

TO: The Public, Bench, and Bar of Virginia

FROM: The Advisory Committee on Rules of Court

October 19, 2016

PROPOSED RULE CHANGES
TO REQUIRE ELECTRONIC SERVICE OF PLEADINGS

The Advisory Committee on Rules of Court seeks public comment on whether the Supreme Court should be asked to amend the Rules of the Supreme Court of Virginia, as shown in **Attachment 1**, to require that pleadings be served by email in a court of record. In particular, the Advisory Committee invites comment on the text of the proposed revisions.

This proposal originated in a series of reports by the Boyd-Graves Conference, which has recommended that the rules of court be amended to require electronic service of pleadings and discovery.¹ The Advisory Committee has studied the recommendation at length and has developed the modified version shown in Attachment 1. The Advisory Committee seeks public comment both about the wisdom of requiring email service in courts of record as well as about the text of the proposed revisions.

The guiding principle of the proposal is that, at least in courts of record, all pleadings to be served after the initial filing should be served by email unless the parties agree otherwise. The default rule requiring email service would not apply to incarcerated persons, who typically

¹ See Study Committee re Electronic Service of Pleadings and Discovery (Sep. 21, 2023), 2023 Boyd-Graves Conference, <https://perma.cc/GF8P-M5PL>; Electronic Service of Pleadings and Discovery (Sep. 3, 2025), 2025 Boyd-Graves Conference, <https://perma.cc/994B-KY5X>.

do not have access to email, nor to unrepresented litigants who do not agree in writing to email service. The default rule also would not apply to service of pleadings in courts not of record, unless the parties agree in writing to service by email.

Rule 1:12 is proposed to be amended as shown in Attachment 1 (lines 165-205) to implement these changes. As the service-by-email rule is mandated only for courts of record, Rule 1:12A is added (lines 206-31) to govern service of pleadings in courts not of record. In courts not of record, however, Rule 1:12A would permit the parties to agree in writing to email service.

These changes will require numerous conforming amendments to other rules and forms. In drafting the conforming edits, the Advisory Committee has used “email” consistently in lieu of “e-mail” or “electronic mail,” as “email” is now the predominant form. *See Email*, Bryan A. Garner, *Garner’s Modern English Usage* (5th ed. 2022).

Although the concept behind this proposal is simple, the execution is challenging. Accordingly, the Advisory Committee invites members of the public, bench, and bar to weigh in on this proposal and to help vet the recommendation before the text is presented to the Judicial Council and the Supreme Court for further consideration.

Email Comments: Please send comments—on or before January 15, 2027—to:

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Rule 1:4. General Provisions as to Pleadings.

(a) Counsel tendering a pleading gives his assurance as an officer of the court that it is filed in good faith and not for delay.

(b) A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted.

(c) Counsel or an unrepresented party who files or serves a pleading, motion, or other paper must sign it and state his name and mailing address. In any action in a court of record, counsel must also state his Virginia State Bar number, email address, and telephone number. In any action in a court of record, an unrepresented party must also state his email address and telephone number.

(d) Every pleading must state the facts on which the party relies in numbered paragraphs, and it is sufficient if it clearly informs the opposite party of the true nature of the claim or defense.

(e) An allegation of fact in a pleading that is not denied by the adverse party's pleading, when the adverse party is required by these Rules to file such pleading, is deemed to be admitted. A denial must fairly respond to the substance of the allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest. An allegation in a pleading that the party does not know whether a fact exists will be treated as a denial that the fact exists.

(f) Requirements of pleadings applicable to instruments not under seal apply to instruments under seal.

(g) Requirements of pleadings applicable to legal defenses apply to equitable defenses.

(h) The clerk must note and attest the filing date on every pleading. In an Electronically Filed Case, the procedures of Rule 1:17 apply to the notation by the clerk of the date of filing.

(i) The mention in a pleading of an accompanying exhibit, of itself and without more, makes such exhibit a part of the pleading. Filing of such exhibits is governed by Rule 3:4.

(j) Brevity is enjoined as the outstanding characteristic of good pleading. In any pleading a simple statement, in numbered paragraphs, of the essential facts is sufficient.

(k) A party asserting either a claim, counterclaim, cross-claim, or third-party claim or a defense may plead alternative facts and theories of recovery against alternative parties, provided that such claims, defenses, or demands for relief so joined arise out of the same transaction or occurrence. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A

party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds.

~~(1) Every pleading, motion or other paper served or filed must contain at the foot the Virginia State Bar number, office address and telephone number of the counsel of record submitting it, along with any electronic mail (E-mail) address and facsimile number regularly used for business purposes by such counsel of record.~~

Rule 1:5. Counsel and Parties Appearing Without Counsel.

(a)(1) When used in these Rules, the word “counsel” includes a partnership, a professional corporation or an association of members of the Virginia State Bar practicing under a firm name.

(2) When such firm name is signed to a pleading, notice, or brief, the name of at least one individual member or associate of such firm must be signed to it. Any such pleading, notice, or brief may be signed electronically or by inclusion of a digital image of the signature. The electronic signature accompanying the document when filed constitutes that person’s signature on the document for purposes of Code § 8.01-271.1.

~~(3) Service on one member or associate of such firm constitutes service on the firm. Service is not required to be made on foreign attorneys.~~

(b) “Counsel of record” includes a counsel or party who has signed a pleading in the case or who has notified the other parties and the clerk in writing that he or she appears in the case, or has endorsed a draft order of the court as provided in Rule 1:13.

(c) As required by Code § 8.01-271.1, a party who is not represented by an attorney—including a person confined in a state or local correctional facility proceeding pro se—must sign every pleading, motion, or other paper that he or she serves or files, and must state his or her address. Any such pleading, notice, or paper may be signed electronically or by inclusion of a digital image of the signature. The electronic signature accompanying the document when filed constitutes that person’s signature on the document for purposes of Code § 8.01-271.1.

(d) (1) Counsel of record may not withdraw from or terminate appearances in a case except by (i) leave of court after notice to the client of the time and place of a motion for leave to withdraw, or (ii) pursuant to the provisions in subpart (f)(4) of this Rule.

(2) Any order permitting withdrawal must state the name, Virginia State Bar number, office address and telephone number of the attorney or law firm being substituted as counsel of record for the party, along with any ~~electronic mail (email)~~ address and any facsimile number regularly used for business purposes by such counsel; or

(3) if replacement counsel is not being designated at the time of withdrawal by an attorney or law firm, the order permitting withdrawal must state the address and telephone number of the formerly represented party for use in subsequent mailings or service of papers and notices, and the pro se party will be deemed counsel of record.

(e) As required by Code §§ 8.01-319(A) and 16.1-88.03, any party not represented by counsel who has made an appearance in the case must promptly file with the clerk of the court in which the action is pending a written statement of his or her place of residence and mailing address, and must inform the clerk in writing of any changes of residence and mailing address during the pendency of the action. The clerk and all parties to the action may rely on the last written statement filed as aforesaid.

(f) Limited Scope Appearance; Notice; Service; Completion or Termination of Appearance.

(1) Notice of Limited Scope Appearance by a Qualified Legal Services Provider. In any civil court proceeding an attorney may, prior to or simultaneous with the proceeding, file and serve on all parties a notice of limited scope appearance (A) stating that the attorney is (i) employed by a qualified legal services provider, as defined in Section IV, Paragraph 3(f) of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court (hereafter “QLSP”), or (ii) acting pro bono on a direct referral from a QLSP; (B) stating that the attorney and the party have a written agreement that the attorney will make a limited scope appearance in such action; and (C) specifying the matters, hearings, or issues on which the attorney will appear for the party.

(2) Limited Scope Appearance by Leave of Court. Any attorney not proceeding under subpart(f)(1) of this Rule may seek leave of court to make a limited scope appearance in any civil case. If such leave is granted, the appearance will be governed by the notice requirements of subparts(f)(1)(B) and (C) of this Rule, the service and unrepresented party provisions of subpart (f)(3), and the completion or termination provisions of subpart (f)(4).

(3) Service of Papers After Notice. For the duration of the limited scope appearance as provided in this Rule, service of all papers must be made upon both the attorney making such limited scope appearance and the party on whose behalf the appearance is made, who will be considered an unrepresented party.

(4) Completion or Termination of Limited Scope Appearance.

(A) *Notice of Completion of Limited Scope Appearance.* — An attorney who has completed the obligations identified in a notice of limited scope appearance must file a notice of completion of limited scope appearance. The notice must be accompanied by a declaration by the attorney that counsel’s obligations under the limited scope appearance agreement have been satisfied, and must be (i) endorsed by the party on whose behalf the limited scope appearance was made, and (ii) served on all counsel and any unrepresented parties. Upon the filing of the notice of completion of limited scope appearance, the attorney is deemed to have ceased appearances in the matter.

(B) *Termination of Limited Scope Appearance.* — If the party on whose behalf the limited scope appearance was made cannot or will not endorse the notice of completion of limited scope appearance, the attorney may file a motion to terminate the limited scope appearance, serve it on all parties, and afford seven days for objection. If an

objection is filed, the court may hold a hearing to determine whether the attorney's obligations under the notice of limited scope appearance have been met. If the court finds that the attorney's obligations under the notice of limited scope appearance have been met, it must grant the motion to terminate the limited scope appearance.

(C) *Replacement Counsel or the Party Acting Pro Se.* — If replacement counsel is not being designated at the time of the attorney's completion of limited scope appearance, the notice of completion of limited scope appearance or order permitting termination of limited scope appearance must state the address and telephone number of the party on whose behalf the limited appearance was made for use in subsequent mailings or service of papers and notices, and said party will be deemed self-represented.

(5) Limited Scope Appearance for a Single District Court Hearing. If the matters, hearings, or issues on which the attorney will appear for the party are limited to one court appearance in General District Court or Juvenile and Domestic Relations District Court, an attorney meeting the criteria in subpart (f)(1) may, prior to or simultaneous with the appearance, file and serve on all parties a notice of limited scope appearance for a single District Court hearing. The notice of limited scope appearance for a single District Court hearing serves as both a notice of appearance and notice of completion of limited scope appearance. The limited scope appearance will automatically conclude at the end of the District Court hearing. The completion or termination of limited scope appearance requirements outlined in subpart (f)(4) do not apply to a limited scope appearance for a single District Court hearing. Nothing will preclude an attorney from making more than one limited scope appearance.

(6) Local Counsel or Covering Docket Calls. Nothing in this subpart (f) will apply where a party is represented for all purposes by counsel of record and another attorney appears in lieu of counsel of record for a particular proceeding or docket call.

Rule 1:7. Computation of Response Dates.

Whenever a party is required or permitted under these Rules, or by direction of the court, to do an act within a prescribed period of days after service of a paper upon counsel of record,

(a) No days will be added if the paper is served by:

(1) manual delivery no later than 5:00 p.m. by counsel, counsel's agent or courier, or a commercial delivery service making same-day delivery;

(2) facsimile transmission completed no later than 5:00 p.m.; or

(3) ~~email~~electronic mail transmitted no later than 5:00 p.m.

(b) One day will be added to the prescribed time if the paper is served by:

(1) placing the paper in the hands of a commercial delivery service before midnight for next-day delivery, or

(2) completion of the following after 5:00 p.m. but before midnight: (A) manual delivery by counsel, counsel's agent or courier, or a commercial delivery service making

same-day delivery; (B) transmission by facsimile; or (C) transmission by ~~electronic~~ email.

(c) three days will be added to the prescribed time if the paper is served only by mail. With respect to Parts Five and Five A of the Rules, this Rule applies only to the time for filing a brief in opposition.

Times of day are in Eastern Time.

Rule 1:12. Service of Papers after the Initial Process in a Court of Record.

In a court of record, All pleadings, motions and other papers served after the initial process in an action and not required to be served otherwise, and all requests for subpoenas duces tecum, must be served on every other party on or before the day of filing. Service on a represented party must be made on counsel of record.

Except as otherwise provided in this Rule or Rule 1:17, service on a party represented by counsel must be made by email. Counsel for a represented party may designate one or more email addresses for such service by filing and serving a written notice of designation. When such designation is made, service by email is effective only if sent to the designated address. Service at an email address so designated constitutes service on that party and all counsel of record for that party. If no such designation has been made, service may be made at an email address regularly used for business purposes by counsel of record and identified in that counsel's contact information in any signature block, notice of appearance, or other filing in the action. The court, in its discretion, may permit a represented party to utilize a method of service other than email.

Service on a party who is not represented by counsel may be made by email if that party has agreed in writing to service by email. Otherwise, service on an unrepresented party must be made by mailing, delivering, dispatching by commercial delivery service for same-day or next-day delivery, or transmitting by facsimile, transmitting by electronic mail when Rule 1:17 so provides or when consented to in writing signed by the person to be served, or by mailing, a copy to each counsel of record on or before the day of filing. Service by or on an incarcerated person who is not represented by counsel must be made by mailing unless the parties agree in writing to another method of service.

The parties may agree in writing to an alternative method of service including mailing, delivering, dispatching by commercial delivery service for same-day or next-day delivery, or transmission by facsimile. A party may withdraw from such an agreement by serving written notice on the other parties to the agreement. The agreement ceases to apply to service by or on the withdrawing party when the notice is served.

Subject to the provisions of Rule 1:17, service pursuant Service under to this Rule is presumed effective upon such delivery, dispatch, transmission or mailing. Service by electronic mail under this Rule is not effective if the party making service learns that the Nothing in this Rule limits a method of electronic service authorized or required by Rule 1:17. attempted service did not reach the person to be served.

At the foot of each paper or request served under this Rule ~~such pleadings and requests~~ must be appended either acceptance of service or a certificate of counsel stating that copies were served as this Rule requires and stating, showing the date of delivery and method of service, dispatching, transmitting, or mailing. ~~If service was made by email, the certificate must state the email address to which service was sent. When service is made by electronic mail, a certificate of counsel that the document was served by electronic mail must be served by mail or transmitted by facsimile to each counsel of record on or before the day of service.~~

Rule 1:12A. Service of Papers after the Initial Process in a Court Not of Record.

In a court not of record, all pleadings, motions and other papers served after the initial process in an action and not required to be served otherwise, and all requests for subpoenas duces tecum, must be served on every other party on or before the day of filing. Service on a represented party must be made on counsel of record.

Except as otherwise provided in this Rule or Rule 1:17, service under this Rule must be made by mailing, delivering, dispatching by commercial delivery service for same-day or next-day delivery, or transmitting by facsimile. Service by or on an incarcerated person who is not represented by counsel must be made by mailing unless the parties agree in writing to another method of service.

The parties may agree in writing to service by email. The agreement must designate one or more email addresses for service on each party covered by the agreement. An email address designated for service on a represented party must be an address of counsel of record. Service at such an address constitutes service on that party and all counsel of record for that party.

A party may withdraw from an agreement to service by email by serving written notice on the other parties to the agreement. The agreement ceases to apply to service by or on the withdrawing party when the notice is served.

Service under this Rule is presumed effective upon such mailing, delivery, dispatch, or transmission. Nothing in this Rule limits a method of electronic service authorized or required by Rule 1:17.

At the foot of each paper or request served under this Rule must be appended either acceptance of service or a certificate stating that copies were served as this Rule requires and stating the date and method of service. If service was made by email, when allowed by this Rule, the certificate must state the email address to which service was sent.

Rule 1:13. Endorsements.

