

New Rule Promulgated by Order dated April 10, 2015; effective July 1, 2015.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS

Rule 5A:38. 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 within 15 days of an order of a circuit court that grants an injunction, refuses an injunction, or dissolves or refuses to enlarge an existing injunction.

(b) *Copy to Opposing Counsel.* At the time the petition for review is filed, a copy of the petition shall be served on counsel for the respondent. At the same time that the petition is served, a copy of the petition shall also be emailed to counsel for the respondent, unless said counsel does not have, or does not provide, an email address. With the agreement of the parties, the petition may be served on counsel for the respondent solely by email.

(c) *Length and What the Petition for Review Must Contain.*

(i) Except by permission of a Judge of this Court, a petition for review shall not exceed the longer of 15 pages or 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 shall 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 shall constitute part of the petition for the purpose of paragraph (b), but shall not count against the petition size limit.

(iii) The petition for review shall 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) if a word count is used, 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) *Number of Copies to File.* Four copies of the petition, including the record of the circuit court, shall be filed. Only one copy of the record need be filed if, upon filing the petition, counsel for the petitioner also files an electronic copy of the said record as an Adobe Acrobat Portable Document Format (PDF) document on a CD-ROM.

(e) *Filing Fee.* The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount 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 shall be dismissed.

(f) *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 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 shall be 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.

(g) *Responsive Pleading.* A respondent may file a response to a petition for review

within seven days of the date of service of same, unless the 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, the Court may act on a petition for review without awaiting a response; however, absent exceptional circumstances, the Court shall not grant a petition for review without affording the respondent an opportunity to file a responsive pleading.

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