

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 1st day of April 2021.

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 June 1, 2021.

Amend Part Five as follows:

Rule 5:1. Scope, Citation, Applicability, and General Provisions.

(a) *Scope of Rules.* – Part Five governs all proceedings in the Supreme Court of Virginia.

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(g) *Filings.* – Every document or object filed with or transmitted to this Court must be filed or transmitted in compliance with these Rules. Originals or copies of documents or objects should not be filed with or transmitted to any justice of this Court, unless expressly authorized by the Court. A failure to comply with this prohibition may result in the imposition of penalties under Rule 5:1A.

Rule 5:1B. Electronic Filing.

(a) *Record on Appeal.* – If available, all components of the record on appeal must be filed in electronic form as provided in Rule 5:13A. If such a digital appellate record is not available, a paper record must be filed complying with Rules 5:10, 5:11, 5:13, and related provisions of these Rules.

(b) *Electronic Filing of All Other Documents (“e-filing”).* – All documents – other than the record on appeal – must be filed electronically, except for filings by pro se prisoners or a litigant who has been granted leave by the Court to file documents in paper form. Documents to be filed electronically include, but are not limited to, all notices, motions, pleadings, petitions, briefs, appendices, letters, exhibits, or other items to be filed or served during an appeal. All such documents must be filed with the clerk of this Court electronically, in Portable Document Format (referred to in these Rules as the “PDF” or “electronic version”). The electronic version must be filed in the manner prescribed by the Virginia Appellate Courts Electronic System (“VACES”)

Guidelines and User's Manual, located on the Court's website at <https://eapps.courts.state.va.us/help/robo/vaces/index.htm#t=VACES.htm>.

(c) *Service on Other Parties by Email.* – An electronic version of any document filed in this Court pursuant to Rule 5:1B(b) must be served via email on all other parties on the date the document is filed with the Court or immediately thereafter, unless excused by this Court for good cause shown. An e-filed document must contain a certificate stating the date(s) of filing and of email service of the document. For any litigant exempted under Rule 5:1B from the requirement to file documents electronically, a paper copy of each document filed with the Court must be served upon all other parties – by mailing, delivery, or another means authorized in Rule 1:12 – on or before the date of filing, and must contain a certificate stating the date(s) and method(s) of service.

(d) *Technical Problems with Electronic Filing.* – A person who files a document electronically has the same responsibility as a person filing a document in paper form to ensure that the document is timely and properly filed, complete, and readable. However, if a technical problem in the operation of the VACES system results in a failure to timely file an electronic document, counsel must provide to the clerk of this Court on the next business day all documentation that exists demonstrating the attempt to electronically file the document in the VACES system, any error message received in response to the attempt, documentation that the document was later successfully resubmitted, and a motion requesting that the Court accept the resubmitted document. In the event that filing was not available due to a VACES technical problem during the last filing hours of a business day, the office of the clerk of the Court is deemed to have been closed on that day solely with respect to that attempted filing and the provisions of Virginia Code § 1-210(B) and (C) apply to that particular attempted filing for purposes of computing the last day for performing any act in the judicial proceeding or the filing of any legal action.

(e) *Copies.* – No paper copies are to be filed for any e-filed documents. Where a paper document is filed by a party who is exempt from e-filing requirements pursuant to Rule 5:1B(b), only the original document need be filed, and no additional copies thereof may be filed.

(f) *Signatures.* – All documents filed pursuant to Part Five of these Rules must be signed by counsel for the filing party, or personally signed if the party is proceeding pro se. Documents

that are filed electronically may be digitally signed using an electronic signature. Otherwise, documents must contain a handwritten signature.

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Rule 5:4. Motions and Responses; Orders.

(a) *Motions and Responses.* – (1) *Motions.* All motions, except motions for the qualification of attorneys at law to practice in this Court, must be in writing and filed with the clerk of this Court, as provided for in Rule 5:1B. All motions must contain a statement by the movant that the other parties to the appeal have been informed of the intended filing of the motion. For all motions in cases in which all parties are represented by counsel – except motions to dismiss petitions for a writ of habeas corpus – the statement by the movant must also indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition.

(2) *Responses.* Opposing counsel may have 10 days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the 10 days expire, if necessary. Once such a response is filed, no further pleadings in support of or in opposition to a motion may be filed without leave of Court.

(3) *Oral Argument.* No motion will be argued orally except by leave of this Court.

(b) *Orders.* – Promptly after this Court has entered an order, the clerk of this Court must send a copy of the order to all counsel.

Advisory Note. – This rule is not intended to limit the scope of motions that may be filed in the Supreme Court. Such motions may be filed in any pending or contemplated appeal, and may request from the Court any form of relief that is available to the movant. The practitioner should consult individual rules relating to the filing of motions in particular matters; for example, Rule 5:12 (trial judge authorized to act on matters pertaining to record); Rule 5:30(a)(3) (motion for leave to file brief amicus curiae). Rehearings are not within the scope of this rule, but are governed by Rules 5:20 and 5:37.

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

(a) *Filing Deadlines.* – The times prescribed for filing the notice of appeal (Rules 5:9(a), 5:14(a), 5:21(a)(3), and 5:21(b)(2)), a petition for appeal (Rules 5:17(a) and 5:21(a)(6)), a petition for review pursuant to Code § 8.01-626 (Rule 5:17A) and a petition for rehearing (Rules 5:20 and 5:37), are mandatory. A single extension not to exceed thirty days may be granted if at least two Justices of the Supreme Court of Virginia concur in a finding that an extension for papers to be filed is warranted by a showing of good cause sufficient to excuse the delay.

(b) *Post-Trial Proceedings Below and Their Effect on the Notice of Appeal.* – The time period for filing the notice of appeal and the petition for appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended by the trial court pursuant to Rule 1:1 or a timely petition for rehearing is filed in the Court of Appeals. In any such case, the time for filing the notice of appeal and the petition for appeal is computed from the date of final judgment entered following such modification, vacation, or suspension, or from the date the Court of Appeals refuses a timely petition for rehearing or enters final judgment following the granting of such a petition.

(c) *How to File in a Timely Manner.* – Filing must be accomplished electronically as provided in Rule 5:1B. For any party exempt from the e-filing requirements under Rule 5:1B(b), any document required to be filed with the clerk of this Court is deemed to be timely filed if (1) it is transmitted expense pre-paid to the clerk of this Court by priority, express, registered, or certified mail via the United States Postal Service, or by a third-party commercial carrier for next-day delivery, and (2) if the official receipt therefor be exhibited upon demand of the clerk of this Court or any party and it shows such transmission or mailing within the prescribed time limits. This rule does not apply to documents to be filed in the office of the clerk of the trial court or clerk of the Virginia Workers' Compensation Commission or clerk of the State Corporation Commission.

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Rule 5:6. Forms of Briefs and Other Papers.

(a) *Paper Size, Line Spacing, Font, and Margins.* – (1) Application. Electronic filing requirements, and exemptions therefrom, are specified in Rule 5:1B. Provisions of this Rule 5:6

apply to electronically filed documents, and to paper documents filed by persons exempted from e-filing requirements under Rule 5:1B(b).

(2) General Rules. Briefs, appendices, motions, petitions, and other documents must be formatted to appear on an 8-1/2 by 11-inch page with a clear black image on a white background. Margins must be at least one inch on all four sides of each page.

(3) Specific Rules for Motions, Petitions, and Briefs. Except by leave of Court, all motions, petitions, and briefs, including footnotes, must use one of the font styles listed on the Court's website in at least 14-point type and must be printed on only one side of the page. Text may not be reduced and must be double spaced except for headings, assignments of error, quotations that exceed 49 words, and footnotes, which must be single spaced. Page numbers are required and may appear in either the top or bottom margin, but no text, including footnotes, is permitted in the one-inch margins. Page or word limits for motions, petitions, and briefs do not include the cover page, table of contents, table of authorities, or certificate.

(4) Specific Rules for the Appendix. The appendix may be printed using both sides of the page. Any transcript, including a deposition transcript, that is made a part of the appendix must be in 12-point type or larger. Any transcript contained in the appendix that fails to conform to the 12-point type requirement may be returned to counsel, and counsel will be required to promptly comply with this requirement in accordance with the instruction of this Court. The use of condensed or multi-page transcripts is prohibited. Page numbers are required and may appear in either the top or bottom margin.

(b) *Cover Contents; Printing.* – The style of the case (with the name of the appellant stated first) and the record number of the case must be stated on the front cover of all briefs and appendices and, in addition, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address of counsel submitting the brief must be placed on the front cover of all briefs. For parties exempted from electronic filing requirements under Rule 5:1B(b), all documents to be filed must be printed with black text on 8-1/2 x 11-inch white paper. All briefs and appendices filed in paper form

must be bound on the left margin in such a manner as to produce a flat, smooth binding. The covers of documents filed in paper form must comply with the color requirements of Rule 5:31.

(c) *Effect of Non-compliance.* – No appeal will be dismissed for failure to comply with the provisions of this Rule; the clerk of this Court may, however, require that a document be redone in compliance with this Rule. Failure to comply after notice of noncompliance, however, may result in the dismissal of the case.

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Rule 5:7. Petitions for Writs of Habeas Corpus, Mandamus, and Prohibition.

(a) *Petition for Writ of Habeas Corpus.* – An application to this Court for a writ of habeas corpus under its original jurisdiction must be by petition filed in the office of the clerk of this Court, as provided for in Rule 5:1B.

(1) *When Petition Must be Filed.* The petition for a writ of habeas corpus challenging a criminal conviction or sentence, except as provided in Rule 5:7A for cases in which the death penalty has been imposed, must be filed within two years from the date of the final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later. All other petitions for a writ of habeas corpus must be filed within one year after the cause of action accrues.

(2) *What the Petition Must Contain.* The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition. All petitions must comply with the requirements of Code § 8.01-655. Where a petition for a writ of habeas corpus is filed by counsel, counsel must file as an exhibit a single copy of the complete record of the proceedings that resulted in the detention the petition challenges. The record must comply with the form and content requirements of Rule 5:7(a)(5), and counsel may seek leave to provide less than the complete record as provided for in Rule 5:7(a)(6).

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(5) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth grounds of defense as in an action at law. The answer must state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities must accompany each responsive pleading. In any case in which the respondent states an opinion that the taking of evidence is not necessary for the proper disposition of a petition for a writ of habeas corpus, the respondent must file as separate exhibits:

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(7) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, may exceed the longer of 50 pages or 8,750 words. No reply filed to a responsive pleading may exceed the longer of 10 pages or 1,750 words. Page and word limits do not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate.

(8) Number of Copies. For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of a petition and any other document need be filed.

(9) Calling up the Record. If this Court determines that any portion of the underlying trial or appellate record is necessary for a proper determination of the merits of the petition, the clerk of this Court is authorized to request the record and, to the extent necessary, the preparation of any transcripts, and the clerk of the trial court, commission, or the Court of Appeals as appropriate must prepare the requested transcripts and transmit it forthwith upon request without the necessity of an order.