Drafts of orders and decrees must be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof must be served pursuant to ~~Rule 1:12~~ these Rules upon all counsel of record who have not endorsed them.

Compliance with this Rule and with Rule 1:12 ~~and Rule 1:12A~~ may be modified or dispensed with by the court in its discretion. In an Electronically Filed Case, endorsement and specification of any objections to the draft order may be accomplished as provided in Rule 1:17.

Rule 1:17. Electronic Filing and Service.

(a) *Scope of Electronic Filing Rules.* Pursuant to § 8.01-271.01 and Article 4.1 (§§ 17.1-258.2 et seq.) of Chapter 2 of Title 17.1 of the Code of Virginia, this Rule applies in any court that has established an electronic filing system under the standards and procedures set forth in subdivision (c) of this Rule, and applies in civil cases in circuit court as provided in Rule 3:3, in criminal cases in circuit court as provided in Rule 3A:23, in general district court proceedings as provided in Rule 7A:7(c), and in juvenile and domestic relations district court proceedings as provided in Rule 8:8(f).

(b) Definitions.

(1) "**Electronic Document**" means any defined set of textural matter, graphic content or other encoded information in an approved format, that can be read, printed, and stored or retained as electrical, magnetic or optically encoded signals in some medium and that can be transmitted by a data-link.

(2) "**Data-link**" refers to any means of electronic transmission of a document in a coded form such that the document can be received, read, printed, and stored by the recipient.

(3) "**E-Filing Portal**" means the electronic web site maintained by the Supreme Court of Virginia designated as the facility for electronically filing documents, or an alternative which meets the standards set forth in this Rule and is made available by individual circuit courts.

(4) "**Electronic filing**" means the official filing of an electronic document on the court's docket and case files in electronic form by transmission over a data-link.

(5) "**Electronically Filed Case**" means a case in which pleadings, motions, notices and other filings are made electronically in accordance with these rules.

(6) "**Hyperlink**" means an electronic connection or reference to another place in the document, such that when the hyperlink is selected the user is taken to the portion of the document to which the link refers. It is not ~~in~~ itself a part of the document.

(c) *System Operational Standards.* In addition to the obligations and procedures set forth in subdivision (d) of this Rule, electronic filing systems under this Rule must meet these requirements:

(1) Electronic documents must be stored without loss of content or material alteration of appearance.

(2) Files capable of carrying viruses into court computers must be scanned for viruses prior to being written to disk in the clerk's office.

(3) The electronic filing system must be capable of securing the document upon receipt so that it is protected from alteration.

279 (4) The electronic filing system must be capable of establishing the identity of a
280 sender of a document by means of a registered user identity and password, or by digitally
281 encrypted electronic signatures, or by any other means reasonably calculated to ensure
282 identification to a high degree of certainty.

283 (5) Remote electronic access to documents submitted in an electronically filed
284 case and stored electronically will be limited to judges, court personnel, any persons
285 assisting such persons in the administration of the electronic filing system, active
286 members of the Virginia State Bar and their authorized agents, and parties appearing pro
287 se, who have complied with the registration requirements to use the electronic filing
288 system.

289 (6) If the court accepts payment of fees by credit card, debit card, debit account,
290 or electronic funds transfer, registration for the user identity must include submission of
291 all information required to effect the payment of fees. Electronic submission of this
292 information will be deemed a signature by the cardholder sender, authorizing the
293 payment of document filing fees. This information must be kept confidential. There will
294 be an electronic confirmation from the clerk of any charge to or the debit from the user's
295 account.

296 (7) No unauthorized person is permitted access to other court networks, data or
297 applications unrelated to electronic filing. Administrative access to computer equipment
298 and networks handling electronic filing will be restricted to designated court employees
299 or authorized maintenance personnel.

300 (8) Electronic filing systems must reasonably protect filed documents against
301 system and security failures and must provide, at a minimum, for daily backup, periodic
302 off-site backup storage if feasible, and prudent disaster recovery mechanisms.

303
304 (d) *Electronic Service and Filing Practice and Procedures.*

305 (1) In an Electronically Filed Case, all pleadings, motions, notices and other
306 material filed with the court must be in the form of Electronic Documents except where
307 otherwise expressly provided by statute or the Rules of Court, or where the court orders
308 otherwise in an individual case for good cause shown.

309 (2) Each attorney admitted to practice in the Commonwealth is entitled to a
310 registered User ID and password issued by the clerk, or access using any comparable
311 identification system approved by the Supreme Court, for the electronic filing and
312 retrieval of documents.

313 (3) The clerk must provide a means, in the courthouse or other designated
314 location, for the parties, counsel and the public to review and copy electronic records
315 from the electronic file during normal business hours.

316 (4) The format for electronically filed material must be the Portable Document
317 Format (PDF). Notice will be provided if any other format is approved.

318 (5) (i) Subject to the provisions of subsections (d)(6) and (7) of this Rule, an
319 electronic document must be filed by following the procedures of the applicable E-Filing
320 Portal, and will be deemed filed on the date that it is received in the E-Filing Portal
321 without regard to whether the filing occurred within or outside of standard business
322 hours. If the electronic document is received in the E-Filing Portal on a Saturday,
323 Sunday, legal holiday, or any day or part of a day on which the clerk's office is closed as
324 authorized by an act of the General Assembly, then such document will be deemed filed

on the next day that is not a Saturday, Sunday, legal holiday, or day or part of a day on which the clerk's office is closed.

(ii) Upon electronic filing of a document, an electronic confirmation will be transmitted to the filing party indicating that the document has been successfully filed through the E-Filing Portal. In addition, the court to which the document is directed will promptly transmit an electronic acknowledgement of its receipt of the electronically filed document, specifying the identity of the receiving court, the date the document was received by the court, and a court-assigned document reference or docketing number.

(6) 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 properly filed, complete, and readable. However,

(i) if technical problems at the E-Filing Portal result in a failure to timely file the electronic document, counsel must provide to the clerk of the court on the next business day all documentation which exists demonstrating the attempt to file the document through the E-Filing Portal, any delivery failure notice received in response to the attempt, and a copy of the document, and

(ii) in the event that the E-Filing Portal was not available due to technical problems during the last filing hours of a business day, the office of the clerk of the court to which the document is directed will be 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) will apply to that particular attempted filing for purposes of computing the last day for performing any act in a judicial proceeding or the filing of any legal action.

(7) Clerk's notice of defects in a filing; striking documents; court orders.

(i) Incorrect or missing fee. If the clerk of court determines that an electronically filed document is defective because of an incorrect or missing filing fee, and

(A) if the clerk has been provided by the filing party with a credit or payment account through which to obtain payment of fees, the clerk must immediately process payment of the correct fee through such credit or payment account; or

(B) if processing by the clerk of the proper payment through a credit or payment account authorized by the filing party is not feasible, notice must be sent by the clerk electronically to the filing party, and all other parties who have appeared in the case.

(ii) Document filed in the wrong case by counsel. If the clerk of court determines prior to acceptance that an electronic document has been filed by counsel under the wrong case or docket number, the clerk must notify the filing party as soon as practicable, by notice through the E- Filing system, by telephone, or by other effective means.

(iii) A copy of all notices transmitted by the clerk under this subpart (d)(7) must be retained in the permanent electronic case file maintained by the clerk. A copy of any document stricken must be retained by the clerk with a designation clearly reflecting that it was stricken and the date of such striking, as a record of its content and disposition.

(8) The clerk's office must accommodate the submission of non-electronic documents in an Electronically Filed Case if filing in electronic form cannot, as a practical matter, be achieved. Such documents must be imaged to facilitate the creation of a single electronic case file to the extent reasonably possible. An outsized document that

is capable of being imaged must be retained in the form submitted.

(9) When an order is entered, the electronic record will be updated to identify the judge who directed entry of the order and the date it was entered, and a notification will be sent to counsel of record that the order has been entered, along with a copy of the order or an electronic link providing access to such order. If the entry of an order is done on a paper copy of the order, a digital image of such order will be made a part of the electronic record, and the endorsed original paper will be retained for the record.

(10) Hyperlinks between two portions of a filed document or between two or more documents filed in the same case, are permissible, but hyperlinks to other documents, or to external websites, are prohibited. A hyperlink is not itself a part of the official filed document and each hyperlink must contain a text reference to the target of the link.

(e) Application of, and Compliance with, Other Rules. In an Electronically Filed Case:

(1) Unless otherwise agreed by all parties, or ordered by the court in an individual case for good cause shown, all documents required to be served – after the initial service of process must be served by electronic transmission. Such service is effective as provided in Rule 1:12 or Rule 1:12A as applicable.

(2) Annotation by the clerk as provided in Rule 1:4(h) is not required to be made physically upon the face of the pleading and – if it is made by a separate document – it must specify the pleading to which such annotation pertains.

(3) An e-mail-email address of the counsel of record must be included in the electronic documents filed as required by Rule 1:4(l).

(4) The approved electronic identification accompanying the document when filed constitutes that person's signature on the document for purposes of Rule 1:5 and Virginia Code § 8.01-271.1.

(5) The provisions of Article 4.1 (§§ 17.1-258.2 et seq.) of Chapter 2 of Title 17.1 of the Code of Virginia apply where a document is to be notarized, sworn, attested, verified, or otherwise certified, or if any sworn signatures, stamps, seals or other authentications relating to the document are required by any statute or Rule, and an electronic or digitally imaged document with such accompanying entries must be filed in the clerk's office. Electronic notarization in compliance with the Virginia Notary Act (§§ 47.1-1 et seq.) may also be employed with the filing.

(6) An acceptance of service or a certificate of counsel that electronic copies were served as this Rule requires, showing the date of delivery, must electronically accompany the served papers and satisfies Rule 1:12 and Rule 1:12A.

(7) In compliance with Rule 1:13, drafts of orders, decrees and notices must be served on each counsel of record. Such service may be by electronic transmission and must make provision for electronic endorsement by multiple parties where applicable. Objections or other notations by the parties must be entered upon the drafts so circulated, or appended to such drafts by specific cross- reference or other unambiguous association. Endorsed drafts must be submitted electronically whenever possible, and must be accompanied by proof of service or acceptance of service when required by the rules of court. If there is no practical means of submitting an electronic or digitally imaged

Attachment 1

416 endorsed draft, the manually endorsed document must be filed in the clerk's office. The
417 clerk must accommodate the imaging of the document into electronic form and must
418 retain the original endorsed document.

APPENDIX—PART ONE.

1. Praeipe (Rule 1:15(b)).

VIRGINIA: IN THE CIRCUIT COURT OF THE

.....,

Plaintiff

v.

CASE NO. ...

.....,

Defendant

PRAECIPE

I certify that the above styled cause is matured for trial on its merits
and request the Clerk to place it on the docket to be called on

.....

date of next docket call

to be set for trial *with* () or *without* () a jury.

Dated this day of, 20....

.....

Counsel for

CERTIFICATE OF SERVICE

I certify that on the day of, 20...., I ~~mailed or delivered~~ served a true copy
of the foregoing praecipe to all counsel of record herein pursuant to the provisions of
Rule 1:12 of the Rules of the Supreme Court of Virginia, and served a true copy upon
parties not represented by counsel, if any.

.....

Counsel for

Rule 2:107. Ultrahazardous Items as Exhibits.

(a) Ultrahazardous items may not be brought into any courtroom as exhibits without leave of the court for good cause shown. Ultrahazardous items are those substances or devices the presence of which in the courtroom, notwithstanding reasonable safety precautions, could pose a significant threat to human health, including, but not limited to, explosives, explosive devices, biological or chemical toxins, and highly potent controlled substances such as fentanyl and carfentanil that are toxic by their nature or quantity.

(b) Photographs or reasonable facsimiles of ultrahazardous items are admissible in any proceeding, hearing or trial to the same extent as if such ultrahazardous items themselves were being introduced as evidence. Such photographs must fairly and accurately depict the ultrahazardous items and clearly include scale for the size of the items depicted. "Reasonable facsimiles" are models that substantially replicate the actual ultrahazardous items in appearance and are of a scale of 1:1. All facsimiles must be clearly labeled as facsimiles. This rule does not excuse the party offering such evidence from proving chain of custody but that party is not required to produce ultrahazardous items to establish chain of custody. Regardless of whether a party offers photographs or facsimiles of ultrahazardous items under this rule, a party may offer properly authenticated photographs of ultrahazardous items as part of its proof on the issue of chain of custody.

(c) In any trial or hearing in which a party intends to offer photographs or facsimiles of ultrahazardous items into evidence, that party must:

1. Serve notice of such intent pursuant to Rule 1:12 or Rule 1:12A, together with Provide by mail, delivery, or otherwise, notice of such intent and a copy of such photographs or a description of the proposed facsimiles, ~~to counsel of record for the other party, or directly to a party who is proceeding pro se, at no charge,~~ no later than 28 days before the hearing or trial, and promptly permit the other party to inspect the proposed facsimile; and

2. File a copy of the notice and photographs or description of the proposed facsimiles with the clerk of the court hearing the matter on the day that the notice is provided to the other party.

(d) If the opposing party objects to the introduction of a photograph or proposed facsimile, that party must file written notice of its objection with the court hearing the matter, with a copy to the other party, no later than 14 days after the notice and photographs required under subsection (c) were filed with the clerk by the other party. Upon filing of a timely objection, the court must conduct a pre-trial hearing to determine whether the photograph or proposed facsimile may be introduced as evidence, unless the parties with the concurrence of the court agree to consider the objection during the trial.

(e) If either party wishes that an ultrahazardous item itself be introduced as evidence in lieu of photographs or facsimiles, that party must file a motion with the court hearing the matter, with a copy to the other party. Such a motion by the Commonwealth or plaintiff must be filed no more than 28 days before the trial or hearing, and if by the defendant or respondent, no more than 14 days after the notice and photographs required under subsection (c) were filed with the clerk by the other party. Upon timely motion, the court must conduct a pre-trial hearing to determine whether good cause exists to allow ultrahazardous items themselves to be brought into the courtroom and introduced as evidence.

Rule 2A:2. Notice of Appeal.

(a) Any party appealing from a regulation or case decision must file with the agency secretary, within 30 days after adoption of the regulation or after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel. With respect to appeal from a regulation, the date of adoption or readoption is the date of publication in the Register of Regulations. In the event that a case decision is required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days will be added to the 30-day period for that party. Service under this Rule is sufficient if sent by registered or certified mail to the party's last address known to the agency.

(b) The notice of appeal must identify the regulation or case decision appealed from, must state the names, ~~and~~ addresses, telephone number, and email address of ~~each~~ the appellant and of all other parties and their counsel, if any, must specify the circuit court to which the appeal is taken, and must conclude with a certificate that a copy of the notice of appeal has been mailed to each of the parties. Any copy of a notice of appeal that is sent to a party's counsel or to a party's registered agent, if the party is a corporation, will be deemed adequate and will not be a cause for dismissal of the appeal; provided, however, sending a notice of appeal to an agency's counsel will not satisfy the requirement that a notice of appeal be filed with the agency secretary. The omission of a party whose name and address cannot, after due diligence, be ascertained will not be cause for dismissal of the appeal.

(c) Any final agency case decision as described in § 2.2-4023 must advise the party of the time for filing a notice of appeal under this Rule.

Rule 3:14A. Intervention by the Commonwealth where constitutionality of law challenged.

