicable after the submission of briefs and after any oral argument. The opinion or order will be sent by the clerk under the seal of this Court to the certifying court and to counsel for the parties and shall, if this Court so directs, be published in the Virginia Reports.

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A Copy,

Teste:

Clerk