

Friday

1st

October, 2004.

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, 2005.

Amend Rule 5:20 to read as follows:

**Rule 5:20. Denial of Appeal; Petition for Rehearing.**

(a) When a petition for appeal is denied, the clerk of this Court shall mail a copy of the order denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may, within 14 days after the date of this notice, file in the office of the clerk of this Court a petition for rehearing. Oral argument on the petition for rehearing will not be allowed. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall notify counsel for the appellant and counsel for the appellee of the action taken by this Court on the petition for rehearing.

(b) Except for petitions for rehearing filed by pro se prisoners or with leave of Court, a petition for rehearing shall be filed as an Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail in compliance with Rule 5:20A. Petitions filed by pro se prisoners or with leave of Court shall be filed in compliance with subsection (c) of this Rule. This subsection will expire on December 31, 2005 unless otherwise ordered by the Court.

(c) The petition for rehearing shall not exceed 15 typed or printed pages in length. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Ten copies shall be filed.

Add Rule 5:20A to read as follows:

**Rule 5:20A. Denial of Appeal; Petition for Rehearing. (Effective January 1, 2005 to December 31, 2005.)**

Except for petitions for rehearing filed by pro se prisoners, or with leave of Court, the petition shall be filed as a PDF document attached to an e-mail addressed to [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us) and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due.

The petition must be formatted to print on a page 8 ½ x 11 inches, must be in 12 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to counsel for the appellee and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. 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 petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Supreme Court record number. The e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such

service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be forwarded to counsel seeking the rehearing.

The clerk of this Court shall notify counsel for both parties of the action taken by this Court on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Amend Rule 5:39 to read as follows:

**Rule 5:39. Rehearing.**

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(f) Notwithstanding subsection (c) a petition for rehearing shall be filed as a PDF document attached to an e-mail in compliance with Rule 5:39A unless filed by a pro se prisoner or with leave of Court. In those instances, the petition for rehearing shall be filed in compliance with subsection (c) of this Rule. This subsection will expire on December 31, 2005 unless otherwise ordered by the Court.

Add Rule 5:39A to read as follows:

**Rule 5:39A. Rehearing Petition. (Effective January 1, 2005 to December 31, 2005.)**

(a) The notice of intent to apply for a rehearing may be filed as a PDF document attached to an e-mail addressed to [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us) and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due.

(b) Except for petitions filed by pro se prisoners, or with leave of Court, the petition for rehearing shall be filed as a PDF document attached to an e-mail addressed to [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us) and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due. The petition must be formatted to print on a page 8 ½ x 11 inches, must be in

12 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. 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 petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to e-mail the petition, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Supreme Court record number. The e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be forwarded to counsel seeking the rehearing.

Amend Rule 5A:15 to read as follows:

**Rule 5A:15. Denial of Appeal; Petition for Rehearing. (Effective January 1, 2005 to December 31, 2005.)**

(a) When a petition for appeal is denied by a judge of the Court of Appeals pursuant to Code § 17.1-407(C), the clerk of the Court of Appeals shall mail a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of Court to proceed under this Rule may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). The demand shall be filed in writing and in quadruplicate with the clerk of the Court of Appeals within fourteen days after the date of the order by which the petition was denied. The demand, which shall include a statement identifying how the one-judge order is in error, shall not exceed one typed or printed page in length. Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). A petitioner who has previously requested oral argument may waive oral argument by so stating in the demand for review. All petitioners other than pro se prisoners and those with leave of Court to proceed under this Rule must follow the provisions of Rule 5A:15A(a) when filing a demand for three-judge review pursuant to Code § 17.1-407(D).

(b) When a petition for appeal is denied by a three-judge panel, the clerk of the Court of Appeals shall mail or e-mail a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of Court to proceed under this Rule may, within 14 days after the date of this notice, file a petition for rehearing in writing in the office of the clerk of the Court of Appeals unless the denial was by a three-judge panel after its consideration of a petition denied by a judge of the Court pursuant to Code § 17.1-407. The petition for rehearing shall not exceed 15 typed or printed pages in length. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Four copies shall be filed. Carbon copies are acceptable. Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of the Court of Appeals that considered the petition for appeal. No responsive brief shall be filed unless requested by the Court of Appeals. The

clerk of the Court of Appeals shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing. All petitioners other than pro se prisoners and those with leave of Court to proceed under this Rule must follow the provisions of Rule 5A:15A(b) when filing a petition for a rehearing of an order of a three-judge panel denying a petition for appeal.

Add Rule 5A:15A to read as follows:

**Rule 5A:15A. Denial of Appeal; Petition for Rehearing. (Effective January 1, 2005 to December 31, 2005.)**

(a) When a petition for appeal is denied by a judge of the Court of Appeals pursuant to Code § 17.1-407(C), the clerk of the Court of Appeals shall mail a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. The appellant may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). Demands for three-judge review filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:15(a) shall be filed in accordance with the provisions of Rule 5A:15(a).

Except for demands for three-judge review filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:15(a), the demand shall be filed as a single Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

The demand, which shall include a statement identifying how the one-judge order is in error, must be formatted to print on a page 8 ½ x 11 inches, must be in 11 point type or larger, must be double-spaced, and must not exceed a word count of 500. The demand must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The demand must also include a certificate of compliance with the word count limit. The demand will be considered filed on the date and time that it is received by [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us). If the demand does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the

demand to be filed. 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 demand for three-judge review, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the demand by e-mail, any delivery failure notice received in response to the attempt, and a copy of the demand for three-judge review.