(a) *Intervention of right by the Commonwealth.* — In any civil action in any circuit court, the Court of Appeals, or the Supreme Court in which a party challenges the constitutionality of a statute or regulation of the Commonwealth or of a provision of the Constitution of Virginia, and in which no party is represented by the Office of the Attorney General, the Attorney General, on behalf of the Commonwealth, is entitled to intervene in the action.

(b) *Notice to the Attorney General.* — A party who files a pleading or written motion challenging the constitutionality of a statute or regulation of the Commonwealth or of a provision of the Constitution of Virginia must promptly (1) file with the court a notice stating the nature of the challenge and identifying the filing in which it was raised and (2) serve a copy of the notice and the filing on the Attorney General by certified or registered mail, return receipt requested, to Notices of Constitutional Challenges, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219, or by ~~electronic mail~~email to noticesofappeal@oag.state.va.us.

(c) *Time to Intervene.* — The Attorney General, on behalf of the Commonwealth, may intervene in such action by filing a motion to intervene within 30 days after being served with a copy of the notice required by subsection (b), unless the court extends the time to intervene.

(d) *Further proceedings.* — Before the expiration of the time to intervene in subsection (c), or if the party has failed to give the notice required by subsection (b) within 10 days after notice of such failure has been received by the party in writing, the court may reject the constitutional challenge but may not enter a final judgment holding the statute, regulation, or constitutional provision unconstitutional.

Rule 3:23. Use of and Proceedings Before a Commissioner in Chancery.

(a) Commissioners in chancery may be appointed in cases in circuit court, including uncontested divorce cases, only when (1) there is agreement by the parties with concurrence of the court or (2) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case.

(b) Upon entry of a decree by the court referring any matter to a commissioner in chancery, the clerk must mail or deliver to the commissioner a copy of the decree of reference. Unless the decree prescribes otherwise, the commissioner must promptly set a time and place for the first meeting of the parties or their attorneys, and must notify the parties or their attorneys of the time and place so set. The notice does not need to be served as provided in Rule 1:12. It is the duty of the commissioner to proceed with all reasonable diligence to execute the decree of reference.

(c) A commissioner may require the production of evidence upon all matters embraced in the decree of reference including the production of all books, papers, vouchers, documents and writings applicable thereto. The commissioner has the authority to call witnesses or the parties to the action to testify and may examine them upon oath. The commissioner may rule upon the admissibility of evidence unless otherwise directed by the decree of reference; but when a party so requests, the commissioner must cause a record to be made of all proffered evidence which is excluded by the commissioner as inadmissible.

(d) The commissioner must prepare a report stating his findings of fact and conclusions of law with respect to the matters submitted by the decree of reference. The commissioner must file the report, together with all exhibits admitted in evidence and a

transcript of the proceedings and of the testimony, with the clerk of the court. In an Electronically Filed Case, filing as required in this Rule must be in accord with the requirements of Rule 1:17. The commissioner must mail or deliver to counsel of record and to parties not represented by counsel, using the last address shown in the record, written notice of the filing of the report. Provided, however, that in divorce cases a copy of the report must accompany the notice. Provided, further, that no such notice or copy will be given parties who have not appeared in the proceeding.

Rule 3A:11. Discovery and Inspection.

(a) *General Provisions.* — (1) This Rule applies to any prosecution for a felony in a circuit court and to any misdemeanor brought on direct indictment.

(2) The constitutional and statutory duties of the Commonwealth's attorney to provide exculpatory and/or impeachment evidence to an accused supersede any limitation or restriction on discovery provided pursuant to this Rule.

(3) A party may satisfy the requirement to permit the opposing party to inspect and copy or photograph a document, recorded statement or recorded confession by providing an actual duplicate, facsimile or copy of the document, recorded statement or recorded confession to the opposing party in compliance with the applicable time limits and redaction standards set forth in this Rule.

(4) Any material or evidence disclosed or discovered pursuant to this Rule and filed with the clerk of court must be placed under seal until it is either admitted as an exhibit at a trial or hearing or the court enters an order unsealing the specified material or evidence.

(b) *Discovery by the Accused.* — Upon written motion of an accused a court must order the Commonwealth's attorney to: (1) Permit the accused to inspect and review any relevant reports prepared by law enforcement officers and made in connection with the particular case, including any written witness statements or written summaries of oral statements contained within such reports, that are known to the Commonwealth's attorney to be in the possession, custody or control of the Commonwealth. Nothing in this Rule requires that the Commonwealth provide the accused with copies of the relevant law enforcement reports, although it may do so in its discretion. The court's order providing for inspection and review of these reports is subject to the provisions of subparts (c)(1) and (c)(2) of this Rule regarding redaction and restrictions on dissemination of designated material.

(2) Permit the accused to inspect, review and copy or photograph any relevant:

(A) written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the accused to any law enforcement officer, that are known to the Commonwealth's attorney to be within the possession, custody or control of the Commonwealth;

(B) written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the accused to any person other than a law enforcement officer, that the Commonwealth intends to introduce into evidence against the accused at trial;

(C) written or recorded statements, or the substance of any oral statements, made by a co-defendant or co-conspirator that the Commonwealth intends to introduce into evidence against the accused at trial; and

(D) written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath tests, other scientific reports, and written reports of a physical or mental examination of the accused or the alleged victim made in connection with the particular case, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth.

(3) Permit the accused to inspect, review and copy or photograph designated books, papers, documents, tangible objects, recordings, buildings or places, or copies or portions thereof, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth, upon a showing that the items sought may be material to preparation of the accused's defense and that the request is reasonable.

(4)(A) Notify the accused in writing of the Commonwealth's intent to introduce expert opinion testimony at trial or sentencing and to provide the accused with: (i) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions, and (ii) the witness's qualifications and contact information. Such notice must be served pursuant to Rule 1:12.

(B) Nothing in subparts (b)(4)(A)(i) and (ii) of this Rule renders inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed pursuant to this Rule, or the expert witness's qualifications, just because the further explanatory language was not included in the notice and disclosure provided under this Rule.

Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, satisfies the requirements of subparts (b)(4)(A)(i) and (ii) of this Rule.

(5) Provide to the accused a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the Commonwealth at trial or sentencing. This provision is subject to subpart (c)(1) of this Rule and to any protective orders entered by the court pursuant to subpart (g).

(6) This Rule does not authorize the discovery or inspection of the work product of the Commonwealth's attorney, including internal reports, witness statements, memoranda, correspondence, legal research or other internal documents prepared by the office of the Commonwealth's attorney or its agents in anticipation of trial.

(7) This Rule does not authorize the discovery of the names and/or personal identifying information of confidential informants whom the Commonwealth does not intend to call at trial and with regard to whose identity the Commonwealth asserts it holds a privilege.

(c) *Redaction and Restricted Dissemination Material.* — (1) With regard to any material or evidence provided pursuant to this Rule,

(A) the Commonwealth may redact the residential address, telephone number, email address and place of employment of any witness or victim, or any member of a witness's or victim's family, who satisfies the conditions outlined in §19.2-11.2 of the Code of Virginia. The Commonwealth may redact the date of birth and Social Security Number of any person whose information is contained in material or evidence provided pursuant to this Rule; and

(B) If the Commonwealth redacts personal identifying information pursuant to this subpart of the Rule, the accused may file a motion seeking disclosure of the redacted information. Should the court find good cause for disclosure, it may order the Commonwealth to provide the redacted information. In its discretion, the court ordering the provision of redacted personal identifying information may order that the information be identified as "Restricted Dissemination Material" pursuant to subpart (c)(2) of this Rule.

(2) The Commonwealth may designate evidence or material disclosed pursuant to this Rule as "Restricted Dissemination Material" by prominently stamping or otherwise marking such items as "Restricted Dissemination Material."

(A) The Commonwealth may designate any evidence or material subject to disclosure pursuant to this Rule as "Restricted Dissemination Material," without supporting certification, if the accused's attorney agrees to the designation.

(B) In the absence of an agreement by the attorney for the accused, the attorney for the Commonwealth may designate any evidence or material as "Restricted Dissemination Material" by stamping or otherwise marking it as such and providing a certification in writing, upon information and belief, that: (i) the designated material relates to the statement of a child victim or witness; or (ii) disclosure of the designated material may result in danger to the safety or security of a witness or victim, danger of a witness being intimidated or tampered with, or a risk of compromising an ongoing criminal investigation or confidential law enforcement technique.

(C) Except as otherwise provided by order of the court or these Rules, "Restricted Dissemination Material" may only be disclosed to the accused's attorney, the agents or employees of the accused's attorney, or to an expert witness. The accused's attorney may orally communicate the content of "Restricted Dissemination Material" to the accused or allow the accused to view the content of such material but must not provide the accused with copies of material so designated. "Restricted Dissemination Material" may not otherwise be reproduced, copied or disseminated in any way.

(D) If the Commonwealth designates evidence or material as "Restricted Dissemination Material" pursuant to subpart (c)(2)(B) of this Rule, the accused may at any time file a motion seeking to remove that designation from such evidence or material. Should the court find good cause to remove the designation, it may order that the evidence or material no longer be designated as "Restricted Dissemination Material."

(E) Within 21 days of the entry of a final order by the trial court, or upon the termination of the representation of the accused, the accused's attorney must return to the court all originals and copies of any "Restricted Dissemination Material" disclosed pursuant to this Rule. The court must maintain such returned "Restricted Dissemination Material" under seal. Any material sealed pursuant to this subpart must remain available for inspection by counsel of record. For good cause shown, the court may enter an order

allowing additional access to the sealed material as the court in its discretion deems appropriate.

(F) In any case in which an accused is not represented by an attorney, the Commonwealth may file a motion seeking to limit the scope of discovery pursuant to this Rule. For good cause shown, the court may order any limitation or restriction on the provision of discovery to an accused who is unrepresented by an attorney as the court in its discretion deems appropriate.

(d) *Discovery by the Commonwealth.* — If the court grants disclosure to the accused under subpart (b) of this Rule, it must also order the accused to: (1) Permit the Commonwealth to inspect and copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath analyses, and other scientific testing within the accused's possession, custody or control that the defense intends to proffer or introduce into evidence at trial or sentencing.

(2) Disclose whether the accused intends to introduce evidence to establish an alibi and, if so, disclose the place at which the accused claims to have been at the time the alleged offense was committed.

(3) Permit the Commonwealth to inspect, copy or photograph any written reports of physical or mental examination of the accused made in connection with the particular case if the accused intends to rely upon the defense of insanity pursuant to Chapter 11 of Title 19.2; provided, however, that no statement made by the accused in the course of such an examination disclosed pursuant to this Rule may be used by the Commonwealth in its case-in-chief, whether the examination was conducted with or without the consent of the accused.

(4)(A) Notify the Commonwealth in writing of the accused's intent to introduce expert opinion testimony at trial or sentencing and to provide the Commonwealth with: (i) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions, and (ii) the witness's qualifications and contact information.

Such notice must be served pursuant to Rule 1:12.

(B) Nothing in subparts (d)(4)(A)(i) and (ii) of this Rule renders inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed pursuant to this Rule, or the expert witness's qualifications, just because the further explanatory language was not included in the notice and disclosure provided under this Rule.

Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, satisfies the requirements of subparts (d)(4)(A)(i) and (ii) of this Rule.

(5) Provide to the Commonwealth a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the accused at trial or sentencing. The accused's attorney may redact the personal identifying information of any witness if so authorized by a protective order entered by the court pursuant to subpart (g) of this Rule.

(e) *Time of Motion.* — A motion by the accused under this Rule must be made at least 10 calendar days before the day fixed for trial. The motion must identify all relief sought pursuant to this Rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

(f) *Time, Place and Manner of Discovery and Inspection.* — The order granting relief under this Rule must specify in writing the time, place and manner of making the discovery and inspection ordered. The court in its discretion may prescribe such terms and conditions as are reasonable and just.

(g) *Protective Order.* — (1) Upon the motion of either party and for good cause, the court may enter a protective order with regard to the discovery or inspection required by this Rule. The court in its discretion may order any condition that it deems necessary to the orderly adjudication of the case or to the fair administration of justice. These conditions may include, but are not limited to:

(A) a requirement that the parties not disclose the contents of any material or evidence disclosed or discovered pursuant to this Rule in any public forum, including any website;

(B) a requirement that the parties not disclose the contents of any material or evidence disclosed or discovered pursuant to this Rule to any third-party who is not an agent or employee of the parties or an expert witness;

(C) authorization to either party to withhold the residential address, telephone number, email address or place of employment of any witness not covered by the terms of subpart (c)(1) of this Rule; or

(D) authorization for either party in appropriate circumstances to withhold from disclosure or place additional restrictions on dissemination of information otherwise discoverable but not exculpatory.

(2) Should either party believe in good faith that the terms of a protective order entered by the court have been violated, such party may move the court to enforce the order and to impose any necessary and appropriate sanction authorized by Virginia law.

(h) *Continuing Duty to Disclose; Failure to Comply.* — If, after disposition of a motion under this Rule, counsel or a party discovers before or during trial additional material previously requested or falling within the scope of an order previously entered, that is subject to discovery or inspection under this Rule but has not previously been disclosed, the party must promptly notify the other party or their counsel or the court of the existence of the additional material. If at any time during the pendency of the case it is brought to the attention of the court that a party has failed to comply with this Rule or with an order issued pursuant to this Rule, the court must order such party to permit the discovery or inspection of materials not previously disclosed, and may grant such other relief authorized by Virginia law as it may in its discretion deem appropriate.

Rule 3A:21. Service and Filing of Papers.

(a) *Copies of Written Motions to Be Furnished.* — All written motions and notices not required to be served as process must be served as provided in Rule 1:12 ~~otherwise~~ on each counsel of record ~~by delivering or mailing a copy to him~~ on or before

the day of filing. ~~In any case where electronic service and filing is permitted under Rule 1:17, delivery of an electronic copy or digital image of a document satisfies this requirement.~~ At the foot of such motions and notices must be appended either acceptance of service or a certificate of counsel that copies were served as this Rule requires, showing the date of servicedelivery or mailing.

(b) *Filing*. — Motions, notices and other items required to be served must be filed with the clerk.

Rule 4:1. General Provisions Governing Discovery.

(a) *Discovery Methods*. — Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) *Scope of Discovery*. — Unless otherwise limited by order of the court in accordance with these Rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Subject to the provisions of Rule 4:8 (g), the frequency or extent of use of the discovery methods set forth in subdivision (a) may be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice to counsel of record or pursuant to a motion under subdivision (c).

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person (which includes any individual, corporation, partnership or other association) carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance will not be treated as part of an insurance agreement.

§849 (3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of
850 this Rule, a party may obtain discovery of documents and tangible things otherwise
851 discoverable under subdivision (b)(1) of this Rule and prepared in anticipation of
852 litigation or for trial by or for another party or by or for that other party's representative
853 (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a
854 showing that the party seeking discovery has substantial need of the materials in the
855 preparation of his case and that he is unable without undue hardship to obtain the
856 substantial equivalent of the materials by other means. In ordering discovery of such
857 materials when the required showing has been made, the court must protect against
858 disclosure of the mental impressions, conclusions, opinions, or legal theories of an
859 attorney or other representative of a party concerning the litigation.