(b) *Petitions for Writs of Mandamus and Prohibition.* – An application for a writ of mandamus or a writ of prohibition under the original jurisdiction of this Court must be by petition filed in the office of the clerk of this Court, as provided for in Rule 5:1B.

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(7) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, may exceed the longer of 50 pages or 8,750 words. No reply filed to a responsive pleading may exceed the longer of 10 pages or 1,750 words. This page or word limit does not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate.

(8) Number of Copies. For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of a petition and any other document need be filed.

(c) *When this Court May Act on a Petition.* – This Court may act on any petition for a writ of habeas corpus, mandamus, or prohibition before a responsive pleading or reply of the petitioner is filed. This Court may by order shorten the period within which a responsive pleading must, or reply may, be filed.

(d) *Further Proceedings on Petitions.* – Further proceedings will be in accordance with the orders of this Court or a Justice thereof to whom this Court may delegate authority to determine all procedural matters. If this Court or the designated Justice determines that evidence is desirable, (1) depositions may be taken according to a schedule agreed upon by counsel and filed in the office of the clerk of this Court or, in the absence of agreement, according to a schedule determined by this Court or the designated Justice, or (2) the Court may order the circuit court in which the judicial proceeding resulting in petitioner’s detention occurred to conduct an evidentiary hearing. Such hearings will be limited in subject matter to the issues enumerated in the order. The circuit court must conduct such a hearing within 90 days after the order has been received and must report its findings of fact to this Court within 60 days after the conclusion of the hearing. The Court may extend these deadlines upon a motion filed by either party and supported by good cause. Any objection to the report must be filed in this Court within 30 days after the report is filed.

(e) *Amendment of Petition.* – If the statute of limitations has not expired, a petitioner may move – at any time before a ruling is rendered on the merits of the petition as initially filed – for

leave of this Court to substitute an amended petition. This amendment can include additional claims not presented in the petition as initially filed. Any such motion must attach a copy of the proposed amended petition.

(f) *Filing Fee.* – The petition must be accompanied by either (i) the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee. For mandamus petitions filed by pro se inmates, the Court may require the petitioner to provide a certified copy of the petitioner’s inmate trust account for the preceding 12 months.

Rule 5:7A. Petitions for Writs of Habeas Corpus in Cases in Which the Sentence of Death Has Been Imposed.

In cases in which the sentence of death has been imposed:

(a) *Petition for the Writ.* – A petition for a writ of habeas corpus must be filed as provided for in Rule 5:1B in the office of the clerk of this Court within 60 days after the earliest of: (i) the denial by the Supreme Court of the United States of a petition for a writ of certiorari to the judgment of this Court on direct appeal, (ii) an order of the Supreme Court of the United States affirming imposition of the sentence of death in a case in which that Court granted a writ of certiorari to review the judgment of this Court on direct appeal, or (iii) the expiration of the period for filing a petition for a writ of certiorari in the Supreme Court of the United States without such a petition being filed.

(b) *Contents of Petition for Writ.* – Each petition for a writ of habeas corpus must be verified and must include an enumerated list of the grounds asserted for relief together with all supporting facts upon which the petitioner relies. The petition must contain citation to the relevant legal authorities and an enumeration of all previous petitions and their disposition. The petition must state whether, in the opinion of the petitioner, the taking of evidence is necessary for the proper disposition of the petition. The petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof upon the Attorney General of Virginia or by an acceptance of service signed by the Attorney General or an Assistant Attorney General.

(c) *Response.* – Within 30 days after service of the petition, the Attorney General must file with the clerk of this Court a responsive pleading, which may include a motion to dismiss. The response should include citation to the relevant legal authorities and must state whether, in the opinion of the Attorney General, the taking of evidence is necessary for the proper disposition of the petition.

(d) *Reply.* – Within 20 days after the Attorney General's responsive pleading is filed pursuant to subparagraph (c), the petitioner may file a reply.

(e) *Motions.* – Upon the filing of any motion other than a motion to dismiss included in a responsive pleading filed pursuant to subparagraph (c) of this Rule, or upon the filing of an objection pursuant to Code § 8.01-654(C)(3), the opposing party may file a response within ten days of the filing of the motion or objection, or within such time as this Court may order.

(f) *Length.* – Except by permission of a justice of this Court, no petition for a writ of habeas corpus or a response thereto may exceed the longer of 100 pages or 17,500 words, and no reply to a response may exceed the longer of 50 pages or 8,750 words. Page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. All petitions, responses, replies, motions, and other papers filed pursuant to this Rule must conform to the provisions of Rule 5:6(a). If counsel wishes to file a petition or response in excess of the page or word limit prescribed in this paragraph, a motion to exceed the page or word limit must be filed with the clerk of this Court at least 10 days before the due date for the petition or response. If the motion is denied, or if no timely motion to exceed the page or word limit is filed, any pages in the petition or response that exceed the page or word limit, except the signature and certificate of service, will be stricken and not considered by this Court.

(g) *Further Proceedings by Order of this Court.* – Further proceedings will be conducted in accordance with the orders of this Court. If it is determined that an evidentiary hearing is necessary for the proper disposition of the petition, this Court will enter an order directing the circuit court that entered the judgment imposing the sentence of death to conduct such a hearing in accordance with the provisions of Code § 8.01-654(C)(1), (2), and (3).

(h) *Amendment of Petition.* – If the statute of limitations has not expired, a petitioner may move – at any time before a ruling is rendered on the merits of the petition as initially filed – for leave of this Court to substitute an amended petition. This amendment can include additional claims not presented in the petition as initially filed. Any such motion must attach a copy of the proposed amended petition.

(i) *Filing Fee.* – If the petitioner is not represented by court-appointed counsel, the petition must be accompanied by the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee.

Rule 5:7B. Petition for a Writ of Actual Innocence.

(a) *Who may File a Petition.* – A petition for a writ of actual innocence based upon previously unknown or untested human biological evidence may be filed by any person who has been convicted of a felony upon a plea of not guilty, or who was adjudicated delinquent upon a plea of not guilty by a circuit court of an offense that would be a felony if committed by an adult, or by any person, regardless of plea, who has been sentenced to death, or convicted or adjudicated delinquent of a class 1 felony, a class 2 felony or any felony for which the maximum penalty is imprisonment for life.

(b) *Time for Filing.* – A petition under this Rule must be filed in the office of the clerk of this Court, as provided for in Rule 5:1B, within 60 days after the date upon which exculpatory test results are obtained by the petitioner or his counsel of record from the Department of Forensic Science for any tests conducted on human biological evidence pursuant to Code § 19.2-327.1.

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(e) *Filing Fee.* – The petition must be accompanied by either (i) the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee.

(f) *Response.* – The Attorney General must respond to the petition as follows:

(1) Within 30 days after service of the petition, the Attorney General must file with the clerk of this Court, as provided for in Rule 5:1B, a pleading in the form of a

declaration stating, in the opinion of the Attorney General, with an explanation of the reasons therefor, whether the record of any trial or appellate proceedings involving the conviction or convictions, or adjudication or adjudications of delinquency, or of any proceedings under Code § 19.2-327.1, is necessary for preparation of a response to the petition. If the Attorney General asserts that the record, or any part thereof, of any trial or appellate court proceedings is necessary, the Attorney General should request the production of such record by this Court, and must describe with specificity, including the court, docket number and date of judgment, each and every record or part thereof which is requested.

(2) If the Attorney General asserts in the declaration required by subparagraph (f)(1) of this Rule that no trial or appellate court record, or any part thereof, is necessary for the preparation of a responsive pleading to the petition, the Attorney General must file with the clerk of this Court within 30 days thereafter a pleading in response to the petition. Any pleading in response filed by the Attorney General may include a motion to dismiss. The response must include citation to any relevant legal authorities, and may contain a proffer of any evidence pertaining to the guilt of the petitioner that is not included in the record of the case, including any evidence that was suppressed at trial.

(3) If the Attorney General asserts in the declaration required by subparagraph (f)(1) of this Rule that a trial or appellate court record, or any part thereof, is necessary for the preparation of a response to the petition, the Court must issue the writ of certiorari described in Code § 19.2-327.3(D) to the clerk of the respective court below for the production of the record forthwith to the clerk of this Court. Upon receipt of the record by the clerk of this Court, the clerk must immediately notify in writing the petitioner, any attorney for the petitioner, the Attorney General, and the attorney for the Commonwealth of the jurisdiction where the conviction or convictions or adjudication or adjudications of delinquency occurred, of the date of receipt of the record. Within 30 days after receipt of the record by the clerk of this Court, the Attorney General must file the responsive pleading described in subparagraph (f)(2) of this Rule.

(g) *Reply.* – Within 20 days after the Attorney General's responsive pleading is filed pursuant to subparagraph (f) of this Rule, the petitioner may file a reply.

(h) *Copies to be Filed.* – For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of the petition and reply need be filed.

(i) *Further Proceedings by Order of this Court.* – Further proceedings will be conducted in accordance with the orders of this Court. If this Court determines that an evidentiary hearing is necessary for the proper disposition of the petition, this Court may order that the circuit court conduct a hearing within 90 days after the order has been issued to certify findings of fact with respect to such issues as this Court directs. The record and certified findings of fact of the circuit court must be filed with the clerk of this Court within 30 days after the hearing is concluded. The Court may extend these deadlines upon a motion filed by either party and supported by good cause.

(j) *Appointment of Counsel.* – In any petition filed pursuant to and in compliance with this Rule, petitioner is entitled to the appointment of counsel subject to the provisions of Code § 19.2-157 et seq. Any request for counsel in this Court must be made on the form provided by this Court, entitled REQUEST FOR COUNSEL – PETITION FOR A WRIT OF ACTUAL INNOCENCE, and must include: (i) all the information required by the in forma pauperis affidavit attached to the request for appointment of counsel, and (ii) an attested copy of the order of the circuit court ordering that testing of human biological evidence on the petitioner's behalf be conducted by the Department of Forensic Science pursuant to Code § 19.2-327.1.

(k) *Duty of Counsel.* – Any attorney(s) appointed to represent a petitioner pursuant to Code § 19.2-327.1 is deemed to be counsel of record for petitioner for all purposes and proceedings under this Rule until a final order of this Court is issued pursuant to Code § 19.2-327.5, or until counsel is relieved or replaced by other counsel by leave of this Court.

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Rule 5:14. Notice of Appeal; Certification.

(a) *Notice of Appeal.* – No appeal from a judgment of the Court of Appeals which is subject to appeal to this Court will be allowed unless, within 30 days after entry of final judgment or order denying a timely petition for rehearing, a notice of appeal is filed with the clerk of the Court of Appeals, as provided for in Rule 5A:1.

