

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday, the 31st day of October, 2018.

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 January 1, 2019.

Amend Rule 1:5 as follows:

Rule 1:5. Counsel and Parties Appearing Without Counsel.

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

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

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

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

that the attorney will make a limited scope appearance in such action; and (C) specifying the matters, hearings, or issues on which the attorney will appear for the party.

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

(3) Service of Papers After Notice. Service of all papers after the filing of a notice of limited scope appearance as provided in this Rule shall be made upon both the attorney making such limited scope appearance and the party on whose behalf the appearance is made, who shall be considered an unrepresented party.

(4) Completion or Termination of Limited Scope Appearance. (A) *Notice of Completion of Limited Scope Appearance.* — An attorney who has completed the obligations identified in a notice of limited scope appearance shall file a notice of completion of limited scope appearance, providing at least seven (7) days' notice to the party on whose behalf the attorney appeared. The notice shall be accompanied by a declaration by the attorney that counsel's obligations under the limited scope appearance agreement have been satisfied, and shall be (i) endorsed by the party on whose behalf the limited scope appearance was made, and (ii) served on all counsel and any unrepresented parties. Upon the filing of the notice of completion of limited scope appearance, the attorney shall be deemed to have ceased appearances in the matter. (B) *Termination of Limited Scope Appearance.* — If the party on whose behalf the limited scope appearance was made cannot or will not endorse the notice of completion of limited scope appearance, the attorney may file a motion to terminate the limited scope appearance, serve it on all parties, and afford seven days for objection. If an objection is filed, the court may hold a hearing to determine whether the attorney's obligations under the notice of limited scope appearance have been met. If the court finds that the attorney's obligations under the notice of limited scope appearance have been met, it shall grant the motion to terminate the limited scope appearance. (C) *Replacement Counsel or the Party Acting Pro Se.* — If replacement counsel is not being designated at the time of the attorney's completion of

limited scope appearance, the notice of completion of limited scope appearance or order permitting termination of limited scope appearance shall state the address and telephone number of the party on whose behalf the limited appearance was made for use in subsequent mailings or service of papers and notices, and said party shall be deemed self-represented.

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

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

Amend Rule 1:7 as follows:

Rule 1:7. Computation of Response Dates.

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

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

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

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

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

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

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

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

(c) Three days shall be added to the prescribed time if the paper is served by mail.

With respect to Parts Five and Five A of the Rules, this Rule applies only to the time for filing a brief in opposition.

Amend Rule 1:12 as follows:

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

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

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

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Amend Rule 4:1 as follows:

Rule 4:1. General Provisions Governing Discovery.

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(b) *Scope of Discovery.* — Unless otherwise limited by order of the court in accordance with these Rules, the scope of discovery is as follows:

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(7) Electronically Stored Information. A party need not provide discovery of electronically stored information (“ESI”) from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought has the burden of showing that the information is not

reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the discovery, including allocation of the reasonable costs thereof.

If the party receiving a discovery request anticipates that it will require the production of ESI and that an ESI protocol is needed, then within 21 days of being served with the request, or within 28 days of service of requests served with the Complaint, the receiving party shall propose an ESI protocol which should address: (A) an initial list of custodians or the person(s) with knowledge of the party's custodians and the location of ESI, (B) a date range, (C) production specifications, (D) search terms, and (E) the identification and return of inadvertently revealed privileged materials. If the proposed protocol is not acceptable, the parties shall in good faith attempt to meet within 15 days from service of the protocol on the party requesting the ESI. If, after 15 days from service of the protocol, the parties are unable to agree to limits on the discovery of the ESI, on motion to compel discovery or for a protective order, the court shall, in its discretion, determine appropriate limitations or conditions on the ESI request, if any, including allocation of the reasonable costs thereof.

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Amend Rule 4:9 as follows:

Rule 4:9. Production by Parties of Documents, Electronically Stored Information, and Things; Entry on Land for Inspection and Other Purposes; Production at Trial.