§860 A party may obtain without the required showing a statement concerning the
861 action or its subject matter previously made by that party. Upon request, a person not a
862 party may obtain without the required showing a statement concerning the action or its
863 subject matter previously made by that person. If the request is refused, the person may
864 move for a court order. The provisions of Rule 4:12(a)(4) apply to the award of expenses
865 incurred in relation to the motion. For purposes of this paragraph, a statement previously
866 made is (A) a written statement signed or otherwise adopted or approved by the person
867 making it, or (B) a stenographic, mechanical, electrical, or other recording, or a
868 transcription thereof, which is a substantially verbatim recital of an oral statement by the
869 person making it and contemporaneously recorded.

§870 (4) Trial Preparation: Experts; Costs - Special Provisions for Eminent Domain
871 Proceedings. Discovery of facts known and opinions held by experts, otherwise
872 discoverable under the provisions of subdivision (b)(1) of this Rule and acquired or
873 developed in anticipation of litigation or for trial, may be obtained only as follows:

§874 (A) (i) A party may through interrogatories require any other party to identify
§875 each person whom the other party expects to call as an expert witness at trial, to state the
876 subject matter on which the expert is expected to testify, and to state the substance of the
877 facts and opinions to which the expert is expected to testify and a summary of the
878 grounds for each opinion.

§879 (ii) A party may depose any person who has been identified as an expert whose
880 opinion may be presented at trial, subject to the provisions of subdivision (b)(4)(C) of
881 this Rule concerning fees and expenses.

§882 (iii) Upon motion, the court may order further discovery by other means, subject
883 to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of
884 this Rule, concerning fees and expenses as the court may deem appropriate.

§885 (iv) Drafts of expert reports, disclosures, or interrogatory responses called for by
886 subdivision (b)(4)(A)(i) of this Rule are not discoverable except on a showing of
§887 exceptional circumstances under which it is impractical for the party seeking discovery to
888 obtain otherwise discoverable information contained in the draft by other means. The

889 party seeking discovery of such information bears the burden of proving such exceptional
890 circumstances.

891 (v) Communications between a party's attorney and any expert witness expected
892 to testify at trial are not discoverable except to the extent that such communications relate
893 to compensation for the expert's work on the case or identify facts or assumptions that
894 the expert considered or relied upon in forming the opinions to be expressed.

895 (vi) In ordering discovery of any material covered by subdivisions (b)(4)(A)(iv)
896 or (b)(4)(A)(v) of this Rule, the court must in all events protect against disclosure of the
897 mental impressions, conclusions, opinions, or legal theories of an attorney or other
898 representative of a party concerning the litigation.

899 (B) A party may discover facts known or opinions held by an expert who has
900 been retained or specially employed by another party in anticipation of litigation or
901 preparation for trial and who is not expected to be called as a witness at trial, only upon a
902 showing of exceptional circumstances under which it is impracticable for the party
903 seeking discovery to obtain facts or opinions on the same subject by other means.

904 (C) Unless manifest injustice would result, (i) the court must require that the
905 party seeking discovery pay the expert a reasonable fee for time spent and expenses
906 incurred in responding to discovery under subdivisions (b)(4)(A)(ii), (b)(4)(A)(iii), and
907 (b)(4)(B) of this Rule; and (ii) with respect to discovery obtained under subdivision
908 (b)(4)(A)(iii) of this Rule the court may require, and with respect to discovery obtained
909 under subdivision (b)(4)(B) of this Rule the court must require, the party seeking
910 discovery to pay the other party a fair portion of the fees and expenses reasonably
911 incurred by the latter party in obtaining facts and opinions from the expert.

912 (D) Notwithstanding the provisions of subdivision (b)(4)(C) of this Rule, the
913 condemnor in eminent domain proceedings, when it initiates discovery, must pay all
914 reasonable costs thereof, including the cost and expense of those experts discoverable
915 under subdivision (b) of this Rule. The condemnor will be deemed to have initiated
916 discovery if it uses, or gives notice of the use of, any discovery method before the
917 condemnee does so, even though the condemnee subsequently engages in discovery.

918 (5) Limitations on Discovery in Certain Proceedings. In any proceeding (1) for
919 separate maintenance, divorce, or annulment of marriage, (2) for the exercise of the right
920 of eminent domain, or (3) for a writ of habeas corpus or in the nature of coram nobis; (a)
921 the scope of discovery extends only to matters which are relevant to the issues in the
922 proceeding and which are not privileged; and (b) no discovery is allowed in any
923 proceeding for a writ of habeas corpus or in the nature of coram nobis without prior leave
924 of the court, which may deny or limit discovery in any such proceeding. In any
925 proceeding for divorce or annulment of marriage, a notice to take depositions must be
926 served in the Commonwealth by an officer authorized to serve the same, except that, in
927 cases where such suits have been commenced and an appearance has been made on
928 behalf of the defendant by counsel, notices to take depositions may be served in
929 accordance with Rule 1:12.

(6) Claims of Privilege or Protection of Trial Preparation Materials.

(i) When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(ii) If a party believes that a document or electronically stored information that has already been produced is privileged or its confidentiality is otherwise protected the producing party may notify any other party of such claim and the basis for the claimed privilege or protection. Upon receiving such notice, any party holding a copy of the designated material must sequester or destroy its copies thereof, and may not duplicate or disseminate such material pending disposition of the claim of privilege or protection by agreement, or upon motion by any party. If a receiving party has disclosed the information before being notified of the claim of privilege or other protection, that party must take reasonable steps to retrieve the designated material. The producing party must preserve the information until the claim of privilege or other protection is resolved.

(7) Electronically Stored Information. A party need not provide discovery of electronically stored information (“ESI”) from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought has the burden of showing that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the discovery, including allocation of the reasonable costs thereof.

If the party receiving a discovery request anticipates that it will require the production of ESI and that an ESI protocol is needed, then within 21 days of being served with the request, or within 28 days of service of requests served with the Complaint, the receiving party should propose an ESI protocol that addresses: (A) an initial list of custodians or the person(s) with knowledge of the party’s custodians and the location of ESI, (B) a date range, (C) production specifications, (D) search terms, and (E) the identification and return of inadvertently revealed privileged materials. If the proposed protocol is not acceptable, the parties must in good faith attempt to meet within 15 days from service of the protocol on the party requesting the ESI. If, after 15 days from service of the protocol, the parties are unable to agree to limits on the discovery of the ESI, on motion to compel discovery or for a protective order, the court will, in its discretion, determine appropriate limitations or conditions on the ESI request, if any, including allocation of the reasonable costs thereof.

(8) Pre-Motion Negotiation. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(c) *Protective Orders.* — Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county or city where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the subpoena duces tecum seeks a nonparty's financial records or a nonparty's records protected by the attorney-client privilege, such nonparty may move for a protective order, and for such other relief permitted by this subsection, in accordance with Code § 8.01-420.9.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) *Sequence and Timing of Discovery.* —

(1) Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, will not operate to delay any other party's discovery.

(2) Discovery continues after a demurrer, plea or dispositive motion addressing one or more claims or counter-claims has been filed and while such motion is pending decision – unless the court in its discretion orders that discovery on some or all issues in the action should be suspended.

(e) *Supplementation of Responses.* — A party who has responded to a request for discovery is under a duty to supplement or correct the response to include information thereafter acquired in the following circumstances.

(1) A party is under a duty promptly to amend and/or supplement all responses to discovery requests directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be

called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony, when additional or corrective information becomes available.

(2) A party is under a duty promptly to amend and/or supplement all other prior responses to interrogatories, requests for production, or requests for admission if the party learns that any such response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(3) A court may order, or the parties may agree to provide, supplementation in addition to that required in subsections (1) and (2) of this subpart (e).

(4) A party may supplement a prior discovery response by serving filing an updated response on all other parties labelled "Supplemental" or "Amended," ~~or by otherwise notifying all other parties of the updated information in writing,~~ signed by counsel of record.

(f) *Service Under This Part.* — Except for the service of the notice required under Rule 4:2(a)(2), any notice or document required or permitted to be served under this Part Four must be served as provided in Rule 1:12 except that any notice or document permitted to be served with the initial pleading may be served (or accepted) in the same manner as such pleading.

(g) *Signing of Discovery Requests, Responses, and Objections.* — Every request for discovery or response or objection thereto made by a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name, whose address must be stated. A party who is not represented by an attorney must sign the request, response, or objection, and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these Rules and warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy and the importance of the issues at stake in the litigation. General or blanket objections to discovery requests are prohibited. If a request, response, or objection is not signed, it will be stricken unless it is signed no later than 21 days after the omission is called to the attention of the party making the request, response, or objection, and a party is not obligated to take any action with respect to it until it is signed.

(1) Raising Signature Defects; Waiver. —

(a) The issue of a signature defect must be raised in the trial court prior to the entry of the final order;

(b) A party waives an objection to a signature defect in a discovery request, response, or objection by failing to raise the issue in the trial court in time for the defect to be corrected.

(2) *Effect of Curing Signature Defects.* If a signature defect is timely cured, the discovery request, response, or objection is deemed valid and relates back to the date it was originally served. When a party objects to a signature defect in a discovery request, however, the objecting party's time to respond to the discovery request runs from the date the signature defect is cured.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Rule 4:5. Depositions Upon Oral Examination.

(a) *When Depositions May Be Taken.* — After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition before the expiration of the period within which a defendant may file a responsive pleading under Rule 3:8, except that leave is not required (1) if a defendant has served a notice of taking deposition, or (2) if special notice is given as provided in subdivision (b)(2) of this Rule. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(a1) *Taking of Depositions.* — (i) *Party Depositions.* A deposition of a party, or any witness designated under Rule 4:5(b)(6) to testify on behalf of a party, must be taken in the county or city in which suit is pending, in an adjacent county or city, at a place upon which the parties agree, or at a place that the court in such suit may, for good cause, designate. Good cause may include the expense or inconvenience of a non-resident party defendant appearing in one of the locations specified in this subsection. The restrictions as to parties set forth in this subdivision (a1)(i) do not apply where no responsive pleading has been filed or an appearance otherwise made.

(ii) *Non-party Witness Depositions.* Unless otherwise provided by the law of the jurisdiction where a non-party witness resides, a deposition of a non-party witness must be taken in the county or city where the non-party witness resides, is employed, or has a principal place of business; at a place upon which the witness and the parties to the litigation agree; or at a place that the court may, for good cause, designate.

(iii) *Taking Depositions Outside the State.* Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or, where

applicable, the law of the United States, or (2) before a person appointed or commissioned by the court in which the action is pending, and such a person has the power by virtue of such appointment or commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter rogatory will be issued upon application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A commission or letter rogatory may be addressed "To the Appropriate Authority in (here name the state, territory, or country)." Witnesses may be compelled to appear and testify at deposition taken outside this state by process issued and served in accordance with the law of the jurisdiction where the deposition is taken or, where applicable, the law of the United States. Upon motion, the courts of this State may issue a commission or letter rogatory requesting the assistance of the courts or authorities of the foreign jurisdiction.

(iv) Uniform Interstate Depositions and Discovery Act. Depositions and related documentary production sought in Virginia pursuant to a subpoena issued under the authority of a foreign jurisdiction are subject to the provisions of the Uniform Interstate Depositions and Discovery Act, Virginia Code §§ 8.01-412.8 through 8.01- 412.15.

(b) Notice of Examination: General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization. —

(1) A party desiring to take the deposition of any person upon oral examination must give reasonable notice in writing to every other party to the action. The notice must be served in accordance with Rule 1:12 and must state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena must be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the Commonwealth, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the period for filing a responsive pleading under Rule 3:8, and (B) sets forth facts to support the statement. The plaintiff's attorney must sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

1133 (3) The court may for cause shown enlarge or shorten the time for taking the
1134 deposition.

1135 (4) Unless otherwise agreed to by the parties or otherwise provided by court
1136 order or by law, only the witness, the parties, their respective counsel including such
1137 counsel's staff, experts identified pursuant to Rule 4:1(b)(4)(A), and those involved with
1138 the administration of the deposition (such as court reporters and translators) may attend
1139 the deposition, given the private nature of discovery. Counsel of record for the parties and
1140 counsel for any non-party deponent must timely confer regarding any other attendees
1141 who are requested by a party or by the deponent to be present at the deposition. A party
1142 seeking to exclude any person from attending a deposition – or seeking authorization for
1143 any person to attend a deposition – must move for an order in the discretion of the circuit
1144 court.

1145 (5) The notice to a party deponent may be accompanied by a request made in
1146 compliance with Rule 4:9 for the production of documents and tangible things at the
1147 taking of the deposition. The procedure of Rule 4:9 applies to the request.

1148 (6) A party may in the notice name as the deponent a public or private
1149 corporation, or a partnership, an association, governmental agency, or other entity, and
1150 must describe and designate with reasonable particularity the matters on which
1151 examination is requested. The organization so named must designate one or more
1152 officers, directors, or managing agents, or designate other persons who consent to testify
1153 on its behalf, and it may set out the matters on which each person designated will testify.
1154 Before or promptly after the notice or subpoena is served, the serving party and the
1155 organization must confer in good faith about the matters for examination. A subpoena
1156 must advise a nonparty organization of its duty to make this designation and to confer
1157 with the serving party. The persons so designated must testify as to matters known or
1158 reasonably available to the organization on the topics specified in the notice of
1159 deposition. Except as provided in Virginia Code § 8.01-420.4:1, this subdivision (b)(6)
1160 does not preclude taking a deposition by any other procedure authorized in these Rules
1161 and Virginia law.

1162 (7) Unless the court orders otherwise, a deposition may be taken by telephone,
1163 video conferencing, or teleconferencing. A deposition taken by telephone, video
1164 conferencing, or teleconferencing must be taken before an appropriate officer in the
1165 locality where the deponent is present to answer questions propounded to him.

1166 (c) Examination and Cross-Examination; Record of Examination; Oath;
1167 Objections. —

1168 (1) Unless the parties agree otherwise, examination of a witness at deposition is
1169 begun by the party noticing the deposition. The officer before whom the deposition is to
1170 be taken must put the witness on oath and must personally, or by someone acting under
1171 his direction and in his presence, record the testimony of the witness. If requested by one
1172 of the parties, the testimony must be transcribed. The preservation or waiver of objections
1173 during the deposition is governed by the provisions of Rule 4:7.

(2) An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objections. Any objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege or protection for attorney work-product pursuant to Rule 4:1(b)(3), to enforce a limitation ordered by the court, or to present a motion under subsection (d).

(3) In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he must transmit them to the officer, who must propound them to the witness and record the answers verbatim.

(d) *Motion to Terminate or Limit Examination.* — At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county or city where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 4:1(c). If the order made terminates the examination, it may be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition is suspended for the time necessary to make a motion for an order. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) *Submission to Witness; Changes; Signing.* — When the testimony is fully transcribed, the deposition must be submitted to the witness for examination and must be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make must be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition must then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer must sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 4:7(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.* —

(1) The officer must prepare an electronic or digitally imaged copy of the deposition transcript, including signatures and any changes as provided in subsection (e) of this Rule, and must certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. In a divorce

or annulment case, the officer must then promptly file the electronic or digitally imaged deposition in the office of the clerk, notifying all other parties of such action. In all other cases, the officer must then lodge the deposition with the attorney for the party who initiated the taking of the deposition, notifying the clerk and all parties of such action. Depositions taken pursuant to this Rule or Rule 4:6 (except depositions taken in divorce and annulment cases) may not be filed with the clerk until the court so directs, either on its own initiative or upon the request of any party prior to or during the trial. Any such filing must be made electronically unless otherwise ordered by the judge.