(b) *Notice of Certification.* – Whenever this Court may certify a case pending in the Court of Appeals for review by this Court, notice of certification will be given by the clerk of this Court to all counsel and to the clerk of the Court of Appeals. A case certified for review by this Court will proceed as if a petition for appeal had been granted by this Court on the date of the certification for review, except as otherwise ordered.

(c) *Bail Pending Appeal in Criminal Cases.* – In criminal cases, either party may appeal an order of the Court of Appeals affirming, reversing, or modifying a circuit court order regarding bail pending appeal as provided by this Rule, Rule 5:15 and Rule 5:17.

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Rule 5:17. Petition for Appeal.

(a) *When the Petition Must be Filed.* – Unless otherwise provided by rule or statute, in every case in which the appellate jurisdiction of this Court is invoked, a petition for appeal must be filed with the clerk of this Court, as provided for in Rule 5:1B, within the following time periods:

(1) in the case of an appeal direct from a trial court, not more than 90 days after entry of the order appealed from; or

(2) in the case of an appeal from the Court of Appeals, within 30 days after entry of the judgment appealed from or a denial of a timely petition for rehearing.

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(d) *Filing Fee Required With the Petition.* – When it is filed, the petition for appeal must be accompanied by the filing fee required by statute, unless the appellant is represented by court-appointed counsel or the appellant files an in forma pauperis affidavit demonstrating that he cannot afford the filing fee. The clerk of this Court may file a petition for appeal that is not

accompanied by such fee if the fee is received by the clerk within 10 days of the date the petition for appeal is filed. If the fee is not received within such time, the petition for appeal will be dismissed.

(e) *Number of Copies to File.* – For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of the petition need be filed.

(f) *Length.* – Except by leave of a Justice of this Court, a petition must not exceed the longer of 35 pages or 6,125 words. The page or word limit does not include the cover page, table of contents, table of authorities, and certificate.

(g) *Use of a Single Petition in Separate Cases.* – Whenever two or more cases were tried together in the court or commission below, one petition for appeal may be used to bring all such cases before this Court even though the cases were not consolidated below by formal order.

(h) *Procedure for an Anders appeal.* – If counsel for appellant finds appellant’s appeal to be without merit, counsel must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Brown v. Warden of Virginia State Penitentiary*, 238 Va. 551, 385 S.E.2d 587 (1989). In compliance therewith, counsel is required to file (1) a petition for appeal which refers to anything in the record which might arguably support the appeal and which demonstrates to this Court counsel’s conscientious examination of the merits of the appeal; (2) a motion for leave to withdraw as counsel; and (3) a motion for an extension of time to allow the appellant to file a supplemental petition for appeal. The petition for appeal and the motion for leave to withdraw as counsel should specifically cite to *Anders*. All three pleadings must be served on opposing counsel and upon the client and must contain a certificate providing evidence of such service. This Court will rule upon the motion for extension of time upon its receipt, but will not rule on the motion to withdraw until this Court considers the case in its entirety, including any supplemental petition for appeal that may be filed.

(i) *What the Certificate Must Contain.* – The appellant must include within the petition for appeal a certificate stating:

(1) the names of all appellants and appellees, 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 party; and the mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of any party not represented by counsel;

(2) that a copy of the petition for appeal has been mailed or delivered on the date stated therein to all opposing counsel and all parties not represented by counsel;

(3) if a word count is used, the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count);

(4) in a criminal, sexually violent predator, termination of parental rights, or habeas corpus appeal, a statement whether counsel for defendant has been appointed or privately retained; and

(5) whether the appellant desires to state orally to a panel of this Court the reasons why the petition for appeal should be granted, and, if so, whether in person or by telephone conference call.

When filed through VACES, a petition for appeal need not contain a separate certificate as long as the information contained in this subsection (i) is provided through the electronic filing process.

(j) *Oral Argument.* – (1) Right to Oral Argument. The appellant is entitled to state orally, in person or by telephone conference call, to a panel of this Court the reasons why the petition for appeal should be granted. The appellee is not entitled to oral argument, whether in person or by telephone conference call. Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court must comply with the requirements of Rule 1A:4.

(2) Waiver of Right to Oral Argument. The appellant may waive the right to oral argument on the petition for appeal before a panel by notifying the clerk of this Court and opposing counsel in writing, or by filing a reply brief.

(3) No Oral Argument on Pro Se Inmate’s Petition. If an appellant is not represented by counsel and is incarcerated, the petition for appeal may be considered by this Court without oral argument.

(4) Notice of Oral Argument. If the appellant has requested oral argument, notice of the date and time of such argument will be provided to counsel for the appellant or to any pro se appellant and to counsel for the appellee or any pro se appellee who has filed a Brief in Opposition or otherwise appeared in the appeal.

Rule 5:17A. Petition for Review Pursuant to Code § 8.01-626; Injunctions.

(a) *Time for Filing.* – In every case in which the jurisdiction of this Court is invoked pursuant to Code § 8.01-626, a petition for review must be filed with the clerk of this Court, as provided for in Rule 5:1B, within 15 days of :

(i) an order of a circuit court that grants an injunction, refuses an injunction, or dissolves or refuses to enlarge an existing injunction; or

(ii) an order of the Court of Appeals deciding a petition for review filed in that court pursuant to Code § 8.01-626.

(b) *Copy to Opposing Counsel.* – At the time the petition for review is filed, a copy of the petition must be served by email on counsel for the respondent, unless said counsel does not have, or does not provide, an email address – in which case a copy may be served by any method authorized under Rule 1:12.

* * *

(d) *Number of Copies to File.* – For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of the petition need be filed.

(e) *Filing Fee.* – The petition must be accompanied by the filing fee required by statute, unless the appellant files an in forma pauperis affidavit demonstrating that he cannot afford the filing fee. The clerk of this Court may file a petition for review that is not accompanied by such fee if

the fee is received by the clerk within 5 days of the date the petition for review is filed. If the fee is not received within such time, the petition for review will be dismissed.

(f) *Scope and Review.* – (i) a petition for review may be considered by this Court whether the lower court's order, or that part of the order dealing with the injunction, is temporary or permanent. If review is sought from a final order that deals with injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses injunctive relief. All other issues are governed by the normal rules and timetables that apply to appeals. If both a petition for review under Code § 8.01-626 and an appeal under § 8.01-670 are filed to challenge the same final order, the clerk of this Court will assign separate record numbers to the two proceedings.

(ii) a petition for review may be considered by a single Justice of this Court, or by a panel of Justices.

(g) *Responsive Pleading.* – A respondent may file a response to a petition for review within 7 days of the date of service of same, unless the Court specifies a shorter time frame. The response may not exceed the greater of 12 pages or 2,100 words. For the purpose of this rule, a petition for review is considered served 3 days from the date on which it was mailed, or 1 day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, the Court may act on a petition for review without awaiting a response; however, absent exceptional circumstances, the Court will not grant a petition for review without affording the respondent an opportunity to file a responsive pleading. The response must be filed in compliance with Rule 5:1B. If the respondent is exempt from electronic filing under Rule 5:1B(b), then one paper copy of the responsive pleading is to be filed.

(h) *Rehearing.* – The provisions of Rules 5:20 and 5:37 do not apply to proceedings under Code § 8.01-626.

Rule 5:18. Brief in Opposition.

(a) *Filing Time.* – A brief in opposition to granting the appeal may be filed with the clerk of this Court, as provided for in Rule 5:1B, by the appellee within 21 days after the petition for

appeal is served on counsel for the appellee. Within the same time the counsel for appellee must send a copy to counsel for appellant. For any appellee exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of the brief need be filed.

(b) *Form and Content.* – The brief in opposition must conform in all respects to the content requirements for the brief of appellee in Rule 5:28. However, the brief in opposition need not be bound or have a blue cover. Except by leave of a Justice of this Court, the brief may not exceed the longer of 25 pages or 4,375 words. If the brief exceeds 10 pages or 1,750 words, it must contain a table of contents and table of authorities with cases alphabetically arranged.

* * *

Rule 5:19. Reply Brief.

(a) When a brief in opposition to the petition for appeal has been filed, the appellant may, within 7 days thereafter, in lieu of oral argument, file with the clerk of this Court, as provided for in Rule 5:1B, a reply brief not to exceed the longer of 15 pages or 2,625 words in length.

(b) When cross-error is assigned in a brief in opposition, the appellant may, without waiving oral argument, file with the clerk of this Court, as provided for in Rule 5:1B and within 14 days after filing of the brief in opposition, a reply brief not in excess of 10 pages or 1,750 words which addresses only the cross-error.

* * *

Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal, Refusal of Assignments of Cross-Error, or Disposition of an Original Jurisdiction Petition.

(a) *Scope.* – This Rule governs requests for rehearing of the refusal or dismissal of a petition for appeal filed pursuant to Rule 5:17, the refusal of one or more assignments of cross-error, or the disposition of an original jurisdiction petition filed pursuant to Rule 5:7, Rule 5:7A, or Rule 5:7B.

(b) *Time to File.* – (1) *Petition for Rehearing After Refusal or Dismissal of Petition for Appeal.* – When a petition for appeal is either refused or dismissed, in whole or in part, the clerk of this Court will send a copy of the order denying the appeal, in whole or in part, to counsel for

the appellant and counsel for the appellee. Counsel for the appellant may, within 14 days after the date of such order, file in the office of the clerk of this Court a petition for rehearing. If the petition for appeal is granted but one or more assignments of cross-error are refused, counsel for the appellee may, within 14 days after the date of that order, file in the office of the clerk of this Court a petition for rehearing.

(2) *Petition for Rehearing after Disposition of Original Jurisdiction Petition.* – When a petition filed pursuant to this Court’s original jurisdiction (habeas corpus, mandamus, prohibition, or actual innocence) is decided, the clerk of this Court will mail a copy of the order to counsel for the petitioner and counsel for the respondent. Counsel for either party may, within 30 days after the date of this order, file in the office of the clerk of this Court a petition for rehearing.

(c) *Filing Requirements.* – Except for petitions for rehearing filed by pro se prisoners or with leave of this Court, a petition for rehearing must be filed electronically, as provided for in Rule 5:1B.

(1) The petition for rehearing must be formatted in compliance with the requirements of Rule 5:6(a) and must not exceed the greater of 10 pages or a word count of 1,750 words. The petition must include a certificate of service to opposing counsel and the certificate must specify the manner of service and the date of service, which must be via email unless opposing counsel does not have, or does not provide, an email address. The petition must also include a certificate of compliance with the word count limit.

(2) *Requirements When Paper Filing is Allowed.* – The petition for rehearing may not exceed the greater of 10 pages or 1,750 words in length and must be formatted in compliance with the requirements of Rule 5:6(a). The petition for rehearing must state that a copy has been mailed or delivered to counsel for the appellee.

* * *

Rule 5:21. Special Rules Applicable to Certain Appeals of Right.

(a) *Appeals from the State Corporation Commission.* – (1) *Applicability.* Paragraph (a) of this Rule applies to all appeals from the State Corporation Commission and supersedes all other Rules except as otherwise specified herein.

