

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 2nd day of July, 2019.

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 September 1, 2019.

Add Rule 1:1B as follows:

Rule 1:1B. Jurisdictional Transfer During Appeal of Final Judgment.

(a) Jurisdiction After Notice of Appeal. — When a final judgment entered in a civil or criminal case is appealed from a circuit court directly to the Supreme Court or to the Court of Appeals – whether by right, by petition, or as a partial final judgment pursuant to Rule 1:2 – the following principles govern the exercise of jurisdiction by the circuit and appellate court:

(1) *Effect of Notice.* Immediately upon the filing of a notice of appeal the appellate court acquires jurisdiction over the case. After the filing of the notice of appeal, however, the circuit court retains concurrent jurisdiction for the purposes specified in this Rule, including acting upon any of the matters set forth in subparts (a)(3)(A)–(H) of this Rule.

(2) *Notice of Appeal Within 21 Days.* If a notice of appeal has been filed prior to the expiration of the 21-day period prescribed by Rule 1:1, the circuit court retains plenary, concurrent jurisdiction over the case until the expiration of that period.

(A) If the circuit court vacates the final judgment during this 21-day period, a notice of appeal filed prior to the vacatur order is thereby rendered moot and of no effect. The clerk of the circuit court must forward a copy of the vacatur order to the appropriate appellate court and – if an appeal has been docketed in the matter – upon receipt of the circuit court’s vacatur order the appellate court must issue an order dismissing the appeal as moot.

(B) Following a circuit court’s vacatur order, a new notice of appeal from the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated. The fact that a prior notice of appeal has been rendered moot by a vacatur order, and that any

docketed appeal thereon has been dismissed, has no effect upon proceedings pursuant to a notice of appeal filed after the entry of a subsequent final judgment by the circuit court.

(3) *Notice of Appeal Filed After 21 Days.* If a notice of appeal has been filed after the expiration of the 21-day period prescribed by Rule 1:1, the circuit court retains limited, concurrent jurisdiction during the pendency of the appeal solely for the purposes of:

(A) addressing motions to grant post-conviction bail during the pendency of an appeal in criminal cases;

(B) addressing motions to stay the judgment pending appeal;

(C) addressing motions in civil cases relating to the amount or form of an appeal or suspending bond pursuant to Code § 8.01-676.1;

(D) correcting clerical mistakes in a final judgment in accordance with Code § 8.01-428(B), but only with leave of the appellate court;

(E) exercising its authority under Code § 19.2-306 to revoke suspended criminal sentences and to pronounce judgment for violations of any terms of suspension, conditions of probation, either or both;

(F) addressing motions to enforce a final judgment, including, but not limited to, the exercise of the court's contempt powers;

(G) appointing appellate counsel for indigent criminal defendants; or

(H) taking any other action authorized by statute or Rule of Court to be undertaken notwithstanding the expiration of the 21-day period prescribed by Rule 1:1, which actions include, but are not limited to, those authorized by Code §§ 8.01-392 to -394, 8.01-428, 8.01-623, 8.01-654(A)(2), 8.01-677, 19.2-303, 20-107.3(K), 20-108, and 20-109 and Rules 1:1A, 5:10(b), 5:11, 5A:7(b), and 5A:8, so long as the party requesting the action complies with the applicable time limitation in the statute or Rule authorizing such action.

(b) *Motion to Dismiss in the Appellate Court.* — At any time after a notice of appeal has been filed and after the expiration of the 21-day period prescribed by Rule 1:1, any party to an appeal may file a motion in the appellate court to dismiss the appeal. The motion may assert that the

appeal has become moot or cannot proceed for some other sufficient reason. The failure to file such a motion, however, does not preclude a party from making such arguments in its appellate briefs. The appellate court may decide the motion based upon the existing record or, in its discretion, issue a temporary remand of the matter to the circuit court for the purpose of making findings of fact regarding factual issues relevant to the motion.

(c) *Motion in Appellate Court for Appointment of Counsel.* — At any time after a notice of appeal has been filed and after the expiration of the 21-day period prescribed by Rule 1:1, a party legally entitled to appointed counsel may file a motion in the appropriate appellate court for the appointment of appellate counsel. The appellate court may act upon the motion or may, in its discretion, refer the motion to the circuit court for appointment.

Rule 1:1C. Jurisdictional Transfer During Appeals of Interlocutory Orders.

(a) When a petition for review is filed pursuant to Code § 8.01-626, the appellate court shall have exclusive jurisdiction over the appealable interlocutory order and the circuit court shall retain jurisdiction over any part of the case that has not been appealed, unless the circuit court or the appellate court enters an order staying the proceedings in the circuit court.

(b) In any other appeal of an interlocutory order, the circuit court shall retain concurrent jurisdiction over the case unless the circuit court or the appellate court enters an order staying all or part of the proceedings in the circuit court.