Documents and things produced for inspection during the examination of the witness, must, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer must furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition must give prompt notice of its filing to all other parties. Such notice must be served pursuant to Rule 1:12.

(g) Failure to Attend or to Serve Subpoena; Expenses. —

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.

Rule 4:6. Depositions Upon Written Questions.

(a) *Serving Questions; Notice.* — After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena. The

deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take the deposition upon written questions must serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 4:5(b)(6).

Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

All notices and written questions must be served as provided in Rule 1:12.

(b) *Officer to Take Responses and Prepare Record.* — A copy of the notice and copies of all questions served must be delivered by the party taking the deposition to the officer designated in the notice, who must proceed promptly, in the manner provided by Rule 4:5(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file the electronic or digitally imaged deposition or lodge the deposition with the attorney for the party who initiated the taking of the deposition, attaching thereto the copy of the notice and the questions received.

(c) *Notice of Filing.* — When the deposition is filed, the party taking it must promptly give notice thereof to all other parties. Such notice must be served as provided in Rule 1:12.

Rule 4:7. Use of Depositions in Court Proceedings.

(a) *Use of Depositions.* — At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition taken in a civil action may be used for any purpose in supporting or opposing an equitable claim; provided, however, that such a deposition may be used on an issue heard by an advisory jury empaneled pursuant to Code § 8.01-336(E) or a hearing ore tenus only as provided by subdivision (a)(4) of this Rule.

(2) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 4:5(b)(6) or 4:6(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose in any action upon a claim arising at law, issue heard by an advisory jury empaneled pursuant to Code § 8.01-336(E), or hearing ore tenus upon an equitable claim if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) that the witness is a judge, or is a superintendent of a hospital for the insane more than 30 miles from the place of trial, or is a physician, surgeon, dentist, chiropractor, or registered nurse who, in the regular course of his profession, treated or examined any party to the proceeding, or is in any public office or service the duties of which prevent his attending court provided, however, that if the deponent is subject to the jurisdiction of the court, the court may, upon a showing of good cause or sua sponte, order him to attend and to testify ore tenus; or (F) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(6) No deposition may be read in any action against a person under a disability unless it be taken in the presence of the guardian ad litem appointed or attorney serving pursuant to § 8.01-9, or upon questions agreed on by the guardian or attorney before the taking.

(7) In any action, the fact that a deposition has not been offered in evidence prior to an interlocutory decree or order does not prevent its thereafter being so offered except as to matters ruled upon in such interlocutory decree or order; provided, however, that such deposition may be read as to matters ruled upon in such an interlocutory decree or order if the principles applicable to after- discovered evidence would permit its introduction.

Substitution of parties does not affect the right to use depositions previously taken; and when there are pending in the same court several actions or suits between the same parties, depending upon the same facts, or involving the same matter of controversy, in whole or in part, a deposition taken in one of such actions or suits, upon notice to the same party or parties, may be read in all, so far as it is applicable and

relevant to the issue; and, when an action in any court of the United States or of this or any other state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the one action may be used in the other as if originally taken therefor.

(b) *Form of Presentation; Objections to Admissibility.* — A party may offer deposition testimony pursuant to this Rule in stenographic or nonstenographic form. Except as otherwise directed by the court, if all or part of a deposition is offered, the offering party must provide the court with a transcript of the portions so offered in either form or in electronic or digitally imaged form. Except as provided in Rule 1:18 and subject to the provisions of subdivision (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) *Effect of Taking or Using Depositions.* — A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this does not apply to the use by an adverse party of a deposition under subdivision (a)(3) of this Rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) *Effect of Errors and Irregularities in Depositions.* —

(1) *As to Notice.* — All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served as provided in Rule 1:12 upon the party giving the notice.

(2) *As to Disqualification of Officer.* — Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.* —

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 4:6 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. — Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under Rules 4:5 and 4:6 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(e) *Limitation on Use of Depositions.* — No motion for summary judgment or to strike the evidence may be sustained when based in whole or in part upon any depositions under Rule 4:5, unless such use of depositions is permitted by § 8.01-420.

(f) *Record.* — Depositions become a part of the record only to the extent that they are offered in evidence.

Rule 4:8. Interrogatories to Parties.

(a) *Availability; Procedures for Use.* — Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who must furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint upon that party. Service must be as provided in Rule 1:12

(b) *Form.* — The party answering the interrogatories must restate each question, by photocopying it or otherwise, then insert the word "Answer" and immediately thereafter state the response to that question. The answering party must attach the necessary oath and certificate of service to the answers.

(c) *Filing.* —

(1) Interrogatories and answers or objections thereto should not be filed unless the court directs such filing on its own initiative or upon the request of any party prior to or during the trial.

(2) When the propriety or sufficiency of any interrogatory, answer or objection, or the service thereof, is challenged, or any other issue concerning such discovery is presented to the court for decision, copies of the relevant items, including any applicable certificates of service, must be made available to the court by counsel.

(3) In an Electronically Filed Case, submission of interrogatories, answers, objections and certificates of service as provided in subdivisions (c)(1) and (c)(2) of this

1411 Rule may be made by filing an electronic or digitally imaged copy thereof, unless the
1412 court directs otherwise.

1413 (d) *Answers.* — Each interrogatory must be answered separately and fully in
1414 writing under oath, except to the extent it is objected to, in which event the reasons for
1415 any objection must be stated with specificity. Any part of an interrogatory that is not
1416 objected to must be answered. The answers must be signed by the person making them,
1417 and the objections signed by the attorney making them. The party upon whom the
1418 interrogatories have been served must serve a copy of the answers, and objections if any,
1419 within 21 days after the service of the interrogatories, except that a defendant may serve
1420 answers or objections within 28 days after service of the complaint upon that defendant.
1421 The court may allow a shorter or longer time. Service must be as provided in Rule 1:12.
1422 The party submitting the interrogatories may move for an order under Rule 4:12(a) with
1423 respect to any objection to or other failure to answer an interrogatory.

1424 (e) *Scope; Use.* — Interrogatories may relate to any matters which can be
1425 inquired into under Rule 4:1(b), and the answers may be used to the extent permitted by
1426 the rules of evidence and for the purposes of Rule 3:20. Only such interrogatories and the
1427 answers thereto as are offered in evidence will become a part of the record.

1428 An interrogatory otherwise proper is not necessarily objectionable merely because
1429 an answer to the interrogatory involves an opinion or contention that relates to fact or the
1430 application of law to fact, but the court may order that such an interrogatory need not be
1431 answered until after designated discovery has been completed or until a pre-trial
1432 conference or other later time.

1433 (f) *Option to Produce Business Records.* — Where the answer to an interrogatory
1434 may be derived or ascertained from the business records, including electronically stored
1435 information, of the party upon whom the interrogatory has been served or from an
1436 examination, audit or inspection of such business records, or from a compilation, abstract
1437 or summary based thereon, and the burden of deriving or ascertaining the answer is
1438 substantially the same for the party serving the interrogatory as for the party served, it is a
1439 sufficient answer to such interrogatory to specify the records from which the answer may
1440 be derived or ascertained and to afford to the party serving the interrogatory reasonable
1441 opportunity to examine, audit or inspect such records and to make copies, compilations,
1442 abstracts or summaries. A specification must be in sufficient detail to permit the
1443 interrogating party to locate and to identify, as readily as can the party served, the records
1444 from which the answer may be ascertained. A specification of electronically stored
1445 information may be made under this Rule if the information will be made available in a
1446 reasonably usable form or forms.

1447 (g) *Limitation on Interrogatories.* — No party may serve upon any other party, at
1448 any one time or cumulatively, more than thirty written interrogatories, including all parts
1449 and sub-parts without leave of court for good cause shown.

Rule 4:9. Production by Parties of Documents, Electronically Stored Information, and Things; Entry on Land for Inspection and Other Purposes; Production at Trial.

(a) *Scope.* — Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form), or to inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 4:1(b) and which are in the possession, custody, or control of the party upon whom the request is served; or (2) to produce any such documents or electronically stored information to the court in which the proceeding is pending at the time of trial; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 4:1(b).

(b) *Procedure.* —

(i) *Initiation of the Request.* The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint upon that party. The request must set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request must specify a reasonable time, place, period and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

(ii) *Response.* The party upon whom the request is served must serve a written response within 21 days after the service of the request, except that a defendant may serve a response within 28 days after service of the complaint upon that defendant. The court may allow a shorter or longer time. The response must state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for the objection with specificity. If objection is made to part of an item or category, the part must be specified and production must be permitted as to the remaining parts. An objection must state whether any responsive materials are being withheld on the basis of that objection. If objection is made to the requested form or forms for producing electronically stored information - or if no form was specified in the request - the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 4:12(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(iii) Organization, Reasonable Accessibility, and Forms of Production. Unless the parties otherwise agree, or the court otherwise orders:

(A) Production of Documents. A party who produces documents for inspection must either produce them as they are kept in the usual course of business or organize and label them to correspond with the categories in the request.

(B) Electronically Stored Information.

(1) Responses to a request for production of electronically stored information are subject to the provisions of Rules 4:1(b)(7) and 4:1(b)(8).

(2) If a request does not specify the form or forms for producing electronically stored information, or if a responding party objects to the requested form or forms of production, a responding party must produce the information as it is ordinarily maintained if it is reasonably usable in such form or forms, or must produce the information in another form or forms in which it is reasonably usable. A party need not produce the same electronically stored information in more than one form.

(iv) Proceedings Under the Uniform Interstate Depositions and Discovery Act. Production of documents and electronic records sought in Virginia pursuant to a subpoena issued under the authority of a foreign jurisdiction are subject to the provisions of the Uniform Interstate Depositions and Discovery Act, Virginia Code §§ 8.01-412.8 through 8.01-412.15.

(c) *Proceedings on Failure or Refusal to Comply*. — If a party fails or refuses to obey an order made under section (b) of this Rule, the court may proceed as provided by Rule 4:12(b)(2).

(d) *Filing*. — Requests to a party pursuant to this Rule and responses or objections must be served as provided in Rule 1:12 and filed ~~should be filed~~ as provided in Rule 4:8(c).

Rule 4:9A. Production from Non-Parties of Documents, Electronically Stored Information, and Things and Entry on Land for Inspection and Other Purposes; Production at Trial.

(a) *Issuance of a Subpoena Duces Tecum*. — Except as provided in paragraph (d) of this Rule, a subpoena duces tecum may be issued:

(1) By the clerk of court. Upon written request therefor filed with the clerk of the court in which the action or suit is pending by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel, the clerk must issue to a person not a party therein a subpoena duces tecum subject to this Rule.

(2) By an attorney. In a pending civil proceeding, a subpoena duces tecum may be issued by an attorney-at-law as an officer of the court if he or she is an active member of the Virginia State Bar at the time of issuance. An attorney may not issue a subpoena duces tecum in those civil proceedings excluded in Virginia Code § 8.01-407. An attorney-issued subpoena duces tecum must be signed as if a pleading and must contain the attorney's address, telephone number and Virginia State Bar identification number. A copy of any attorney-issued subpoena duces tecum must be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance with a certificate that a copy thereof has been served ~~pursuant to~~ as provided in Rule 1:12 upon counsel of record and to parties having no counsel. If time for compliance with an attorney-issued subpoena duces tecum is less than fourteen (14) days after service of the subpoena, the person to whom the subpoena is directed may serve on the party issuing the subpoena, as provided in Rule 1:12, a written objection setting forth any grounds upon which such production, inspection, copying, sampling or testing should not be had. If an objection is made, the party issuing the subpoena is not entitled to the requested production, inspection, copying, sampling or testing, except pursuant to an order of the court in which the civil proceeding is pending. If an objection is made, the party issuing the subpoena may, upon notice to the person to whom the subpoena is directed, move for an order to compel the production, inspection, copying, sampling or testing. Upon a timely motion, the court may quash, modify or sustain the subpoena as provided above in subsection (c) of this Rule.

(b) *Content of Subpoena Duces Tecum; Objections.* — Subject to paragraph (d) of this Rule, a subpoena duces tecum will command the person to whom it is directed, or someone acting on his behalf, to produce the documents, electronically stored information, or designated tangible things (including writings, drawings, graphs, charts, photographs, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 4:1(b) which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(c) Responding to a Subpoena; Objections; Production of Documents and Electronically Stored Information. —

(1) Production of Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(2) Electronically Stored Information.

(A) A person responding to a subpoena need not provide discovery of electronically stored information from sources the responder identifies as not reasonably

accessible because of undue burden or cost. On motion to compel production or to quash a subpoena, the person from whom production is sought under the subpoena must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order production of responsive material from such sources if the subpoenaing party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the production of such information, including allocation of the reasonable costs thereof.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding thereto must produce the information as it is ordinarily maintained if it is reasonably usable in such form or forms, or must produce the information in another form or forms in which it is reasonably usable. A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) Objections and Procedures. The court, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (1) quash or modify the subpoena, or the method or form for production of electronically stored information, if the subpoena would otherwise be unduly burdensome or expensive, (2) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of some or all of the reasonable cost of producing the documents, electronically stored information, and tangible things so designated and described or (3) direct that the documents and tangible things subpoenaed, including electronically stored information (unless another location for production is agreed upon by the requesting and producing parties), be returned only to the office of the clerk of the court through which such documents and tangible things are subpoenaed in which event, upon request of any party in interest, or his attorney, the clerk of such court must permit the withdrawal of such documents and tangible things by such party or his attorney for such reasonable period of time as will permit his inspection, photographing, or copying thereof. If the subpoena duces tecum seeks a nonparty's financial records or a nonparty's records protected by the attorney-client privilege, such nonparty may move to quash or modify the subpoena, and for such other relief permitted by this subsection, in accordance with Code § 8.01-420.9.

(4) Pre-Motion Negotiation. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(d) *Certain Officials.* — No request to produce made pursuant to paragraph (b) above may be served, and no subpoena provided for in paragraph (c) above may issue, until prior order of the court is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any Ambassador or Consul; or any Military Officer on active duty holding the rank of Admiral or General.

(e) *Certain Health Records*. Patient health records protected by the privacy provisions of Code Section 32.1-127.1:03 may be disclosed only in accordance with the provisions and procedures prescribed by that statute.

(f) *Copies of Documents and Other Subpoenaed Information*. —

(1) *Documents*. When one party to a civil proceeding subpoenas documents, the subpoenaing party, upon receipt of the subpoenaed documents, must, if requested, provide true and full copies of the same to any party or to the attorney for any other party in accordance with Code § 8.01-417(B).

(2) *Electronically stored information*. When one party to a civil proceeding subpoenas and obtains electronically stored information, the subpoenaing party must, if requested, provide true and full copies of the same to any party or that party's attorney, in the form the subpoenaing party received the information, upon reimbursement of the proportionate cost of obtaining such materials.

(g) *Proceedings on Failure or Refusal to Comply*. — If a non-party, after being served with a subpoena issued under the provisions of this Rule, fails or refuses to comply therewith, he may be proceeded against as for contempt of court as provided in § 18.2-456.

Rule 4:15. Motions Practice.

All civil case motions in circuit court will be scheduled and heard using the following procedures:

(a) *Scheduling* — All civil case motions in circuit court will be scheduled and heard using the following procedures:

1. Presenting the motion on a day the court designates for motions hearings, or
2. Contacting designated personnel in the office of the clerk of the court or the chambers of the judge or judges of the court.