* * *

(6) Petition for Appeal. (a) Only a party who has filed a notice of appeal in compliance with paragraph (a)(3) of this Rule may file a petition for appeal. A party filing a notice of appeal may file a petition for appeal, accompanied by the prescribed filing fee, in the office of the clerk of this Court, as provided for in Rule 5:1B, within 120 days after entry of the final order, judgment or finding by the Commission and, prior to the filing of the petition must send a copy to every other party to the Commission proceeding.

(b) Except as provided herein, the provisions of Rule 5:17 do not apply to a petition filed pursuant to this subparagraph. The petition for appeal must identify the order appealed from and the date of the order, contain assignments of error, and include the certificate required by Rule 5:17(i) (when filed through VACES, a petition for appeal need not contain a separate certificate as long as the information contained in subsection (i) is provided through the electronic filing process).

(c) Oral argument on the petition will not be allowed nor will a brief in opposition be received. If the petition prays for a suspension of the effective date of the order appealed from, it must contain an assignment of error regarding the effective date of the order appealed from and such statements of the facts and argument as may be necessary for an understanding of this assignment of error. In that event, a brief in opposition will be received. The brief in opposition must be filed, as provided for in Rule 5:1B, within 15 days of the filing of the petition for appeal, may be no longer than 10 pages or 1,750 words, and may only address the assignment of error regarding the effective date of the order appealed from. Oral argument on the assignment of error regarding the effective date of the order appealed from may be granted.

* * *

(b) Appeals from the Virginia State Bar Disciplinary Board or a Three-Judge Circuit Court Determination. – (1) Applicability. Paragraph (b) of this Rule applies to appeals from the Virginia State Bar Disciplinary Board, pursuant to Part 6, § IV, Paragraph 13-26 of the Rules of the Supreme Court of Virginia, and to appeals from the decisions of a three-judge circuit court pursuant to Code

§ 54.1-3935. As used in this paragraph, “Respondent” is defined as the attorney who is appealing the decision of the disciplinary proceeding.

(2) Perfecting the Appeal.

(i) Provisions for Appeals from the Virginia State Bar Disciplinary Board. No appeal will be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the Disciplinary System within 30 days after the Memorandum Order is served on the attorney by certified mail, return receipt requested, at the attorney’s last address on record for membership purposes with the Virginia State Bar. At the same time the Respondent files a notice of appeal and assignments of error, a copy of the notice of appeal and assignments of error must be sent to the counsel for the Bar and the Attorney General of Virginia. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the Memorandum Order is the date from which the time limits contained in Rule 5:11 will run. This action within the time prescribed is mandatory. Upon timely compliance with these rules, the Clerk of the Supreme Court will docket the appeal as provided in Rule 5:23.

(ii) Provisions for Appeals from a Three-Judge Circuit Court. No appeal will be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the three-judge circuit court within 30 days after the entry of the final judgment and, at the same time, serves a copy of the notice of appeal and assignments of error on counsel for the Bar and the Attorney General of Virginia by any method authorized under Rule 1:12. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the judgment is the date from which the time limits contained in Rule 5:11 will run. This action within the time prescribed is mandatory. Upon timely compliance with these rules, the Clerk of the Supreme Court will docket the appeal as provided in Rule 5:23.

* * *

Rule 5:22. Special Rule for Appeals in Death Penalty Cases.

(a) *Notice of Receipt of Record.* – Upon receipt of a record pursuant to § 17.1-313(B), the clerk of this Court must notify in writing counsel for the accused in the circuit court (who is deemed to be counsel for the appellant), the Attorney General (who is deemed to be counsel for the appellee), and the Director of the Department of Corrections of the date of its receipt. The date of the receipt of the record is the Filing Date and the case thereupon stands matured as if an appeal had been awarded to review the conviction and the sentence of death.

(b) *Stay of Sentence of Death.* – Upon the Filing Date, the notice issued by the clerk of this Court is deemed to be the certificate of the clerk of this Court pursuant to Rule 5:23 that an appeal has been awarded, and the enforcement of the sentence of death is thereby stayed pending the final determination of the case by this Court.

(c) *Filing of Assignments of Error and of the Appendix.* – Within 30 days after the Filing Date, counsel for the appellant must file with the clerk of this Court, as provided for in Rule 5:1B, assignments of error upon which the appellant intends to rely for reversal of the conviction or review of the sentence of death. Counsel for the appellant must accompany the assignments of error with a designation of the parts of the record relevant to the review and to the assignments of error. Not more than 10 days after such assignments of error and designation are filed, counsel for the appellee may file with the clerk of this Court a designation of the additional parts of the record that he wishes included as germane to the review or to any assignments of error. Counsel for the appellant must include in the appendix the parts so designated. The provisions of Rules 5:31 and 5:32 (except Rule 5:32(b)(1) and (b)(3)) apply to the appendix.

(d) *Assigning Error to the Sentence of Death.* – With respect to the sentence of death, it is a sufficient assignment of error to state that the sentence was imposed under the influence of passion, prejudice, or other arbitrary factor or that the sentence is excessive or disproportionate to the penalty imposed in similar cases.

(e) *Requirements for Briefs.* – All briefs and the appendix must be filed in compliance with Rule 5:1B.

(1) Brief of Appellant and Appendix. The appellant must file the opening brief, which may not exceed the longer of 100 pages or 17,500 words, and the appendix, in the office of the clerk of this Court within 60 days after the Filing Date.

(2) Brief of the Appellee. The appellee must file its brief, which may not exceed the longer of 100 pages or 17,500 words, in the office of the clerk of this Court within 120 days after the Filing Date.

(3) Reply Brief of the Appellant. The appellant must file the reply brief, which may not exceed the longer of 50 pages or 8,750 words, in the office of the clerk of this Court within 140 days after the Filing Date.

The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

(f) *Compliance with Rules for Perfected Appeals.* – Except to the extent that a conflict with this Rule may arise, in which case this Rule will then be controlling, further proceedings in the case must conform to the Rules relating to cases in which an appeal has been perfected.

(g) *Varying Procedure to Attain the Ends of Justice.* – This Court may, on motion in a particular case, vary the procedure prescribed by this Rule in order to attain the ends of justice and the purpose of § 17.1-313.

* * *

Rule 5:26. General Requirements for All Briefs.

(a) *Applicability.* – This Rule, along with Rule 5:6, sets forth the general requirements for all briefs filed in this Court. Rule 5:22 sets forth the special rule for appeals in death penalty cases. All briefs and the appendix must be filed in compliance with the requirements of Rule 5:1B.

(b) *Length.* – Except by permission of a Justice of this Court, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae may exceed the longer of 50 pages or 8,750 words. No reply brief may exceed the longer of 15 pages or 2,625 words. Briefs of amici curiae must comply with the page limits that apply to briefs of the party being supported.

The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

(c) *Filing Time.* – In cases in which a petition for appeal has been granted by this Court, briefs must be filed subject to the provisions of Rule 5:1(d), as follows:

(1) The appellant must file the opening brief and appendix in the office of the clerk of this Court within 40 days after the date of the certificate of appeal issued by the clerk of this Court pursuant to Rule 5:23.

(2) The brief of appellee must be filed in the office of the clerk of this Court within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of this Court within 14 days after filing of the brief of appellee.

(d) *Extension of Time.* – Upon motion and with permission of a Justice of this Court, the time for filing any brief in this Court may be altered.

(e) *Reference to Parties.* – In their briefs, counsel should avoid reference to parties by such designations as “appellant” and “appellee.” Clarity is promoted by the use of the names of the parties or descriptive terms such as “the employee,” “the injured person,” “the driver,” “the wife,” or the designations used in the lower court or commission.

(f) *Arguments Made by Reference.* – Attempts to incorporate arguments made below by reference to pleadings, motions, memorandum, or other filings are prohibited.

(g) *Signature and Certificate.* – All briefs must contain the signature, which need not be in handwriting, of at least one counsel of record, counsel’s Virginia State Bar number, address, telephone number, facsimile number (if any), and email address, and a certificate that there has been compliance with this Rule. If a word count is used, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(h) *Failure to File Complying Brief.* – Any party who fails to file a brief in compliance with these Rules or otherwise fails to file a required brief may be subject to sanctions deemed reasonable by the Court, including, but not limited to, forfeiture of oral argument.

* * *

Rule 5:31. Covers of Documents.

(a) *What Covers Must Be Used on Papers Filed with this Court.* – Where a party has been exempted from electronic filing requirements under Rule 5:1B(b), to facilitate identification, documents printed on paper must bear covers colored as follows:

Document	Color of Cover
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Reply Brief of the Appellant	Green
Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow

(b) *Effect of failure to comply.* – No appeal will be dismissed for failure to comply with the provisions of this Rule.

Rule 5:32. Appendix.

(a) *Responsibility of the Appellant.* – (1) Contents of the Appendix. The appellant must prepare and file an appendix. The appendix must contain:

(i) the initial pleading (as finally amended), unless other versions are necessary to consider the assignments of error;

(ii) final judgments of all tribunals that have considered the case, including the judgment appealed from, and any opinion relating to such judgments;

(iii) testimony and other incidents of the case germane to the assignments of error;

- (iv) exhibits necessary for an understanding of the case that can reasonably be reproduced;
- (v) the granted assignments of error and cross-error;
- (vi) other parts of the record to which the parties wish to direct this Court's attention; and
- (vii) a table of contents as described in paragraph (d) below.

(2) Assumptions and Excluded Material. It will be assumed that the appendix contains everything germane to the granted assignments of error and, if any, assignments of cross-error. Memoranda of law in the trial court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by this Court or the parties even though not included in the appendix.

(b) Responsibility of All Parties.

(1) Determining the Contents of the Appendix. The parties are encouraged to agree on the contents of the appendix. Within 15 days after the date of the certificate of the clerk of this Court issued pursuant to Rule 5:23, counsel for appellant shall file in the office of the clerk of this Court a written statement signed by all counsel setting forth an agreed designation of the parts of the record on appeal to be included in the appendix. In the absence of an agreement, the appellant must, within 15 days after the date of the certificate of appeal issued by the clerk of this Court pursuant to Rule 5:23, file with the clerk of this Court and serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix. The appellee may, within 15 days after receiving the designation, file with the clerk of this Court and serve on the appellant a designation of additional parts of the record the appellee deems germane. The appellant must include the parts designated by the appellee in the appendix, together with any additional parts the appellant considers germane. The parties must not engage in an unnecessary designation of parts of the record, because the entire record is available to the Court.

* * *

Rule 5:35. Attorney's Fees, Costs, and Notarized Bill of Costs.

(a) *To Whom Allowed.* – Except as otherwise provided by law, if an appeal is dismissed, costs will be taxed against the appellant unless otherwise agreed by the parties or ordered by this

Court; if a judgment is affirmed, costs will be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs will be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs may be allowed as ordered by this Court.

