

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday, the 15th day of June, 2026.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect are hereby amended, effective July 1, 2026.

Amend Rule 5A:35 as follows:

Rule 5A:35. Procedure for Rehearing.

* * *

(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 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.* This Court may grant a petition for rehearing en banc 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. Review by the en banc Court is limited to those matters raised in the petition for rehearing en banc for which the Court granted rehearing and those matters included in the grant by this Court on its own motion.

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(4) *Reply Briefs Upon Rehearing En Banc.* The party who was the appellant before the panel may file in the office of the clerk a reply brief within 14 days after the answering brief has been filed. If the Court has granted en banc review of any cross-error, the party who was the appellee before the panel may file in the office of the clerk a reply brief in support of such assignment of cross-error within 14 days after the appellant's reply brief has been filed. A reply brief under this rule is subject to the requirements of Rule 5A:19(a), (e), and (f) and of Rule 5A:22.

(5) *Composition of the En Banc Court.* In accordance with Code § 17.1-402(E), the Court may sit en banc with fewer than 21 judges but not fewer than 13. When the Court votes to sit

with fewer than all active judges, the following procedure will apply to each such case:

(i) the en banc Court will consist of baseline members and rotational members.

(ii) the baseline members will consist of the chief judge and the three judges to whom the case was originally assigned. The rotational members will be selected from the pool of active judges in a number sufficient, when added to the number of baseline members, to empanel an en banc Court of 17 judges.

The rotational members will be selected randomly from the pool of active judges who are not baseline members. The drawing of the rotational members for each case will be performed by the clerk or chief deputy clerk in the presence of at least one judge other than the chief judge. If a judge who is selected as a rotational member thereafter recuses or becomes unavailable to participate in the hearing of an en banc case, the most senior available judge from the remaining active judges in the pool will serve as the replacement. Any active judge in the pool who was not selected as a potential rotational member for the en banc case will automatically qualify to participate in the next en banc case.

(6) When the chief judge is unable to participate in the en banc hearing of a case, the presiding judge will be the next most senior active judge selected for the en banc Court.

A Copy,

Teste:


Clerk