(b) *Notice* — Reasonable notice of the presentation of a motion must be served on all counsel of record. Absent leave of court, and except as provided in paragraph (c) of this Rule, reasonable notice must be ~~in writing and~~ served as provided in Rule 1:12 at least seven days before the hearing. Counsel of record must make a reasonable effort (i) to confer before ~~giving~~ serving notice of a motion to resolve the subject of the motion and (ii) to determine a mutually agreeable hearing date and time. The notice must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. ~~In an Electronically Filed Case, the notice provisions of this paragraph and the filing and service requirements of paragraph (c) of this Rule is accomplished in accord with Rule 1:17.~~

(c) *Filing and Service of Briefs* — Counsel of record may elect or the court may require the parties to file briefs in support of or in opposition to a motion. Any such briefs should be filed with the court and served as provided in Rule 1:12 on all counsel of record sufficiently before the hearing to allow consideration of the issues involved. Absent leave of court, if a brief in support of a motion is five or fewer pages in length, the required notice and the brief must be filed and served at least 14 days before the hearing and any brief in opposition to the motion must be filed and served at least seven days before the hearing. If a brief will be more than five pages in length, an alternative hearing date, notice requirement, and briefing schedule may be determined by the court or its designee. Absent leave of court, the length of a brief may not exceed 20 pages, double spaced.

(d) *Hearing* — Except as otherwise provided in this subparagraph, upon request of counsel of record for any party, or at the court's request, the court will hear oral argument on a motion. Oral argument on a motion for reconsideration or any motion in any case where a pro se incarcerated person is counsel of record will be heard orally only at the request of the court. A court may place reasonable limits on the length of oral argument. No party may be deprived of the opportunity to present its position on the merits of a motion solely because of the unfamiliarity of counsel of record with the motions procedures of that court. A court, however, at the request of counsel of record, or in the judge's discretion, may postpone the hearing of the motion, or require the filing of briefs to assure fairness to all parties and the ability of the court to review all such briefs in advance of the hearing.

~~(e) *Definition of Served* — For purposes of this Rule, a pleading is deemed served when it is actually received by, or in the office of, counsel of record through delivery, mailing, facsimile transmission or electronic mail as provided in Rule 1:12.~~

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

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

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

(c) *Definitions.*

(1) "clerk" means clerk of the court or commission from which an appeal is taken unless some other clerk is specified and, unless the context otherwise requires, includes a deputy clerk;

(2) "clerk of this Court" includes a deputy clerk;

(3) "counsel" has the definition given in Rule 1:5 and in this Part Five includes a party not represented by counsel;

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

(5) "counsel for the appellee" means one of the attorneys representing each

appellee represented by an attorney and each appellee not represented by an attorney. In an appeal from the State Corporation Commission, "counsel for the appellee" includes counsel for the Commission and, unless the Commonwealth is the appellant, the Attorney General;

(6) "Court of Appeals" means the Court of Appeals of Virginia;

(7) "opposing counsel" means, depending on the context, "counsel for the appellant" or "counsel for the appellee";

(8) "judge" means judge of the trial court, unless the context otherwise requires, or if the judge of the trial court is not available, any judge authorized to act under Rule 5:12;

(9) "judgment" includes an order or decree from which an appeal is taken;

(10) "trial court" means the circuit court from which an appeal is taken;

(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.

(d) *Service.* – Unless service or notice is otherwise specified in a given Rule, any paper 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 served in the manner required by Rule 5:1B(c) on ~~transmitted to~~ all counsel and showing the date and manner of ~~transmittal~~service. 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).

(e) *Notice of Change of Address and Other Contact Information.* – If an attorney has a change in mailing address, telephone number, facsimile number, or ~~e-mail~~email address any time after the filing of the notice of appeal, the attorney 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.

(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.

(h) *Substitution of Parties.*

(1) *Substitution of a Successor.* — If a person becomes incapable of prosecuting or defending because of death, disability, conviction of felony, or other cause, and the

claim is not extinguished, a successor in interest may be substituted as a party in such person's place.

(2) *Motion*. — Substitution may be made on motion of the successor or of any party to the appeal.

(3) *Public Officers; Death or Separation from Office*. — An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

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~~by 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 may be digitally signed using an electronic signature.

Rule 5:9. Notice of Appeal.

(a) *Filing Deadline; Where to File.* — No appeal will be allowed unless, within 30 days after the entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court pursuant to Rule 5:5(a), counsel for the appellant files with the clerk of the trial court a notice of appeal and at the same time ~~mails or delivers~~ serves a copy of such notice ~~to on~~ all opposing counsel as required by Rule 1:12. A notice of appeal filed after the court announces a decision or ruling—but before the entry of such judgment or order—is treated as filed on the date of and after the entry.

Appeals from the Circuit Court. — Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order 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. In the event a transcript is to be filed, the notice of appeal must certify that 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.

(c) *Separate Cases*. — Whenever two or more cases were tried together in the trial court, one notice of appeal and one record may be used to bring all of such cases before this Court even though such cases were not consolidated by formal order.

(d) *Special Provision for Cases Involving a Guardian Ad Litem*. — No appeal will be dismissed because the notice of appeal fails to identify a guardian ad litem or to provide notice to a guardian ad litem. Upon motion for good cause shown or by sua sponte order of this Court, the notice of appeal may be amended to identify the guardian ad litem and to provide notice to such guardian.

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 an appeal direct from a trial court, not more than 90 days after entry of the order appealed from;

(2) in 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. However, an extension may be granted, in the discretion of this Court, on motion for good cause shown.

(b) *Who Must Receive a Copy of the Petition*. — When the petition for appeal is filed with the clerk of this Court, a copy of the petition must be served on opposing counsel as required by Rule 5:1B(c).

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

(1) Assignments of Error. Under a heading entitled “Assignments of Error,” the petition must list, clearly and concisely and without extraneous argument, the specific errors in the rulings below—or the issue(s) on which the tribunal or court appealed from failed to rule—upon which the party intends to rely, or the specific existing case law that should be overturned, extended, modified, or reversed. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken must be included with each assignment of error. If the error relates to failure of the tribunal or court below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the record where the issue was preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(i) Effect of Failure to Assign Error. Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, the petition will be dismissed.

(ii) Nature of Assignments of Error in Appeals from the Court of Appeals. When appeal is taken from a judgment of the Court of Appeals, only assignments of error relating to assignments of error presented in, and to actions taken by, the Court of Appeals may be included in the petition for appeal to this Court.

(iii) Insufficient Assignments of Error. An assignment of error that does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. An assignment of error in an appeal from the Court of Appeals to the Supreme Court which recites that “the trial court erred” and specifies the errors in the trial court, will be sufficient so long as the Court of Appeals ruled upon the specific merits of the alleged trial court error and the error assigned in this Court is identical to that assigned in the Court of Appeals. If the assignments of error are insufficient, the petition for appeal will be dismissed.

(iv) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the petition for appeal contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c)(1) of this Rule, a rule to show cause will issue pursuant to Rule 5:1A. If there is a deficiency in the reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken - including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) of the record where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s) - a rule to show cause will issue pursuant to Rule 5:1A.

(2) Table of Contents and Table of Authorities. A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities must include the year thereof.

(3) Nature of the Case and Material Proceedings Below. A brief statement of the nature of the case and of the material proceedings in the trial court or commission in which the case originated. This statement should omit references to any paper filed or action taken that does not relate to the assignments of error.

(4) Statement of Facts. A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record, transcript, or written statement of facts. Any quotation from the record should be brief. When the facts are in dispute, the petition must so state. The testimony of individual witnesses should not be summarized seriatim unless the facts are in dispute and such a summary is necessary to support the appellant's version of the facts.

(5) Authorities and Argument. With respect to each assignment of error, the standard of review and the argument—including principles of law and the authorities—must be stated in one place and not scattered through the petition. At the option of counsel, the argument may be preceded by a short summary.

1898 (6) Conclusion. A short conclusion stating the precise relief sought.

1899 (d) Filing Fee Required With the Petition. — When it is filed, the petition for
1900 appeal must be accompanied by the filing fee required by statute, unless the appellant is
1901 represented by court-appointed counsel or the appellant files an in forma pauperis
1902 affidavit demonstrating that he cannot afford the filing fee. The clerk of this Court may
1903 file a petition for appeal that is not accompanied by such fee if the fee is received by the
1904 clerk within 10 days of the date the petition for appeal is filed. If the fee is not received
1905 within such time, the petition for appeal will be dismissed.

1906 (e) *Number of Copies to File*. — For prisoners filing pro se and other petitioners
1907 exempted from the electronic filing requirements under Rule 5:1B(b), only one paper
1908 copy of the petition need be filed.

1909 (f) *Length*. — Except by leave of a Justice of this Court, a petition must not
1910 exceed the longer of 35 pages or 6,125 words. The page or word limit does not include
1911 the cover page, table of contents, table of authorities, signature blocks, or certificate.

1912 (g) *Use of a Single Petition in Separate Cases*. — Whenever two or more cases
1913 were tried together in the court or commission below, one petition for appeal may be used
1914 to bring all such cases before this Court even though the cases were not consolidated
1915 below by formal order.

1916 (h) *Procedure for an Anders appeal*. — If counsel for appellant finds appellant's
1917 appeal to be without merit, counsel must comply with the requirements of *Anders v.*
1918 *California*, 386 U.S. 738 (1967), and *Brown v. Warden of Virginia State Penitentiary*,
1919 238 Va. 551 (1989). In compliance therewith, counsel is required to file (1) a petition for
1920 appeal which refers to anything in the record which might arguably support the appeal
1921 and which demonstrates to this Court counsel's conscientious examination of the merits
1922 of the appeal; (2) a motion for leave to withdraw as counsel; and (3) a motion for an
1923 extension of time to allow the appellant to file a supplemental petition for appeal. The
1924 petition for appeal and the motion for leave to withdraw as counsel should specifically
1925 cite to *Anders*. All three pleadings must be served on opposing counsel and upon the
1926 client by any method authorized under Rule 5:1B(c) and must contain a certificate
1927 providing evidence of such service. This Court will rule upon the motion for extension of
1928 time upon its receipt, but will not rule on the motion to withdraw until this Court
1929 considers the case in its entirety, including any supplemental petition for appeal that may
1930 be filed.

1931 (i) *What the Certificate Must Contain*. — The appellant must include within the
1932 petition for appeal a certificate stating:

1933 (1) the names of all appellants and appellees, the name, Virginia State Bar
1934 number, mailing address, telephone number (including any applicable extension),
1935 facsimile number (if any), and e-mail address (if any) of counsel for each party, and
1936 the mailing address, telephone number (including any applicable extension), facsimile

1937 number (if any), and ~~e-mail~~email address (if any) of any party not represented by
1938 counsel;

1939 (2) that a copy of the petition for appeal has been ~~mailed or delivered~~served as
1940 provided in Rule 5:1B(c) on the date stated therein to all opposing counsel and all parties
1941 not represented by counsel;

1942 (3) if a word count is used, the number of words (headings, footnotes, and
1943 quotations count towards the word limitation; the cover page, table of contents, table of
1944 authorities, signature blocks, and certificate do not count towards the word count);

1945 (4) in a criminal, sexually violent predator, termination of parental rights, or
1946 habeas corpus appeal, a statement whether counsel for defendant has been appointed or
1947 privately retained; and

1948 (5) whether the appellant desires to state orally to a panel of this Court the
1949 reasons why the petition for appeal should be granted, and, if so, whether in person or by
1950 telephone conference call.

1951 When filed through VACES, a petition for appeal need not contain a separate
1952 certificate as long as the information contained in this subsection (i) is provided through
1953 the electronic filing process.

1954 (j) Oral Argument. —

1955 (1) Right to Oral Argument. The appellant is entitled to state orally, in person or
1956 by telephone conference call, to a panel of this Court the reasons why the petition for
1957 appeal should be granted. The appellee is not entitled to oral argument, whether in person
1958 or by telephone conference call. Any lawyer not licensed in Virginia who seeks to appear
1959 pro hac vice to present oral argument to the Court must comply with the requirements of
1960 Rule 1A:4.

1961 (2) Waiver of Right to Oral Argument. The appellant may waive the right to oral
1962 argument on the petition for appeal before a panel by notifying the clerk of this Court and
1963 opposing counsel in writing, or by filing a reply brief.

1964 (3) No Oral Argument on Pro Se Inmate's Petition. If an appellant is not
1965 represented by counsel and is incarcerated, the petition for appeal may be considered by
1966 this Court without oral argument.

1967 (4) Notice of Oral Argument. If the appellant has requested oral argument, notice
1968 of the date and time of such argument will be provided to counsel for the appellant or to
1969 any pro se appellant and to counsel for the appellee or any pro se appellee who has filed a
1970 Brief in Opposition or otherwise appeared in the appeal.

Rule 5:17A. Petition for Review Pursuant to Code § 8.01-626; Preliminary Injunctions and Interlocutory Immunity Rulings.

(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, no later than 15 days after the circuit court enters the order to be reviewed.

(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 such 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.

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

(i) Except by permission of a Justice of this Court, a petition for review may not exceed the longer of 20 pages or 3,500 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5:17(c), except as set out below.

(ii) The petition must be accompanied by a copy of the pertinent portions of the record of the lower tribunal(s), including the relevant portions of any transcripts filed in the circuit court and the order(s) entered by the lower tribunal(s) respecting the matter under review (“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 size 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, and ~~e-mail~~email address of counsel for each party; and the mailing address, telephone number, and ~~e-mail~~email 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, signature blocks, 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 lower tribunal(s) and contains everything necessary for a review of the petition.

(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 petitioner files an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee. The clerk of this Court will file a petition for review that is not accompanied by such fee, but if the fee is not received by the clerk within 10 days, the petition for review will be dismissed.

(f) *Review*. — The clerk will assign the petition for review to a panel of at least three Justices of the Court.

(g) *Responsive Pleading*. — A respondent may file a response to a petition for review within 15 days of the date of service unless otherwise determined by the Court. The response may not exceed the greater of 20 pages or 3,500 words. The Court may act on a petition for review without awaiting a response, but 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 petition for appeal is served on counsel for the appellee. Within the same time the counsel for appellee must ~~serve send~~ a copy ~~on to~~ counsel for appellant in accordance with Rule 5:1B(c). 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.

(c) *Assignments of cross-error*. — The brief in opposition may include assignments of cross-error. If the brief in opposition contains an assignment or assignments of cross-error, the cover of the brief must so indicate by being styled, “Brief in Opposition and Assignment of Cross-Error.”

(1) A cross-error must be assigned in the brief in opposition in order to be noticed by this Court.

(2) The provisions of Rule 5:25 apply to limit the assignments of cross-error which will be heard on the appeal.

(3) A brief in opposition containing assignments of cross-error must conform to the form, content, and maximum word requirements of paragraph (b) of this Rule.

(4) When an appellee assigns cross-error in the brief in opposition:
(i) this Court will not grant any assignment of cross-error unless it first decides to grant some or all of the assignments of error contained in the appellant's petition for appeal.
(ii) the appellee is not permitted to present oral argument to a writ panel.
(iii) if the appellant withdraws the petition for appeal, the appeal will be dismissed without consideration of the cross-error assigned by an appellee.

(d) *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 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) Requirements for Electronic Filing. 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~~ by 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~~ served on counsel for the appellee.