* * *

(d) *Notarized Bill of Costs.* – Counsel for a party who desires costs to be taxed must itemize them in a notarized bill of costs, which must be filed with the clerk of this Court, as provided for in Rule 5:1B, within 14 days after the date of the decision in the case. Objections to the bill of costs must be filed with the clerk of this Court within 10 days after the date of filing the bill of costs.

* * *

Rule 5:37. Petition for Rehearing After Consideration by the Full Court.

(a) *Scope.* – This Rule does not apply to the refusal or dismissal of a petition for appeal, or the refusal or dismissal of an original jurisdiction petition. See Rules 5:20 and 5:20A.

(b) *Notice of Intent.* – A party intending to apply for a rehearing must file written notice with the clerk of this Court, as provided for in Rule 5:1B, within 10 days after the date of the order or opinion of this Court deciding the case. If such notice is given, the clerk of this Court must withhold certification of the mandate until time for filing the petition for rehearing has expired and, if the petition is filed, until it is disposed of.

(c) *Requirements for Pro Se Prisoners or By Leave of Court.* – Unless the rehearing is abandoned, a petition for rehearing not to exceed the longer of 10 pages or 1,750 words in length must be thereafter filed in the office of the clerk of this Court and a copy delivered or mailed to opposing counsel within 30 days after the date of the order of this Court deciding the case.

(d) *Requirements for All Others.* – Except for petitions filed by pro se prisoners, or with leave of this Court, the petition for rehearing must be filed electronically, as provided for in Rule 5:1B. The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 14-point type or larger, must be double-spaced, and must not exceed the longer of 10 pages or 1,750 words. The

petition must include a certificate of service to opposing counsel and the certificate must specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit.

(e) *Grounds for Granting.* – No petition for rehearing will be granted unless one of the Justices who decided the case adversely to the applicant determines that there is good cause for such rehearing. The proceedings upon such rehearing will be in accordance with Code § 8.01-675.2. No oral argument will be permitted on applications for rehearing.

(f) *When a Rehearing is Granted.* – When a rehearing is granted, the Court will determine whether any additional briefing or argument is necessary. Thereafter, the Court may direct the respondent to electronically file a brief, in compliance with paragraph (d) of this Rule, that may not exceed the longer of 15 pages in length or 2,625 words. After review of the petition for rehearing and the respondent's brief, if any is filed, the Court may set oral argument on the petition for rehearing at the next available session of the Court. Otherwise, the Court will issue a ruling on the rehearing without further briefing or oral argument.

* * *

Amend Part Five A as follows:

Rule 5A:1. Scope, Citation, Applicability, Filing and General Provisions.

(a) *Scope of Rules.* – Part Five A governs all proceedings in the Court of Appeals of Virginia (“this Court”).

(b) *Citation.* – These Rules may be cited generally as the “Rules of the Court of Appeals of Virginia” and specifically as “Rule 5A:___.”

(c) *Filings; Copies; Signatures; Service.* – (1) Filings. Except as otherwise provided, all documents to be filed in this Court must be filed electronically, in Portable Document Format (PDF), with the clerk of this Court and electronically served on opposing counsel. Pro se litigants may file by non-electronic means. Others may file by non-electronic means only by leave of Court. Electronic pleadings must be filed through the Virginia Appellate Courts Electronic System (“VACES”) in the manner prescribed by the Guidelines and User’s Manual. All electronic filings are governed by Rule 1:17.

(2) Copies. No paper copies are to be filed for any electronically filed documents. For paper filings, only the original document is required.

(3) Signatures. All documents filed pursuant to Part Five A of these Rules must be signed by counsel for the filing party, or personally signed if the party is proceeding pro se. Electronically filed documents may be signed digitally. Paper filings must contain a handwritten signature.

(4) Service. Unless service or notice is otherwise specified in a given Rule, any document or object filed with this Court must have included within it or appended to it a certificate of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count limitation is required, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(d) *Definitions.* – (1) “clerk of the trial court” means clerk of the trial court from which an appeal is taken to this Court, and includes a deputy clerk and the clerk of the Virginia Workers’ Compensation Commission when the context requires;

(2) “clerk of this Court” includes a deputy clerk;

(3) “counsel” has the definition given in Rule 1:5 for Counsel of Record and in this Part Five A includes a party not represented by counsel and any attorney appointed as a guardian ad litem;

(4) “counsel for appellant” means one of the attorneys representing each appellant represented by an attorney, and each appellant not represented by an attorney;

(5) “counsel for appellee” means one of the attorneys representing each appellee represented by an attorney, and each appellee not represented by an attorney includes a guardian ad litem, unless the guardian ad litem is the appellant;

(6) “opposing counsel” means, depending on the context, “counsel for the appellant” or “counsel for the appellee”;

(7) “judge” means judge of the trial court, unless the context otherwise requires, or if he be not available, any judge authorized to act under Rule 5A:9;

(8) “judgment” includes an order or decree from which an appeal is taken;

(9) “File with the clerk” or “files with the clerk” or “filed with the clerk” means deliver to the clerk specified a document, a copy of which has been electronically transmitted, mailed, or delivered to opposing counsel, and appended to which is either acceptance of service or a certificate indicating the date and manner of such transmission. “File in the office of the clerk” or “files in the office of the clerk” or “filed in the office of the clerk” means, on the other hand, deliver a document to the clerk specified;

(10) “trial court” means the circuit court from which an appeal is taken to this Court;

(11) the “date of entry” of any final judgment or other appealable order or decree is the date the judgment, order, or decree is signed by the judge.

(e) *Notice of Change of Address and Other Contact Information.*— If an attorney or a party pro se has a change in mailing address, telephone number, facsimile number, or e-mail address any time after the filing of the notice of appeal, that individual must immediately notify the clerk of this Court and all other counsel of record in writing. The notice must reference the style and record number of all cases pending before this Court.

(f) *Citing Unpublished Judicial Dispositions.* — The citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as “unpublished,” “not for publication,” “non precedential,” or the like, is permitted as informative, but will not be received as binding authority. If the cited disposition is not available in a publicly accessible electronic database, a copy of that disposition must be filed with the brief or other paper in which it is cited.

Rule 5A:1A. Penalties for Non-compliance; Show Cause; Dismissal.

(a) *Penalties; Show Cause; Dismissal.* — This Court may dismiss an appeal or impose such other penalty as it deems appropriate for non-compliance with these Rules. Except as provided in Rule 5A:12(c)(1)(i) and (ii) regarding assignments of error, before dismissing an appeal for any

defect in the filings related to formatting, curable failure to comply with other requirements, or the failure to meet non-mandatory filing deadlines, this Court may issue a show cause order to counsel or a party not represented by an attorney, prescribing a time in which to cure such defect or to otherwise show cause why the appeal should not be dismissed or other penalty imposed.

(b) *Report to Virginia State Bar* – If an attorney’s failure to comply with these Rules results in the dismissal of an appeal, this Court may report the attorney to the Virginia State Bar in accordance with Rule 8.3 of the Virginia Rules of Professional Conduct.

Rule 5A:2. Motions and Responses; Orders.

(a) *Motions and Responses.* – (1) *Motions.* All motions must be in writing and filed with the clerk of this Court. All motions must contain a statement by the movant that the other parties to the appeal have been informed of the intended filing of the motion. For all motions in cases when all parties are represented by counsel – except motions to dismiss petitions for a writ of habeas corpus – the statement by the movant must also indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition.

(2) *Responses.* Opposing counsel may have 10 days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the 10 days expire, if necessary.

(3) *Oral Argument.* No motion will be argued orally except by leave of this Court.

(b) *Motion for Review of Pre-trial Bail Orders in Criminal Cases.* – When a circuit court has granted or denied pre-trial bail or set a bond or terms of recognizance or revoked bail, either party may move this Court to review the order. With the motion for review, the party seeking review must submit copies of: (1) the warrant(s) or indictment(s) in the case; (2) the order granting, denying, or setting bond; and (3) a transcript of the bond hearing or a stipulation between counsel stating the evidence introduced at the bond hearing and the ruling of the circuit court. An order setting or denying bail or setting terms of a bond or recognizance is reviewable for abuse of discretion.

(c) *Motion for Review of Post-trial Bail Pending Appeal Orders in Criminal Cases.* – When a notice of appeal has been filed in a criminal case, an appellant other than the Commonwealth

may move this Court to review the trial court's order denying bail pending appeal or setting an excessive bail pending appeal. With the motion for review, the appellant must submit copies of: (1) the sentencing order entered by the trial court; (2) a pre-sentence report when available; (3) the trial court's decision setting or denying bail; and (4) a transcript of the bail hearing or a stipulation between counsel stating the evidence introduced at the bail hearing and the reason the trial court gave for the bail decision. An order setting or denying bail pending appeal in a criminal case is reviewable for abuse of discretion. If this Court overrules a trial court decision denying bail pending appeal, this Court will set the amount of the bail pending appeal or remand the matter to the trial court with directions to set bail pending appeal.

(d) *Orders.* – Promptly after this Court has entered an order, the clerk of this Court must send a copy of the order to all counsel.

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

(a) *Filing Deadlines and Extensions.* – The times prescribed for filing the notice of appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), and a petition for rehearing (Rule 5A:33) and a request for rehearing en banc (Rule 5A:34) are mandatory. Except for the petition for appeal which is addressed in Rule 5A:12(a) and Code § 17.1-408, a single extension not to exceed 30 days may be granted if at least three judges of this Court concur in a finding that an extension for papers to be filed is warranted upon a showing of good cause sufficient to excuse the delay. The time period for filing the notice of appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended by the trial court pursuant to Rule 1:1, in which case the time for filing is computed from the date of the final judgment entered following such modification, vacation, or suspension.

(b) *Extensions Generally.* – Except as provided in paragraph (a) of this Rule, the times prescribed in these Rules for filing papers, except transcripts (Rule 5A:8(a)), may be extended by a judge of the court in which the papers are to be filed upon a showing of good cause sufficient to excuse the delay.

(c) *Motions for Extension.* – A motion for extension of time is timely if filed:

- (1) within the original filing deadline; or
- (2) within the specified extension period – *See* Rules 5A:3(a) and 5A:12(a); or
- (3) within any specific deadline governing motions to extend – *See* Rules 5A:8(a), 5A:13(a), 5A:14, 5A:19(b), and 5A:19(c).

Filing a motion for extension does not toll the applicable deadline or further extend the period of extension.

(d) *How to File by Mail in a Timely Manner.* – A document filed with the clerk of this Court by a litigant permitted to file non-electronically under Rule 5A:1(c) will be deemed to be timely filed if (1) it is transmitted expense pre-paid to the clerk of this Court by priority, express, registered, or certified mail via the United States Postal Service, or by a third-party commercial carrier for next-day delivery, and (2) if the official receipt therefor be exhibited upon demand of the clerk or any party and it shows such transmission or mailing within the prescribed time limits. This Rule does not apply to documents to be filed in the office of the clerk of the trial court or clerk of the Virginia Workers' Compensation Commission.