The e-mail message to which the demand is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a demand for three-judge review is being filed, the style of the case, the Court of Appeals record number, the name and bar number of counsel filing the demand, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel filing the demand. The message shall also state whether a copy of the demand has been served by e-mail or another means on opposing counsel and the date of such service. If the demand has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the demand for three-judge review in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). An appellant who has previously requested oral argument may waive oral argument by so stating in the demand for review.

(b) When a petition for appeal is denied by a three-judge panel, the clerk of the Court of Appeals shall mail or e-mail a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may file a petition for rehearing in the office of the clerk of the Court of Appeals unless the denial was by a three-judge panel after its consideration of a petition denied by a judge of the Court pursuant to Code § 17.1-407. Petitions for rehearing filed by pro se prisoners or by those with leave of court to proceed under Rule 5A:15(b)

shall be in accordance with the provisions of Rule 5A:15(b).

Except for petitions for rehearing filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:15(b), the petition shall be filed as a single PDF document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

The petition must be formatted to print on a page 8 ½ x 11 inches, must be in 11 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. Petitions filed by e-mail will be considered filed on the date and time that it is received by [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. 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 petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by



e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of the Court of Appeals that considered the petition for appeal. No responsive brief shall be filed unless requested by the Court of Appeals. The clerk of the Court of Appeals shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Amend Rule 5A:33 to read as follows:

**Rule 5A:33. Rehearing – On Motion of a Party. (Effective January 1, 2005 to December 31, 2005.)**

(a) *Petition for Rehearing.* -- Pro se prisoners and those with leave of Court to proceed under this Rule desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall, within 14 days following such decision or order, file seven copies of a petition for rehearing with the clerk of the Court of Appeals. Carbon copies are permitted. The petition for rehearing shall not exceed 15 typed or printed pages in length. All petitioners other than pro se prisoners and those with leave of Court to proceed under this Rule must follow the provisions of Rule 5A:33A when filing a petition for rehearing.

(b) *Response.* -- No response to a petition for rehearing will be received unless requested by the Court of Appeals.

(c) *No Oral Argument.* -- No oral argument on the petition will be permitted.

(d) *Grounds.* -- No petition for rehearing will be allowed unless one of the judges who decided the case adversely to the petitioner certified that there is good cause for such rehearing.

Add Rule 5A:33A to read as follows:

**Rule 5A:33A. Rehearing – On Motion of a Party. (Effective January 1, 2005 to December 31, 2005.)**

(a) *Petition for Rehearing.* –Any party desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall, within 14 days following such decision, file a petition for rehearing with the clerk of the Court of Appeals. Petitions for rehearing filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:33 shall be filed in accordance with the provisions of Rule 5A:33.

Except for petitions for rehearing filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:33, the petition shall be filed as a single PDF document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

The petition must be formatted to print on a page 8 ½ x 11 inches, must be in 11 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. 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 petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file e-mail the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition for rehearing.

(b) *Response.* -- No response to a petition for rehearing will be received unless requested by the Court of Appeals.

(c) *No Oral Argument.* -- No oral argument on the petition will be permitted.

(d) *Grounds.* -- No petition for rehearing will be allowed unless one of the judges who decided the case adversely to the petitioner certifies that there is good cause for such rehearing. The clerk of the Court of Appeals shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Amend Rule 5A:34 to read as follows:

**Rule 5A:34. Rehearing En Banc. (Effective January 1, 2005 to December 31, 2005.)**

A pro se prisoner or a party who has leave of Court to proceed under this Rule aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc within 14 days after the date of the order sought to be reheard. Twelve copies of any such petition shall be filed with the clerk of the Court of Appeals. The petition for rehearing en banc shall not exceed 15 typed or printed pages

in length. No answer to a petition for a rehearing en banc will be received unless requested by the Court of Appeals. A rehearing en banc on motion of the Court of Appeals shall be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of the Court of Appeals shall promptly notify all counsel of action taken pursuant to this Rule. All petitioners other than pro se prisoners and those with leave of Court to proceed under this Rule must follow the provisions of Rule 5A:34A when filing a petition for rehearing en banc.

Add Rule 5A:34A to read as follows:

**Rule 5A:34A. Rehearing En Banc. (Effective January 1, 2005 to December 31, 2005.)**

A party aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc. Petitions for rehearing filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:34 shall be filed in accordance with the provisions of Rule 5A:34.

Except for petitions for rehearing en banc filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:34, the petition shall be filed as a single PDF document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

The petition must be formatted to print on a page 8 ½ x 11 inches, must be in 11 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. 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 petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing en banc is being filed, the style of the case, the Court of Appeals record number, the name and bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition.

No answer to a petition for a rehearing en banc will be received unless requested by the Court of Appeals. A rehearing en banc on motion of the Court of Appeals shall be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of the Court of Appeals shall promptly notify counsel for both parties of the action taken by this Court on the petition for rehearing en banc via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

A Copy,

Teste:

Clerk