(d) *Oral Argument and Responsive Brief.* — Oral argument on the petition for rehearing will not be allowed. No responsive brief may be filed unless requested by this Court.

(e) *Incorporation of Facts or Arguments; Restating Assignments of Error.* — Attempts to incorporate facts or arguments from the petition for appeal or original jurisdiction petition are prohibited. The petition for rehearing, however, need not restate any assignment of error.

(f) *Notification of Action on the Petition.* — The clerk of this Court will notify counsel for all parties of the action taken by this Court on the petition for rehearing ~~via~~ by e-mail, if ~~e-mail~~ addresses have been provided, or via U.S. Mail to any counsel or party who has not provided an email address.

(g) *Attorney Fees.* — Upon denial of a petition for appeal and any petition for rehearing, any appellee who has received attorney fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

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.

(2) Party to the Commission Proceeding. For the purposes of paragraph (a), the Commission, the Attorney General, the applicant or petitioner, and every person who made an appearance in person or by counsel in a capacity other than as a witness at any hearing in any proceeding before the Commission are the parties to such proceeding. Any party who is aggrieved by any final order, judgment, or finding of the Commission, or part thereof, is entitled to an appeal to this Court upon perfecting the appeal as provided by paragraph (a). Upon the request of any party, the clerk of the Commission must prepare and certify a list of all parties (including their addresses and the names and addresses of their counsel) to a proceeding before the Commission. Service upon a party represented by counsel must be made upon his counsel.

(3) Notice of Appeal. No appeal from an order of the Commission will be allowed unless the aggrieved party files a notice of appeal in the office of the clerk of the Commission within 30 days after entry of the order appealed from. A copy of the notice of appeal must be mailed or delivered to each party to the Commission proceeding, including the Attorney General of Virginia, and an acceptance of such service or a

certificate showing the date of delivery or mailing must be appended thereto. All appeals from the same order will be deemed to be a consolidated case for the purpose of oral argument in this Court unless this Court orders a severance for convenience of hearing.

(4) Record. The clerk of the Commission must prepare and certify the record as soon as possible after a notice of appeal is filed and must, as soon as it has been certified by him, transmit the record to the clerk of this Court within 4 months after entry of the order appealed from. In the event of multiple appeals in the same case or in cases tried together below, only one record need be prepared and transmitted.

(5) Contents of Record. The record on appeal from the Commission consists of all notices of appeal, any application or petition, all orders entered in the case by the Commission, the opinions, the transcript of any testimony received, and all exhibits accepted or rejected, together with such other material as may be certified by the clerk of the Commission to be a part of the record. The record must conform as nearly as practicable to the requirements of Rule 5:10.

(6) Petition for Appeal.

(i) 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.

(ii) 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).

(iii) 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.

(7) Assignments of Error. The assignments of error must be listed under a heading entitled "Assignments of Error." The assignments of error must clearly and concisely and without extraneous argument identify the specific errors in the rulings below upon which the party intends to rely. A clear and exact reference to the pages of the transcript, written statement of facts, or record where the alleged error has been preserved must be included with each assignment of error. Only errors so assigned will be noticed by this Court and no error not so assigned will be considered as grounds for reversal of the decision below. No ruling by the Commission will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the

2176 ruling, except for good cause shown or to enable this Court to attain the ends of justice.
2177 An assignment of error which merely states that the judgment is contrary to the law and
2178 the evidence is not sufficient.

2179 (8) Award of Appeal. When the notice(s) of appeal, the record, and the petition(s)
2180 for appeal have been filed in the manner provided herein and within the time provided
2181 herein and by law, the clerk of this Court must forthwith enter an order docketing the
2182 appeal, requiring such bond as the clerk may deem proper. The clerk's action is subject to
2183 review by this Court.

2184 (9) Notice of Participation in an Appeal. Within 21 days after an appeal from a
2185 Commission order has been docketed as provided in subparagraph (8), any party to the
2186 Commission proceeding who did not file a notice of appeal may file a notice of
2187 participation with the clerk of this Court. The notice must identify whether the party
2188 seeks to be an appellant or appellee. If there is more than one appellant, the notice of
2189 participation as an appellant must identify the specific appellant(s) with which the
2190 participating appellant will align. Participating parties must follow the briefing schedule
2191 and requirements of subparagraph 10, except that a participating party may not raise any
2192 additional assignments of error or cross-error. The notice of participation as appellant or
2193 appellee must be mailed or delivered to every other party to the Commission proceeding.

2194 Every party who has not filed a notice of appeal or notice of participation, or
2195 having filed a notice of appeal does not file a petition as provided herein, will not be a
2196 party to the appeal and no further papers need be served on such party. Notwithstanding
2197 the foregoing provision, a necessary party who does not file a notice of appeal, petition or
2198 notice of participation is deemed an appellee. The Commission need not file a notice of
2199 participation and will be deemed an appellee.

2200 (10) Further Proceedings. Further proceedings in this Court must conform to
2201 Rules 5:23 through 5:38 provided that (i) the time within which the appellee may file
2202 with the clerk of this Court a designation of the additional parts of the record that the
2203 appellee wishes included in the appendix (Rule 5:32(b)) is extended to 30 days after the
2204 date of the certificate of the clerk of this Court, pursuant to Rule 5:23, has been awarded;
2205 and (ii) the time within which the opening brief of the appellant(s) must be filed in the
2206 office of the clerk of this Court is extended to 50 days after such date.

2207 (11) Withdrawal or Settlement of Pending Appeal. A party who filed a notice of
2208 and petition for appeal may withdraw his appeal. Notice of withdrawal or settlement must
2209 conform to Rule 5:38. Settlement or withdrawal of an appeal terminates that appellant's
2210 appeal and any participating party aligned with that appellant is deemed to have
2211 withdrawn its participation in the settled or withdrawn appeal.

2212
2213 (b) Appeals from the Virginia State Bar Disciplinary Board or a Three-Judge
2214 Circuit Court Determination.

2215 (1) Applicability. Paragraph (b) of this Rule applies to appeals from the Virginia
2216 State Bar Disciplinary Board, pursuant to Part 6, § IV, Paragraph 13-26 of the Rules of
2217 the Supreme Court of Virginia, and to appeals from the decisions of a three-judge circuit
2218 court pursuant to Code § 54.1-3935. As used in this paragraph, "Respondent" is defined
2219 as the attorney who is appealing the decision of the disciplinary proceeding.

2220 (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~~ served as provided in Rule 1:12 on 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 as provided in Rule 1:12 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.

(3) Record on Appeal. The clerk of the Disciplinary System or the clerk of the three-judge circuit court must compile and transmit the record as set out in Rules 5:10, 5:11, and 5:13. The clerk must immediately notify by certified mail the Respondent, and the Respondent's counsel, if any, and the Attorney General of the date the record is filed with the clerk of this Court. At the time the record is filed, the clerk must also notify the clerk of this Court and the Respondent whether the Attorney General or Bar Counsel will represent the interests of the Commonwealth as appellee.

(4) Time for Filing Briefs and Appendix. The parties must designate the contents of the appendix pursuant to the requirements of Rule 5:32 and the Respondent is responsible for filing the appendix pursuant to that Rule. The Respondent must file the opening brief in the office of the clerk of this Court within 40 days after the date the record is filed. The opening brief must contain assignments of error and references to the pages of the appendix, transcript, written statement, or record where each assignment of error was preserved. The brief of the appellee must be filed in the office of the clerk of this Court within 25 days after the filing of the Respondent's opening brief. The Respondent may file a reply brief within 14 days after the filing of the appellee's brief. All briefs and the appendix must conform to the provisions of Rules 5:26 through 5:32.

(5) Stay Pending Appeal. The Respondent may file a motion with the clerk of this Court requesting a stay pending appeal of an order suspending or revoking the Respondent's license. The Respondent must file four copies of the motion for stay along with a copy of the order imposing the suspension or revocation and a copy of the Respondent's notice of appeal, which must contain the date stamp of the clerk showing the date the notice of appeal was filed. Any order of Admonition or Public Reprimand is

2267 automatically stayed prior to or during the pendency of an appeal of the order.

2268 (6) Procedure on Appeal. Except as provided in this paragraph, further
2269 proceedings will be as provided in this Court's procedure following the perfection of an
2270 appeal set out in Rules 5:23, 5:25, and Rules 5:33 through 5:38.

2271
2272 (c) Judicial Inquiry and Review Commission Proceedings. —

2273 Procedure in the Supreme Court following proceedings before the Judicial Inquiry
2274 and Review Commission will be as ordered or directed by the Court.

2275 **Rule 5:33. Oral Argument.**

2276 (a) *Notice*. — Whenever an appeal lies as a matter of right or a petition for appeal
2277 has been granted, the clerk of this Court, except in extraordinary circumstances, must
2278 give at least 15 days' notice to counsel of the date, approximate time, and location for
2279 oral argument.

2280 (b) *Length*. — Except as otherwise directed by this Court, argument for a party
2281 may not exceed 15 minutes in length. Such time may be apportioned among counsel for
2282 the same side at their discretion.

2283 (c) *Appearance Pro Hac Vice*. — Any lawyer not licensed in Virginia who seeks
2284 to appear pro hac vice to present oral argument to the Court must comply with the
2285 requirements of Rule 1A:4.

2286 (d) *Amicus Curiae*. — No oral argument by amicus curiae is permitted except by
2287 leave of this Court. Leave may be granted upon the joint written request of amicus curiae
2288 and the party whose position amicus curiae supports. The request must specify the
2289 amount of its allotted time the supported party is willing to yield to amicus curiae.

2290 (e) *Waiver*. — During oral argument, it is not necessary for any party to expressly
2291 reserve any argument made on brief, and the failure to raise any such argument does not
2292 constitute a waiver. Any party may, without waiving the arguments made on brief, waive
2293 oral argument.

2294 (f) *Demonstrative Exhibits*. — No demonstrative exhibit may be used by or on
2295 behalf of a party during oral argument without the prior consent of the Court. A party or
2296 counsel intending to use a demonstrative exhibit during oral argument must notify the
2297 clerk of this Court by letter and serve, with a copy on to all other parties as provided in
2298 Rule 5:1B(c); at least five (5) business days ~~before~~prior to the scheduled date of the oral
2299 argument. The letter must describe the proposed demonstrative exhibit and the manner in
2300 which it will be used. The Court, in its discretion, may refuse to allow the use of the
2301 demonstrative exhibit. No demonstrative exhibit may be brought into the courtroom
2302 unless the Court has consented to its use during oral argument.

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 filed in the office of the clerk of this Court within 30 days after the date of the order of this Court deciding the case with a copy ~~delivered or mailed~~ served on opposing counsel as provided in Rule 1:12.

(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 in the office of the clerk of this Court, as provided for in Rule 5:1B, within 30 days after the date of the order or opinion of this Court deciding the case. The petition must be formatted to print on a page 8 1/2 x 11 inches, ~~29~~ 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.

Rule 5:40. Certification Procedures.

(a) *Power to Answer.* — This Court may in its discretion answer questions of law certified to it by the Supreme Court of the United States, a United States court of appeals for any circuit, a United States district court, or the highest appellate court of any state,

territory, or the District of Columbia. Such answer may be furnished, when requested by the certifying court, if a question of Virginia law is determinative in any proceeding pending before the certifying court and it appears there is no controlling precedent on point in the decisions of this Court or the Court of Appeals of Virginia.

(b) *Method of Invoking.* — This Rule may be invoked only by an order of one of the courts referred to in paragraph (a) of this Rule. No party litigant in the foregoing courts may file a petition or motion for certification in this Court.

(c) *Contents of Certification Order.* — A certification order must set forth:

- (1) the nature of the controversy in which the question arises;
- (2) the question of law to be answered;
- (3) a statement of all facts relevant to the question certified;
- (4) the names of each of the parties involved;
- (5) the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and ~~e-mail~~email address (if any) of counsel for each of the parties involved;
- (6) a brief statement explaining how the certified question of law is determinative of the proceeding in the certifying court; and
- (7) a brief statement setting forth relevant decisions, if any, of this Court and the Court of Appeals of Virginia and the reasons why such decisions are not controlling.

(d) *Preparation of Certification Order.* — The certification order may be prepared by the certifying court, signed by the presiding justice or judge, and forwarded to this Court by the clerk of the certifying court under its official seal. This Court may require the original or copies of all or of any portion of the record before the certifying court to be filed, if, in the opinion of this Court, the record or portion thereof may be necessary in answering the certified question. This Court may in its discretion restate any question of law certified or may request from the certifying court additional clarification with respect to any question certified or with respect to any facts.

(e) *Notification of Acceptance or Rejection.* — This Court, in its discretion, may decide whether to answer any certified question of law. This Court will notify the certifying court and counsel for the parties of its decision to accept or to reject any certified question of law. A notice accepting a question will include a briefing schedule and, if this Court permits oral argument, a tentative date and the length of time allowed for such argument.

(f) *Revocation of Acceptance.* — This Court, in its discretion, may revoke its decision to answer a certified question of law at any time. This Court will notify the certifying court and counsel for the parties of any such action.

(g) *Costs of Certification.* — Fees and costs are the same as in civil appeals docketed in this Court and must be paid as ordered by the certifying court in its order of certification.

(h) *Briefs*. — The form, length, and time for submission of briefs must comply with Rules 5:26 through 5:32 mutatis mutandis.

(i) *Opinion*. — A written opinion or order of this Court stating the law governing each question certified will be rendered as soon as practicable after the submission of briefs and after any oral argument. The opinion or order will be sent by the clerk under the seal of this Court to the certifying court and to counsel for the parties and must, if this Court so directs, be published in the Virginia Reports.

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; Certificate of 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. Documents may be signed digitally using an electronic signature.

(4) Certificate of 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 page or word limit applies, the certificate must also state the number of pages or words. Headings, footnotes, and quotations are included in the page and word limit; the cover page, table of contents, table of authorities, signature blocks, and certificate are not included in the page or word limit.

(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 that judge is 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.

(g) Substitution of Parties.

(1) *Substitution of a Successor.* — If a person becomes incapable of prosecuting or defending because of death, disability, conviction of felony, or other cause, and the claim is not extinguished, a successor in interest may be substituted as a party in such person’s place.

(2) *Motion.* — Substitution may be made on motion of the successor or of any party to the appeal.

(3) *Public Officers; Death or Separation from Office.* — An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer’s successor is automatically

substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The Court may order substitution at any time, but the absence of such an order does not affect the substitution.

Rule 5A:6. Notice of Appeal.

(a) *Filing Deadline; Where to File.* — Except as otherwise provided by statute, 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~~ serves as provided in Rule 1:12 a copy of such notice ~~onte~~ 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 if required by Code § 8.01-676.1.

(a1) *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.

(a2) *Appeal of Certified Questions or Multiple Claimant Litigation Act Orders.* — A notice of appeal is not required for a petition for appeal of a certified question under Code § 8.01-675.5(A) or an interlocutory appeal under Code § 8.01-267.8 of the Multiple Claimant Litigation Act.

(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 will 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~~ email address (if any) of counsel for each party; and the mailing address, telephone number, facsimile number (if any), and ~~e-mail~~ email 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~~ served as provided in Rule 1:12 on 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.

(e) *Separate Cases*. — Whenever two or more cases were tried together in the
trial court, one notice of appeal and one record may be used to bring all of such cases
before this Court even though such cases were not consolidated by formal order.