(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.

Rule 5A:4. Forms of Briefs and Other Papers.

(a) *Paper Size, Line Spacing, Font, and Margins.* – Briefs, appendices, motions, petitions, and other documents may be printed or produced on screen by any process that yields a clear black image on a white background and, when printed, must be on pages 8-1/2 x 11-inch paper. All briefs, appendices, motions, petitions, and other documents must be in at least 12-point font. Text may not be reduced, and must be double-spaced except for headings, assignments of error,

quotations, and footnotes. Margins must be at least one inch on all four sides of each page. The use of condensed or multi-page transcripts is prohibited.

(b) *Binding and Cover.* – All briefs, appendices, petitions for rehearing, and petitions for rehearing en banc filed by a litigant permitted to file non-electronically under Rule 5A:1(c) must be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, Acco fasteners, and the like are not acceptable. The front cover of all petitions for appeal, briefs, appendices, petitions for rehearing, and petitions for rehearing en banc must contain the style of the case (with the name of the petitioner/appellant stated first) and the record number of the case and the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and email address of counsel submitting the document.

* * *

Rule 5A:5. Original Proceedings.

(a) *Original Jurisdiction Proceedings Other Than Actual Innocence Petitions.* – With the exception of petitions for the issuance of writs of actual innocence under paragraph (b) of this Rule, all proceedings before this Court pursuant to its original jurisdiction will be conducted in accordance with the procedure prescribed by Rule 5:7 of the Rules of the Supreme Court.

(b) *Petition for a Writ of Actual Innocence.* – (1) Scope. Any person convicted of a felony or any person who was adjudicated delinquent by a circuit court of an offense that would be a felony if committed by an adult, may file in this Court a petition under Code § 19.2-327.10 *et seq.* seeking a writ of actual innocence based on nonbiological evidence.

(2) Form and Contents of Petition. The petition must be filed using Form 10 in the Appendix of Forms following Part 5A and must include all allegations and documents required by subsections A and B of Code § 19.2-327.11. Under Code § 19.2-327.11(B) “relevant documents” include, but are not limited to, any orders of conviction, adjudication of delinquency, and sentencing orders being challenged, any appellate dispositions on direct review or any habeas corpus orders (issued by any federal or state court), and any prior petitions filed

under Code § 19.2-327.10 *et seq.* in this Court or under Code § 19.2-327.2 *et seq.* in the Supreme Court.

* * *

(5) Appointment of Counsel. If the Court does not summarily dismiss the petition, the Court will appoint counsel for any indigent petitioner who requests the appointment of counsel and satisfies the indigency criteria of Code § 19.2-159. In the Court's discretion, counsel may be appointed at an earlier stage of the proceeding at the petitioner's request upon a showing of requisite indigency. All requests for the appointment of counsel must be made on the form provided by this Court.

* * *

(7) Response. If this Court does not summarily dismiss the petition, the Court will provide written notice to all parties directing the Commonwealth, within 60 days after receipt of such notice, to file a response to the petition pursuant to Code § 19.2-327.11(C). For good cause shown, the 60-day deadline may be extended by this Court. The Commonwealth's response may include any information pertinent to the petitioner's guilt, delinquency, or innocence, including proffers of evidence outside the trial court record and evidence previously suppressed at trial.

(8) Reply. The petitioner may file a reply to the Commonwealth's response only if directed to do so by this Court.

(9) Evidentiary Hearing. This Court may order the circuit court that entered the conviction or adjudication of delinquency to conduct an evidentiary hearing and to certify factual findings pursuant to Code § 19.2-327.12. Such findings, however, will be limited to the specific questions addressed by this Court in its certification order. In the circuit court, the petitioner and the Commonwealth must be afforded an opportunity to present evidence and to examine witnesses on matters relevant to the certified questions.

(10) Oral Argument. Unless otherwise directed by this Court, oral argument will only be allowed on the final decision whether to grant or deny the writ under Code § 19.2-327.13.

(11) Appeal. The petitioner or the Commonwealth may petition for appeal to the Supreme Court from any adverse final decision issued by this Court under Code § 19.2-327.13 to issue or

deny a writ of actual innocence. Such an appeal is initiated by the filing of a notice of appeal pursuant to Rule 5:14.

Rule 5A:6. Notice of Appeal.

(a) *Filing Deadline; Where to File.* – No appeal will 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 transmits, mails, or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the trial 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 this Court must 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 is 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.

(b) *Content.* – 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.

(c) *Filing Fee.* – A copy of the notice of appeal must be filed in the office of the clerk of this Court and, except as otherwise provided by law, must be accompanied by the \$50 filing fee required by statute. The fee is due at the time the notice of appeal is presented. The clerk of this Court may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within 10 days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal will be dismissed.

(d) *Certificate.* – The appellant must include with the notice of appeal a certificate stating:

(1) the names and addresses of all appellants and appellees, 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 party; and the mailing address,

telephone number, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel; and

(2) that a copy of the notice of appeal has been transmitted, mailed, or delivered to all opposing counsel; and

(3) in a criminal case, a statement whether counsel for defendant has been appointed or privately retained; and

(4) that in the event a transcript is to be filed a copy of the transcript has been ordered from the court reporter who reported the case or is otherwise already in the possession of appellant, or was previously filed in the proceedings.

* * *

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 this Court 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.

* * *

Rule 5A:10. Record on Appeal: Preparation and Transmission.

* * *

(c) *Abbreviated Record.* – When the assignments of error presented by an appeal can be determined without examination of all the pleadings, facts, testimony, and other incidents of the case, all counsel with the approval of the trial court may prepare for submission an abbreviated record, stating how the assignments of error in the case arose and were decided, and setting forth only so much of the pleadings, facts, testimony, and other incidents of the case as are essential to a determination of the issues on appeal. Such abbreviated record must be signed by all counsel and the trial judge and filed in the office of the clerk of the trial court. It will be assumed that the abbreviated record contains everything germane to the assignments of error. This Court may, however, consider other parts of the record to enable this Court to attain the ends of justice.

(d) *Transmission.* – The clerk of the trial court must retain the record for 21 days after the notice of appeal has been filed with that court pursuant to Rule 5A:6. If the notice of appeal states that a transcript or statement will thereafter be filed, the clerk of the trial court must retain the record for 21 days after the filing in that clerk’s office of such transcript or statement or, if objection is made to the transcript or statement pursuant to Rule 5A:8(d), the clerk of the trial court must retain the record for 5 days after the objection is acted upon by the trial judge. The clerk of the trial court must then forthwith transmit the record to the clerk of this Court; provided, however, that, notwithstanding that the foregoing periods of retention may not have expired, the clerk of the trial court must transmit the record sooner if requested in writing by counsel for all parties to the appeal and must, whether or not so requested, transmit the record in time for delivery to the clerk of this Court within three months after entry of the judgment appealed from. The failure of the clerk of the trial court to transmit the record as herein provided will not be a ground for dismissal of the appeal by this Court.

(e) *Notice of Filing.* – The clerk of this Court must promptly notify all counsel of the date on which the record is filed in the office of the clerk of this Court.

* * *

Rule 5A:11. Special Rule Applicable to Appeals From the Virginia Workers’ Compensation Commission.

(a) *Non-Application of Other Rules.* – Rules 5A:6 through 5A:10 do not apply to appeals from the Virginia Workers’ Compensation Commission except as otherwise specified in this Part Five A.

(b) *Notice of Appeal.* – No appeal from an order of the Commission will be allowed unless, within 30 days after entry of the order appealed from, counsel files with the clerk of the Virginia Workers’ Compensation Commission a notice of appeal which must state the names and addresses of all appellants and appellees, 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 party; and the mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel; and whether the appellant challenges the sufficiency of the evidence to support the findings of the

Commission. A copy of the notice of appeal also must be filed in the office of the clerk of this Court, and except as otherwise provided by law, must be accompanied by the \$50 filing fee required by statute. The fee is due at the time the notice of appeal is presented. The clerk of this Court may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within 10 days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal will be dismissed.

(c) *Record on Appeal.* – The record on appeal from the Commission consists of the originals or copies of the notice of appeal, the employer’s first report, medical reports, applications for hearings, the transcript of any hearing, depositions, interrogatories and answer to interrogatories, and opinions of a commissioner or deputy commissioner and opinions of the Commission, together with such other material as may be certified by the clerk of the Commission and must conform as nearly as practicable to the requirements of Rule 5A:10(b), provided, that, unless it is stated in the notice of appeal that the appellant challenges the sufficiency of the evidence to support the findings of the Commission, the clerk of the Commission need not prepare or certify the transcript of any hearing.

(d) *Transmission of Record.* – The record must, as soon as it is certified by the clerk of the Commission, be transmitted by that clerk to the clerk of this Court. It must be so transmitted within 30 days after filing of the notice of appeal.

(e) *Notice of Filing.* – The clerk of this Court must promptly notify all counsel of the date on which the record is filed in the office of the clerk of this Court.

(f) *Separate Cases.* – Whenever two or more cases were tried together in the Virginia Workers’ Compensation Commission, one notice of appeal and one record may be used to bring all such cases before this Court even though such cases were not consolidated by formal order.

(g) *Record Returned to Commission.* – When the mandate is issued by this Court, the clerk of this Court must return the record to the clerk of the Commission. The clerk of the Commission must return the record upon request of the clerk of this Court.

Rule 5A:12. Petition for Appeal.

(a) *When the Petition Must be Filed.* – When an appeal to this Court does not lie as a matter of right, a petition for appeal must be filed with the clerk of this Court not more than 40 days after the filing of the record with this Court. An extension of 30 days may be granted on motion in the discretion of this Court upon a showing of good cause sufficient to excuse the delay.

(b) *Copy to Opposing Counsel.* – At the time the petition for appeal is filed, a copy of the petition must be transmitted, mailed, or delivered to the Commonwealth’s attorney or the city, county, or town attorney, as the case may be.

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

* * *

(d) *Length.* – Except by leave of a judge of this Court, a petition must not exceed 12,300 words. The word limit does not include the cover page, table of contents, table of authorities, and certificate.

(e) *Single Petition in Separate Cases.* – Whenever two or more cases were tried together in the trial court or commission below, one petition for appeal may be used to bring all such cases before this Court even though the cases were not consolidated below by formal order.

(f) *Oral Argument.* – When the appeal is not granted by the judge of this Court to whom the petition for appeal is originally presented, the petitioner is entitled to state orally, in person or by telephone conference call, to a panel of this Court the reasons the petition for appeal should be granted. The appellant may waive the right to oral argument on the petition for appeal before a panel by notifying the clerk of this Court and opposing counsel in writing, or by filing a reply brief. Any lawyer not licensed to practice in Virginia who seeks to appear pro hac vice to present oral argument to this Court must comply with the requirements of Rule 1A:4.