* * *

(b) Procedure. — (i) Initiation of the Request. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, period and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

(ii) Response. The party upon whom the request is served shall serve a written response within 21 days after the service of the request, except that a defendant may serve a response within 28 days after service of the complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for the objection. If objection is made to part of an item or category, the part shall be specified and production shall be permitted as to the remaining parts. An objection must state whether any responsive materials are being withheld on the basis of that objection. If objection is made to the requested form or forms for producing electronically stored information — or if no form was specified in the request — the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 4:12(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

* * *

Amend Rule 5:11 as follows:

Rule 5:11. Record on Appeal: Transcript or Written Statement.

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(b) *Transcript.* — The transcript of any proceeding in the case that is necessary for the appeal shall be filed in the office of the clerk of the trial court no later than 60 days after entry of judgment.

* * *

Amend Rule 5:17 as follows:

Rule 5:17. Petition for Appeal.

* * *

(c) *What the Petition Must Contain.* — A petition for appeal must contain the following:

(1) Assignments of Error: Under a heading entitled "Assignments of Error," the petition shall list, clearly and concisely and without extraneous argument, the specific errors in the rulings below – or the issue(s) on which the tribunal or court appealed from failed to rule – upon which the party intends to rely, or the specific existing case law that should be overturned, extended, modified, or reversed. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken shall be included with each assignment of error. If the error relates to failure of the tribunal or court below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the record where the issue was preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(i) Effect of Failure to Assign Error. Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, the petition shall be dismissed.

(ii) Nature of Assignments of Error in Appeals from the Court of Appeals. When appeal is taken from a judgment of the Court of Appeals, only assignments of error relating to assignments of error presented in, and to actions taken by, the Court of Appeals may be included in the petition for appeal to this Court. If the error relates to failure of the Court of Appeals to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the petition, briefs or record where the issue was preserved in that Court and, if applicable, the place(s) in the disposition by the Court of Appeals where it failed or refused to rule on such issue(s).

(iii) Insufficient Assignments of Error. An assignment of error that does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an

appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. An assignment of error in an appeal from the Court of Appeals to the Supreme Court which recites that "the trial court erred" and specifies the errors in the trial court, will be sufficient so long as the Court of Appeals ruled upon the specific merits of the alleged trial court error and the error assigned in this Court is identical to that assigned in the Court of Appeals. If the assignments of error are insufficient, the petition for appeal shall be dismissed.

(iv) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the petition for appeal contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c)(1) of this Rule, a rule to show cause will issue pursuant to Rule 5:1A. If there is a deficiency in the reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken – including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) of the record where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s) – a rule to show cause will issue pursuant to Rule 5:1A.

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Amend Rule 5A:8 as follows:

Rule 5A:8. Record on Appeal: Transcript or Written Statement.

(a) *Transcript.* — The transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court no later than 60 days after entry of the final judgment. This deadline may be extended by a Judge of the Court of Appeals only upon a written motion filed within 90 days after the entry of final judgment. Timely motions will be granted only upon a showing of good cause to excuse the delay.

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Amend Rule 5A:12 as follows:

Rule 5A:12. Petition for Appeal.

* * *

(c) *What the Petition Must Contain.* — A petition for appeal must contain the following:

(1) Assignments of Error. Under a heading entitled "Assignments of Error," the petition shall list, clearly and concisely and without extraneous argument, the specific errors in the rulings below — or the issue(s) on which the tribunal or court appealed from failed to rule — upon which the party intends to rely. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken shall be included with each assignment of error but is not part of the assignment of error. If the error relates to failure of the tribunal or court below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the record where the issue was preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(i) Effect of Failure to Assign Error. Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, the petition shall be dismissed.

(ii) Insufficient Assignments of Error. An assignment of error which does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. If the assignments of error are insufficient, the petition for appeal shall be dismissed.

(iii) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the petition for appeal contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c)(1) of this Rule, a rule to show cause will issue pursuant to Rule 5A:1A. If there is a deficiency in the reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken — including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) of the

record where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s) — a rule to show cause will issue pursuant to Rule 5A:1A.

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A Copy,

Teste:



Clerk