Amend Part One Appendix of Forms as follows:

**PART ONE
GENERAL RULES APPLICABLE TO ALL
PROCEEDINGS**

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APPENDIX OF FORMS.

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3. Uniform Pretrial Scheduling Order (Rule 1:18B).

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XI. Deposition Transcripts to be Used at Trial

Counsel of record shall confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial at the earliest reasonable opportunity. Other than trial depositions taken after completion of discovery under Paragraph II, designations of portions of non-party depositions, other than for rebuttal or impeachment, shall be exchanged no later than 30 days before trial, except for good cause shown or by agreement of counsel. It becomes the obligation of the non-designating parties of any such designated deposition to file any objection or counter-designation within seven days after the proponent's designation. Further, it becomes the obligation of the non-designating parties to bring any objections or other unresolved issues to the court for hearing no later than 5 days before the day of trial.

Amend Rule 3:20 as follows:

Rule 3:20. Motion for Summary Judgment.

Any party may make a motion for summary judgment at any time after the parties are at issue, except in an action for divorce or for annulment of marriage. If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, that the moving party is entitled to judgment, the court shall grant the motion. Summary judgment, interlocutory in nature, may be entered as to the undisputed portion of a contested claim or on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment shall not be entered if any material fact is genuinely in dispute. No motion for summary judgment or motion to strike the evidence shall be sustained when based in whole or in part upon any discovery depositions under Rule 4:5, unless all parties to the action shall agree that such deposition may be so used, or unless the motion is brought in accordance with the provisions of subsection B of § 8.01-420. As further provided in subsection C of § 8.01-420,

depositions and affidavits may be used to support or oppose a motion for summary judgment in any action where the only parties to the action are business entities and the amount at issue is \$50,000 or more.

Amend Rule 3A:25 as follows:

**Rule 3A:25. Special Rule Applicable to Post-Conviction Proceedings:
Inmate Filings in the Trial Courts Under Code § 8.01-654.**

In actions brought under Code § 8.01-654, filed by an inmate confined to an institution, a paper is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an inmate confined to an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

Amend Rule 5:5 as follows:

**Rule 5:5. Filing Deadlines; Post Trial Proceedings Below; Timely
Filing by Mail; Inmate Filing; Extension of Time.**

* * *

(d) *Inmate Filing*. — A paper filed by an individual confined in an institution, including a prison, jail, or the Virginia Center for Behavioral Rehabilitation, is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an individual confined in such an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

Amend Rule 5A:3 as follows:

Rule 5A:3. Filing Deadlines; Post Trial Proceedings Below; Timely Filing by Mail; Inmate Filing; Extension of Time.

* * *

(e) *Inmate Filing.* — A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an inmate confined in an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

Amend Rule 5:9 as follows:

Rule 5:9. Notice of Appeal.

(a) *Filing Deadline; Where to File.* — No appeal shall be allowed unless, within 30 days after the entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court pursuant to Rule 5:5(a), counsel for the appellant files with the clerk of the trial court a notice of appeal and at the same time mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the court announces a decision or ruling — but before the entry of such judgment or order — is treated as filed on the date of and after the entry.

Appeals from the Circuit Court. — Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order shall be moot and of no effect. A new notice of appeal challenging the entry of any subsequent final judgment must be timely

filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.

Amend Rule 5A:6 as follows:

Rule 5A:6. Notice of Appeal.

(a) *Filing Deadline; Where to File.* — No appeal shall be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court under Rule 5A:3(a), counsel files with the clerk of the trial court a notice of appeal, and at the same time mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the court announces a decision or ruling — but before the entry of such judgment or order — is treated as filed on the date of and after the entry. A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

Appeals from the Circuit Court. — Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order shall be moot and of no effect. A new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.

Amend Rule 5A:25. Appendix.

Rule 5A:25. Appendix.

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(d) *Determination of Contents.* — Within ten days after the filing of the record with the Court of Appeals or, in a case in which a petition for appeal has been granted, within ten days after the date of the certificate of appeal issued by the clerk of the Court of Appeals, counsel for appellant shall file in the office of the clerk of the Court of Appeals a written

statement signed by all counsel setting forth an agreed designation of the parts of the record to be included in the appendix. In the absence of such an agreement, counsel for appellant shall file with the clerk of the Court of Appeals a statement of the assignments of error and a designation of the contents to be included in the appendix within fifteen days after the filing of the record or, in a case in which a petition for appeal has been granted, within fifteen days after the date of the certificate of appeal; not more than ten days after this designation is filed, counsel for appellee shall file with the clerk of the Court of Appeals a designation of any additional contents to be included in the appendix and, in appeals of right, a statement of any additional assignments of error the appellee wishes to present. The appellant shall include in the appendix the parts thus designated, together with any additional parts the appellant considers germane.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read 'D B R W', with a long horizontal flourish extending to the right.

Clerk