(g) *Procedure for an Anders appeal.* – If counsel for appellant finds his client’s appeal to be without merit, he must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Akbar v. Commonwealth*, 7 Va. App. 611, 376 S.E.2d 545 (1989). In compliance therewith, counsel is required to file (1) a petition for appeal which refers to anything in the record which might arguably support the appeal and which demonstrates to this Court counsel’s

conscientious examination of the merits of the appeal; (2) a motion for leave to withdraw as counsel; and (3) a motion for an extension of time to allow the appellant to file a supplemental petition for appeal. The petition for appeal and the motion for leave to withdraw as counsel should specifically cite to *Anders*. All three pleadings must be served on opposing counsel and upon the client and must contain a certificate providing evidence of such service. This Court will rule upon the motion for extension of time upon its receipt, but will not rule on the motion to withdraw as counsel until this Court considers the case in its entirety, including any supplemental petition for appeal that may be filed.

Rule 5A:13. Brief in Opposition.

(a) *Filing Time.* – A brief in opposition to granting the appeal may be filed with the clerk of this Court by the appellee within 21 days after the petition for appeal is served on counsel for the appellee. Within the same time the appellee must transmit, mail, or deliver a copy to counsel for appellant. Motions for an extension to this briefing deadline must be filed no later than 10 days after the expiration of the deadline.

(b) *Form and Content.* – The brief in opposition must conform in all respects to the requirements of the brief of appellee (Rule 5A:21).

(1) Length. Except by leave of a judge of this Court, the brief must not exceed 8,800 words.

(2) Table of Contents and Table of Authorities. If the brief exceeds 3,500 words, it must contain a table of contents and table of authorities with cases alphabetically arranged.

(3) Criminal or Traffic Cases. In a criminal or traffic case, a brief may be filed by the Commonwealth’s attorney, city, county, or town attorney, as the case may be.

(c) *Expedited Review.* – When it clearly appears that an appeal ought to be granted without further delay, an appeal may be granted before the filing of the brief in opposition.

Rule 5A:14. Reply Brief.

When a brief in opposition to the petition for appeal has been filed, the appellant may, within 14 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to

exceed 5,300 words in length. Motions for an extension to this briefing deadline must be filed no later than 10 days after the expiration of the deadline.

Rule 5A:15. Denial of Petition for Appeal; Petition for Rehearing.

(a) *Denial by a Single Judge.* – When a petition for appeal is denied by a judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court must transmit a copy of the order denying the petition to all counsel of record. An appellant may demand consideration of the petition by a three-judge panel pursuant to Code § 17.1-407(D). The demand must be filed with the clerk of this Court within 14 days after the date of the order by which the petition was denied. The demand, which must include a statement identifying how the one-judge order is in error, must not exceed 350 words. Oral argument is not 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) *Denial by a Three-Judge Panel.* – When a petition for appeal is denied by a three-judge panel, the clerk of this Court must transmit a copy of the order denying the appeal to all counsel of record. Within 14 days after the date of the order, the appellant may file a petition for rehearing in the office of the clerk of this Court unless the denial was by a three-judge panel after its consideration of a petition denied by a judge of this Court pursuant to Code § 17.1-407. The petition for rehearing may not exceed 5,300 words in length. The petition must state that it has been transmitted, mailed, or delivered to counsel for the appellee. Oral argument on the petition for rehearing will not be allowed. The petition for rehearing will be referred to the panel of this Court that considered the petition for appeal. No responsive brief may be filed unless requested by this Court. The clerk of this Court will notify all counsel of the action taken by this Court on the petition for rehearing.

* * *

Repeal Rule 5A:15A.

Rule 5A:16. Perfection of Appeal; Docketing.

(a) *Appeals as a Matter of Right.* – In cases when an appeal lies as a matter of right to this Court, such appeal is perfected by the timely filing of a notice of appeal pursuant to Rule 5A:6. Such case will be considered mature for purposes of further proceedings from the date the record is filed in the office of the clerk of this Court. A party filing a notice of an appeal of right to this Court must simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

(b) *Grant of Petition for Appeal.* – Promptly after a petition for appeal has been granted by this Court, the clerk of this Court must certify this action to the trial court and all counsel. Such case is considered mature for purposes of further proceedings from the date of such certificate.

(c) *Docketing.* – Cases are placed on the docket in the order in which they mature, provided that precedence must be given to the following cases:

- (1) criminal cases;
- (2) cases from the Virginia Workers' Compensation Commission;
- (3) cases involving termination of parental rights;
- (4) cases of original jurisdiction;
- (5) cases to be reheard; and
- (6) any other cases required by statute to be given precedence.

This Court may, however, for good cause shown or for reasons appearing sufficient to this Court, give preference to other cases.

Rule 5A:17. Security for Appeal.

(a) *Form for Security.* – All security for appeal required under Code § 8.01-676.1 must substantially conform to the forms set forth in the Appendix to this Part Five A.

(b) *Security for Appeal; Defects.* – Whenever an appellant files an appeal bond or irrevocable letter of credit, he must contemporaneously give notice in writing of said filing to counsel for appellee. The time for initially filing the appeal bond or letter of credit prescribed by Code § 8.01-676.1(A) and (B) is not jurisdictional under Code § 8.01-676.1(P). No appeal will be dismissed because of defect in any appeal bond or irrevocable letter of credit unless an appellee,

within 21 days after the giving of such notice, files with the clerk of this Court a statement in writing of the defects in the bond or irrevocable letter of credit, and unless the appellant fails to correct such defects, if any, within 21 days after such statement is filed. If the appellant fails to correct such defects within 21 days, an appellee may move that the appeal be dismissed and it will be dismissed unless the appellant satisfies this Court that the bond or irrevocable letter of credit, either as originally given or as amended, has been filed as required by law.

Rule 5A:18. Preservation of Issues for Appellate Review.

No ruling of the trial court or the Virginia Workers' Compensation Commission will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. A mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review.

Rule 5A:19. General Requirements for All Briefs.

(a) *Length.* – Except by permission of a judge of this Court, neither the opening brief of appellant, nor the brief of appellee may exceed 12,300 words. No reply brief may exceed 3,500 words. Briefs of amici curiae must comply with the word limits that apply to briefs of the party being supported. Word limits under this Rule do not include appendices, or the cover page, table of contents, table of authorities, and certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

(b) *Filing Time: Appeal as a Matter of Right.* – In cases when appeal lies as a matter of right to this Court, briefs must be filed as follows:

(1) The appellant must file the opening brief in the office of the clerk of this Court within 40 days after the date of the filing of the record in such office.

(2) The brief of appellee and the brief of the guardian ad litem must be filed in the office of the clerk of this Court within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of this Court within 14 days after filing of the brief of appellee or guardian ad litem.

(4) Motions for extensions to these briefing deadlines must be filed no later than 10 days after the expiration of the deadline.

(c) *Filing Time: Grant of Petition for Appeal.* – In cases when a petition for appeal has been granted by this Court, briefs must be filed as follows:

(1) The appellant must file the opening brief in the office of the clerk of this Court within 40 days after the date of the certificate of appeal issued by the clerk of this Court pursuant to Rule 5A:16(b).

(2) The brief of appellee must be filed in the office of the clerk of this Court within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of this Court within 14 days after filing of the brief of appellee.

(4) Motions for extensions to these briefing deadlines must be filed no later than 10 days after the expiration of the deadline.

(d) *Participation by Guardian Ad Litem.* – If a guardian ad litem joins with either appellant or appellee, the guardian ad litem must notify the clerk of this Court, in writing, which side it joins. Thereafter, the guardian ad litem may rely on the brief of that party and is entitled to oral argument under Rule 5A:26.

(e) *Arguments Made by Reference.* – Attempts to incorporate arguments made below by reference to pleadings, motions, memorandum, or other filings are prohibited.

Rule 5A:23. Briefs Amicus Curiae.

(a) A brief amicus curiae may be filed at the petition, perfected appeal, and rehearing stages of the appellate proceedings, and in proceedings invoking this Court’s original jurisdiction:

* * *

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, this Court may request that a brief amicus curiae be filed at any time.

Rule 5A:24. Covers of Documents.

(a) To facilitate identification, documents filed non-electronically must bear covers colored as follows:

Document	Color of Cover
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Brief of Guardian Ad Litem (if separate from appellant and appellee)	Brown
Reply Brief of the Appellant	Green
Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow
Petition for Rehearing En Banc	Yellow

(b) No appeal will be dismissed for failure to comply with the provisions of this rule; however, the clerk of this Court may require that a document be redone in compliance with this Rule.

Rule 5A:25. Appendix.

(a) *When Required.* – An appendix must be filed by the appellant in all cases no later than the time of filing the opening brief.

(b) *Filing.* – This Court may by order require the filing or service of a paper copy of the appendix and may, sua sponte or on motion, enter an order dispensing with the appendix and permitting an appeal to proceed on the original record with any copies of the record, or relevant parts, that this Court may order the parties to file.

(c) *Contents.* – An appendix must include:

- (1) the basic initial pleading (as finally amended);
- (2) the judgment appealed from, and any memorandum or opinion relating thereto;
- (3) any testimony and other incidents of the case germane to the assignments of error;
- (4) the title (but not the caption) of each paper contained in the appendix, and its filing date;
- (5) the names of witnesses printed at the beginning of excerpts from their testimony and at the top of each page thereof; and
- (6) exhibits necessary for an understanding of the case that can reasonably be reproduced.

(d) *Determination of Contents.* – Within 10 days after the filing of the record with this Court or, in a case in which a petition for appeal has been granted, within 10 days after the date of the certificate of appeal issued by the clerk of this Court, counsel for appellant must file in the office of the clerk of this Court 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 must file with the clerk of this Court a statement of the assignments of error and a designation of the contents to be included in the appendix within 15 days after the filing of the record or, in a case in which a petition for appeal has been granted, within 15 days after the date of the certificate of appeal; not more than 10 days after this designation is filed, counsel for appellee must file with the clerk of this Court 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 must include in the appendix the parts thus designated, together with any additional parts the appellant considers germane.

* * *

(h) *Assumptions.* – It will be assumed that the appendix contains everything germane to the assignments of error. This Court may, however, consider other parts of the record.

(i) *Sealed Materials in the Appendix.* – Appendices filed with this Court are a matter of public record. If counsel concludes it is necessary to include sealed material in the appendix, then, in order to maintain the confidentiality of the materials, counsel must designate the sealed material for inclusion in a sealed supplemental appendix to be filed separately from the regular appendix. A sealed volume of the appendix must be filed in the manner prescribed by the VACES Guidelines and User's Manual. The Guidelines are located on this Court's website at <https://eapps.courts.state.va.us/help/robo/vaces/index.htm#t=VACES.htm>.

Rule 5A:26. Effect of Noncompliance with Rules Regarding Briefs.

If an appellant fails to file a brief in compliance with these Rules, this Court may dismiss the appeal. If an appellee fails to file a brief in compliance with these Rules, this Court may disregard any additional assignments of error raised by the appellee. If one party has complied

with the Rules governing briefs, but the other has not, the party in default will not be heard orally if the case proceeds to oral argument, except for good cause shown.

Rule 5A:27. Summary Disposition.

In cases in which appeal lies as a matter of right, if all the judges of the panel of this Court to which a pending appeal has been referred conclude from a review of the record and the briefs of the parties that the appeal is without merit, the panel may forthwith affirm the judgment of the trial court or commission.

Rule 5A:28. Oral Argument.

(a) *Notice.* – Whenever appeal lies as a matter of right or a petition for appeal has been granted, oral argument will be permitted except in those cases disposed of pursuant to Rule 5A:27. The Clerk of this Court, except in extraordinary circumstances, must give at least 15 days’ notice to counsel of the date, approximate time, and location for oral argument.

(b) *Length.* – Except as otherwise directed by this Court, argument for a party may not exceed 15 minutes in length. Such time may be apportioned among counsel for the same side at their discretion, except that only one counsel may present the opening argument for the appellant. If guardian ad litem joins with either appellant or appellee, the guardian ad litem will share the time for oral argument with the party. If a guardian ad litem requests additional time to argue, the guardian ad litem must state that application in its brief, subject to approval of this Court.

(c) *Appearance Pro Hac Vice.* – Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to this Court must comply with the requirements of Rule 1A:4.

* * *

Rule 5A:29. Notice of Decision.

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 and to the court or commission from which the appeal proceeded.

Rule 5A:30. Costs and Notarized Bill of Costs.

(a) *To Whom Allowed.* – Except as otherwise provided by law, if an appeal is dismissed, costs will be taxed against the appellant unless otherwise agreed by the parties or ordered by this

Court; if a judgment is affirmed, costs will be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs will be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs will be allowed as ordered by this Court.

(b) *Attorney Fees.* – (1) In any case where attorney fees are recoverable under Title 16.1 or Title 20 relating to affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter 12 (§ 63.2-1200 *et seq.*) of Title 63.2, a party may request an award of attorney fees incurred in the appeal of the case by making said request in the Opening Brief of Appellant, the Reply Brief of the Appellant, or in the Brief of Appellee.

(2) Upon the making of a request for attorney fees as set forth in (b)(1) above, and unless otherwise provided by the terms of a contract or stipulation between the parties, this Court may award to a party who has made such request, all of their attorney fees, or any part thereof, or remand the issue to the circuit court as directed in the mandate order for a determination thereof. Such fees may include the fees incurred by such party in pursuing fees as awarded in the circuit court.

(3) In determining whether to make such an award, this Court will not be limited to a consideration of whether a party’s position on an issue was frivolous or lacked substantial merit but may consider all the equities of the case.

* * *

Rule 5A:31. Mandate.

(a) *Time.* – When there can be no further proceedings in this Court or in the Supreme Court with respect to a decision of this Court, the clerk of this Court must forward its mandate promptly to the clerk of the court or commission from which the appeal proceeded.

(b) *Opinions.* – If the judgment or order is supported by an opinion, a certified copy of the opinion must accompany the mandate.

Rule 5A:32. Scope.

The provisions of Rules 5A:33 through 5A:35 do not apply to the denial or dismissal of a petition for appeal.

Rule 5A:33. Rehearing - On Motion of a Party After Final Disposition of a Case.

(a) *Petition for Rehearing.* – Any party seeking a rehearing of a decision or order of this Court finally disposing of a case must, within 14 days following such decision or order, file a petition for rehearing with the clerk of this Court. The petition for rehearing may not exceed 5,300 words in length.

(b) *Response.* – No response to a petition for rehearing will be received unless requested by this Court.

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

(d) *Grounds.* – No petition for rehearing will be granted unless one of the judges who decided the case adversely to the petitioner determines that there is good cause for such rehearing. The clerk of this Court must notify all counsel of record of the action taken by this Court on the petition for rehearing.

Rule 5A:34. Rehearing En Banc After Final Disposition of a Case.

(a) *Petition for Rehearing en Banc.* – Any party seeking a rehearing by the full Court of a decision or order of a panel of this Court finally disposing of a case must, within 14 days following such decision or order, file a petition for rehearing en banc with the clerk of this Court. The petition for rehearing en banc may not exceed 5,300 words in length.

(b) *Proceedings After Petition for Rehearing.* – No answer to a petition for a rehearing en banc will be received unless requested by this Court. The clerk of this Court must promptly notify all counsel of record of the action taken by this Court on the petition for rehearing en banc.

(c) *On the Court's Order.* – A rehearing en banc on motion of this Court must be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of this Court must promptly notify all counsel of record of the action taken by this Court on this Court's motion.

* * *

Rule 5A:35. Procedure for Rehearing.

(a) *Rehearing by a Panel.* – When rehearing by a panel is granted on petition of a party, the clerk of this Court must notify all counsel. No brief in addition to the petition may be filed by petitioner. Respondent may file in the office of the clerk an answering brief, which may not exceed 5,300 words in length, within 21 days following the date of the order of this Court granting a rehearing. The respondent’s answering brief must be transmitted, mailed, or delivered to opposing counsel on or before the date the answering brief is filed. Respondent may be heard orally whether or not an answering brief is filed. The case will be placed on the docket for oral argument. When practicable, such a rehearing will be heard by the same panel that rendered the final decision in the case.

(b) *Rehearing En Banc.* – When all or part of a petition for rehearing en banc is granted, the clerk of this Court must notify all counsel. The mandate entered is stayed as to all issues decided by the panel pending the decision of this Court en banc. The appeal is reinstated on the docket of this Court for oral argument only as to issues granted. Briefing and oral argument will proceed in the same order as before the three-judge panel.

(1) *Issues Considered Upon Rehearing En Banc.* Only issues raised in the petition for rehearing en banc and granted for rehearing or included in the grant by this Court on its own motion are available for briefing, argument, and review by the en banc Court. This Court may grant a petition in whole or in part. Any issue decided by a panel of this Court not subject to a petition for rehearing en banc remains undisturbed by an en banc decision.

(2) *Appellant's Opening Brief Upon Rehearing En Banc.* The party who was the appellant before the panel of this Court must file in the office of the clerk a brief, which may not exceed 12,300 words in length. Such brief must be filed within 21 days following the date of the order of this Court granting rehearing en banc, and must be accompanied by a certificate indicating that the brief was transmitted, mailed, or delivered to opposing counsel on or before the date of filing.

(3) *Appellee's Answering Brief Upon Rehearing En Banc.* The party who was the appellee before the panel of this Court may file in the office of the clerk the answering brief not to exceed 12,300 words in length, within 14 days after the opening brief has been filed. The appellee’s answering brief must be transmitted, mailed, or delivered to opposing counsel on or before the

date the answering brief is filed. Appellee may be heard orally whether or not the answering brief is filed.

(4) Appellant’s Reply Brief Upon Rehearing En Banc. The party who was the appellant before the panel may file in the office of the clerk a reply brief, not to exceed 3,500 words, within 14 days after the answering brief has been filed. The appellant must transmit, mail, or deliver a copy of the reply brief to opposing counsel on or before the date the answering brief is filed.

Rule 5A:36. Settlement or Withdrawal of Pending Appeal.

When a case has been settled or the appeal withdrawn at any time after the notice of appeal has been filed, it is the duty of counsel to notify the clerk of this Court by filing a written notice that the case has been settled or the appeal withdrawn. If counsel certifies that the terms of the settlement or withdrawal require further proceedings in the trial court, a single judge of this Court may approve entry of an order of remand.

Rule 5A:37. Appellate Settlement Conference in the Court of Appeals.

* * *

(e) *Conference Orders.* – A settlement conference, if ordered in a case, will not automatically affect any time deadline otherwise applicable. The settlement judge, however, may direct the clerk of this Court to enter orders tolling any non-mandatory time deadline before or after the deadline has passed. If any party advises the settlement judge that all or part of an appeal has been settled, the settlement judge will direct the parties to prepare and sign a settlement agreement setting forth all agreed-upon terms. Upon receiving a copy of the settlement agreement, the settlement judge must thereafter direct the clerk of this Court to enter an order dismissing with prejudice all or part of the appeal subject to the agreement.

* * *

Rule 5A:38. Petition for Review Pursuant to Code § 8.01-626; Injunctions.

* * *

(c) *Length and What the Petition for Review Must Contain.* – (i) Except by permission of a judge of this Court, a petition for review may not exceed 2,625 words. The petition for review

must otherwise comply with the requirements for a petition for appeal in Rule 5A:12(c).

(ii) The petition must be accompanied by a copy of the pertinent portions of the record of the circuit court, including the relevant portions of any transcripts filed in the circuit court and the order(s) entered by the court respecting the injunction (hereafter “the record”). The copy of the record constitutes part of the petition for the purpose of paragraph (b), but does not count against the petition word limit.

(iii) The petition for review must contain a certificate:

(1) providing the names of all petitioners and respondents; the name, Virginia State Bar number, mailing address, telephone number, facsimile number (if any), and e-mail address of counsel for each party; and the mailing address, telephone number, facsimile number (if any), and e-mail address of any party not represented by counsel;

(2) certifying that a copy of the petition has been served on all opposing counsel and all parties not represented by counsel, and specifying the date and manner of service.

(3) certifying the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count);

(4) certifying that the copy of the record being filed is an accurate copy of the record of the circuit court and contains everything therefrom necessary for a review of the petition.

(d) *Filing Fee.* – The petition must be accompanied by the \$50 filing fee required by statute. The clerk of this Court may file a petition for review that is not accompanied by such fee if the fee is received by the clerk within 5 days of the date the petition for review is filed. If the fee is not received within such time, the petition for review will be dismissed.

(e) *Scope and Review.* – (i) a petition for review may be considered by this Court whether the circuit court’s order, or that part of the order addressing the injunction, is temporary or permanent. If review is sought from a final order that addresses injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses injunctive relief. All other issues are governed by the normal rules and timetables that apply to appeals. If both a petition for review under Code § 8.01-626 and an appeal under § 8.01-675.3

are filed to challenge the same final order, the clerk of this Court will assign separate record numbers to the two proceedings.

(ii) a petition for review may be considered by a single judge of this Court, or by a three-judge panel.

(f) *Responsive Pleading.* – A respondent may file a response to a petition for review within 7 days of the date of service of same, unless this Court specifies a shorter time frame. For the purpose of this Rule, a petition for review is considered served 3 days from the date on which it was mailed, or 1 day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, this Court may act on a petition for review without awaiting a response; however, absent exceptional circumstances, this Court will not grant a petition for review without affording the respondent an opportunity to file a responsive pleading.

(g) *Rehearing and Further Review.* – The provisions of Rules 5A:15, and 5A:33 through 5A:35 do not apply to proceedings under Code § 8.01-626.

A Copy,

Teste:

A handwritten signature in blue ink, appearing to read "John B. R. [unclear]". The signature is written in a cursive style with a long horizontal flourish at the end.

Clerk