(f) *Special Provision for Cases Involving a Guardian Ad Litem*. — No appeal will
be dismissed because the notice of appeal fails to identify a guardian ad litem or to
provide notice to a guardian ad litem. Upon motion for good cause shown or by sua
sponte order of this Court, the notice of appeal may be amended to identify the guardian
ad litem and to provide notice to such guardian.

(g) *Notice of Appearance by the Commonwealth in Criminal Cases*. — Within 10
days of the filing of the trial court record in a criminal case in the Court of Appeals, the
Attorney General, or the attorney for the Commonwealth who prosecuted the underlying
criminal case, acting ~~2~~ pursuant to Code § 2.2-511 and with the consent of the Attorney
General, must file a notice of appearance identifying the attorney(s) representing the
Commonwealth in the appeal. The notice of appearance must identify the name, Virginia
State Bar number, mailing address, telephone number (including any applicable
extension), facsimile number (if any), and ~~e-mail~~ email address (if any) of counsel who is
to represent the Commonwealth in the appeal. If the notice is being filed by the attorney
for the Commonwealth who prosecuted the underlying criminal case, it must include a
certification that the Attorney General has consented to the representation. A copy of the
notice of appearance must be served on counsel for the appellant.

Form

NOTICE OF APPEAL FROM TRIAL COURT
(Rule 5A:6)

VIRGINIA: IN THE CIRCUIT COURT OF _____

(The style of the case in the Circuit Court.)

NOTICE OF APPEAL

_____, _____

(name(s) of party(ies)) (plaintiff, defendant or other designation in trial court)

_____ hereby appeals to the Court of Appeals of Virginia from the

(final judgment or other appealable order or decree)

of this Court entered on _____.

(date)

[If applicable]

This is a termination of parental rights case (Va. Code §16.1-283, §16.1-277.01, §16.1-277.02 or §16.1-278.3).

A transcript will be filed.

A statement of facts, testimony, and other incidents of the case will be filed.

[In criminal cases only:] Appellant requests the clerk of the circuit court to cause a transcript to be prepared of the following circuit court proceedings:

_____.

CERTIFICATE

The undersigned certifies as follows:

(1) The name(s) and address(es) of appellant(s) are:

[If applicable] Appellant(s), is (are) not represented by counsel. The telephone

Attachment 1

2578 number(s), facsimile number (if any) and ~~e-mail~~email address (if any) of appellant(s) are:
2579

2580 (2) The name(s), Virginia State Bar numbers(s), address(es), telephone number(s),
2581 facsimile number (if any), and email address(es) (if any) of counsel for appellant(s) are:

2582 (3) The name(s) and address(es) of appellee(s) are:

2583 [If applicable] Appellee(s), is (are) not represented by counsel. The telephone
2584 number(s) facsimile number (if any) and ~~e-mail~~email address (if any) of appellee(s) (are):
2585

2586 (4) The name(s), Virginia State Bar numbers(s), address(es), telephone number(s),
2587 facsimile number (if any), and email address(es) (if any) of counsel for appellee(s) are:

2588 (5) [If applicable] The name(s), address(es), ~~and~~ telephone number(s), facsimile number
2589 (if any), and email address(es) of the guardian *ad litem* for the child(ren) is (are):

2590 (6) [If applicable] Counsel for appellant, or appellant if not represented by counsel, has
2591 ordered from the court reporter who reported the case the transcript for filing as required
2592 by Rule 5A:8(a).

2593 (7) [If applicable] _____,
2594 (name of party) (appellant)
2595 _____,
2596 is not represented by counsel. _____
2597 (appellee) (his) (her)

2598 ~~A~~address, and telephone number(s), and email addresses are:

2599 (8) [In criminal and termination of parental rights cases only] Counsel for defendant has
2600 been

2601 _____.
2602 (appointed) (privately retained)

2603 (9) A copy of this Notice of Appeal has been ~~mailed, emailed, or delivered to~~ served in
2604 accordance with Rule 1:12 on all opposing counsel [and/or ~~to~~ unrepresented parties, to
2605 and the guardian ad litem, if applicable] and mailed, emailed, or delivered to the Clerk of
2606 the Court of Appeals this _____ day of _____, 20____.

2607
2608
2609 _____
2610 (Signature of counsel or unrepresented party)
2611

2612

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.

(b) Notice of Filing Transcript. —

(1) Time for Filing. Within 10 days after the transcript is filed or, if the transcript is filed prior to the filing of the notice of appeal, within 10 days after the notice of appeal is filed, counsel for appellant must:

(i) ~~give-serve as provided in Rule 1:12~~ written notice ~~to-on~~ all other counsel of the date on which the transcript was filed, and

(ii) file a copy of the notice with the clerk of the trial court.

There must be appended to the notice either a certificate of counsel for appellant that a copy of the notice has been ~~mailed to-served as provided in Rule 1:12 on~~ all other counsel or an acceptance of service of such notice by all other counsel.

(2) Multiple Transcripts. When multiple transcripts are filed, the 10-day period for filing the notice required by this Rule is calculated from the date on which the last transcript is filed or from the date on which the notice of appeal is filed, whichever is later. The notice of filing transcripts must identify all transcripts filed and the date upon which the last transcript was filed.

(3) Notice of No Further Transcripts. If the notice of appeal states that no additional transcripts will be filed and identifies the transcripts that have been filed, if any, then no additional written notice of filing transcripts is required and the notice of appeal will serve as the notice of filing transcripts for purposes of Rule 5A:8(b).

(4) Effect of Non-compliance.

(i) Any failure to file the notice required by this Rule that materially prejudices an appellee will result in the affected transcripts being stricken from the record on appeal. For purposes of this Rule, material prejudice includes preventing the appellee from raising legitimate objections to the contents of the transcript or misleading the appellee about the contents of the record. The appellee has the burden of establishing such prejudice in the brief in opposition or, if no brief in opposition is filed, in a written statement filed with the clerk of this Court within 21 days after the record is received by the clerk.

(ii) When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission will not be considered.

(c) Written Statement in Lieu of Transcript. A written statement of facts, testimony, and other incidents of the case becomes a part of the record when:

(1) within 60 days after entry of judgment the moving party files in the office of the clerk of the trial court: (i) a copy of the statement, and (ii) a notice that the statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after the

filing date. A copy of the statement and notice must be ~~mailed or delivered to served as~~
provided in Rule 1:12 on opposing counsel on the same day that they are filed in the
office of the clerk of the trial court. The party filing the statement and notice must set or
request a hearing within the time specified in subdivision (ii) above; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of
the trial court. The judge may sign the statement forthwith upon its presentation to him if
it is signed by counsel for all parties, but if objection is made to the accuracy or
completeness of the statement, it must be signed in accordance with paragraph (d) of this
Rule.

The term “other incidents of the case” in this subsection includes motions,
proffers, objections, and rulings of the trial court regarding any issue that a party intends
to assign as error or otherwise address on appeal.

(d) Objections. Any party may object to a transcript or written statement on the
ground that it is erroneous or incomplete. The objecting party must file any objections
with the clerk of the trial court, specifying the errors alleged or deficiencies asserted, no
later than 15 days after the date the notice of filing the transcript (paragraph (b) of this
Rule) or no later than 15 days after the date the notice of filing the written statement
(paragraph (c) of this Rule) was filed in the office of the clerk of the trial court. If the
transcript or written statement was filed before the notice of appeal is filed, any
objections must be filed no later than 10 days after the notice of appeal was filed with the
clerk of the trial court. The clerk must give the trial judge prompt notice of the filing of
such objections. No later than 10 days after the objection is filed with the clerk of the trial
court, the judge must set a hearing with notice to all parties, unless a hearing has already
been scheduled. After the hearing, the judge must:

- (1) overrule the objection; or
- (2) make any corrections that the trial judge deems necessary; or
- (3) include any accurate additions to make the record complete; or
- (4) certify the manner in which the record is incomplete; and
- (5) sign the transcript or written statement.

At any time while the record remains in the office of the clerk of the trial court,
the trial judge may, after notice to counsel and hearing, correct the transcript or written
statement.

The judge’s signature on a transcript or written statement, without more,
constitutes certification that the procedural requirements of this Rule have been satisfied.

(e) *Criminal cases.* — In criminal cases, the appellant must contemporaneously
serve a copy of all notices required by this Rule on the attorney for the Commonwealth
who prosecuted the case.

**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~~ email address (if any) of counsel for each party, and the mailing address, telephone number, facsimile number (if any), and ~~e-mail~~ email 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 ten 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 and Other Petitions for Discretionary Review.

(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, application for an appeal, or other authorized

pleading seeking discretionary review (hereafter “petition”), as appropriate, must be filed with the clerk of this Court:

(1) not more than 10 days after entry of the trial court’s order in cases governed by Code § 8.01-267.8;

(2) not more than 15 days after entry of the trial court’s certification in cases governed by Code § 8.01-675.5(A);

(3) not more than 14 days after the filing of the notice of filing of transcripts in cases governed by Code §§ 19.2-398 (A) and (E);

(4) not more than 40 days after the filing of the record with this Court in cases governed by Code §§ 19.2-398 (B) and (C); and

(5) for any other discretionary appeal, within the time prescribed by the statute authorizing the appeal to the Court of Appeals.

(b) *Copy to Opposing Counsel.* — At the time the petition is filed, a copy of the petition must be served as provided in Rule 1:12 on ~~transmitted, mailed, or emailed to~~ all opposing counsel of record.

(c) *What the Petition Must Contain.* — A petition under this Rule must contain the following:

(1) *Assignments of Error.* Under a heading entitled “Assignments of Error,” the petition must list, clearly and concisely and without extraneous argument, the specific errors in the rulings below—or the issue(s) on which the tribunal or court appealed from failed to rule—upon which the party intends to rely. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken must be included with each assignment of error but is not part of the assignment of error. If the error relates to failure of the tribunal or court below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(i) *Effect of Failure to Assign Error.* Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, the petition will be dismissed.

(ii) *Insufficient Assignments of Error.* An assignment of error which does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. If the assignments of error are insufficient, the petition will be dismissed.

(iii) *Effect of Failure to Use Separate Heading or Include Preservation Reference.* If the petition contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c)(1) of this Rule, a rule to show cause will issue pursuant to Rule 5A:1A. If there is a deficiency in the reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal

is taken—including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s)—a rule to show cause will issue pursuant to Rule 5A:1A.

(2) *Table of Contents and Table of Authorities.* A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities must include the year thereof.

(3) *Nature of the Case and Material Proceedings Below.* A brief statement of the nature of the case and of the material proceedings in the trial court or commission in which the case originated. This statement should omit references to any paper filed or action taken that does not relate to the assignments of error.

(4) *Statement of Facts.* A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record, transcript, or written statement of facts. Any quotation from the record should be brief. When the facts are in dispute, the petition must so state. The testimony of individual witnesses should not be summarized seriatim unless the facts are in dispute and such a summary is necessary to support the appellant's version of the facts.

(5) *Authorities and Argument.* With respect to each assignment of error, the standard of review and the argument—including principles of law and the authorities—must be stated in one place and not scattered through the petition. At the option of counsel, the argument may be preceded by a short summary.

(6) *Conclusion.* A short conclusion stating the precise relief sought.

(7) *Contact Information.* The signature of at least one counsel, counsel's name, Virginia State Bar number, mailing address, telephone number, facsimile number (if any), and email address (if any).

(8) *Certificate.* A certificate stating the date ~~of mailing or delivery of~~ the petition was served on ~~to~~ opposing counsel.

(d) *Length.* — Except by leave of a judge of this Court, a petition may not exceed the longer of 35 pages or 7,500 words. The page and word limits do not include the cover page, table of contents, table of authorities, signature blocks, or certificate.

(e) *Filing Fee.* — The petition for appeal must be accompanied by the \$50 filing fee required by statute. 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.

(f) *The Record.* —

(1) When referencing any item in the record, the petition must cite the record-page number (e.g., “R. 1”) if the record has been transmitted in whole or in part to this Court. No petition will be dismissed for failure to comply with the citation provisions of this rule; however, the clerk of this Court may require that a document be redone in compliance with the citation requirements.

(2) A petition for appeal seeking interlocutory review under Code § 8.01-675.5

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. That copy of the record constitutes part of the petition for the purpose of paragraph (b), but is not included in the page or word limit.

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

(h) *Oral Argument.* — No oral argument will be permitted on a petition except, consistent with Code § 17.1-407(D) and Code § 19.2-403, the Commonwealth is entitled to state orally before a panel of the Court the reasons why its petition for appeal should be granted for petitions filed pursuant to Code § 19.2-398.

Rule 5A:13. Brief in Opposition.

(a) *Filing Time.* — A brief in opposition to granting the petition may be filed with the clerk of this Court by the respondent within:

- (1) 7 days after the petition is served on counsel for the respondent in cases governed by Code § 8.01-267.8;
- (2) 7 days after the petition is served on counsel for the respondent in cases governed by Code § 8.01-675.5(A);
- (3) 14 days after the petition is filed in cases governed by Code §§ 19.2-398(A) and (E);
- (4) 21 days after the petition is served in cases governed by Code §§ 19.2-398(B) and (C); and
- (5) for any other discretionary appeal, any brief in opposition is due within the longer of 21 days or the time prescribed for such a response by the statute authorizing the appeal to the Court of Appeals.

Within the same time the respondent must ~~transmit, mail, or deliver~~ serve a copy of the brief in opposition ~~to~~ on counsel for petitioner as provided in Rule 1:12. Motions for an extension to this briefing deadline must be filed no later than 10 days after the expiration of the deadline. For the purpose of Rule 5A:13(a)(3) & (5), a petition is considered served three days from the date on which it was mailed, or one day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent.

(b) *Form and Content.* — Except as provided herein, the brief in opposition must conform in all respects to the requirements of the brief of respondent (Rule 5A:21).

(1) *Length.* Except by leave of a judge of this Court, the brief must not exceed the longer of 35 pages or 7,500 words. The page and word limits do not include the cover page, table of contents, table of authorities, signature blocks, or certificate.

(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) Citations to the Record. When referencing any item in the record, the brief in opposition must cite the record-page number (e.g., “R. 1”) if the record has been transmitted in whole or in part to this Court. No brief in opposition will be stricken for failure to comply with the citation provisions of this rule; however, the clerk of this Court may require that the brief be redone in compliance with the citation requirements.

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

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

When a petition for appeal is denied, the clerk of this Court must transmit a copy of the order denying the appeal to all counsel of record. Except for petitions filed by the Commonwealth pursuant to Code § 19.2-398 related to pretrial matters for which no rehearing is permitted, the appellant, within 14 days after the date of the order, may file a petition for rehearing in the office of the clerk of this Court. The petition for rehearing may not exceed the longer of 25 pages or 5,300 words. The petition must state that it has been ~~transmitted, mailed, or delivered to~~ served on counsel for the respondent as provided in Rule 1:12. 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 original petition. 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.

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 to the appellee by service under Rule 1:12. 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), and the time for filing such security may be extended by a judge of this Court on motion for good cause shown. No appeal will be dismissed because of a 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:20. Requirements for Opening Brief of Appellant.

The opening brief of appellant must contain:

(a) A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities must include the year thereof.

(b) A brief statement of the nature of the case and of the material proceedings in the trial court, which should omit references to any paper filed or action taken that does not relate to the assignments of error.

(c) Under a heading entitled “Assignments of Error,” the brief must list, clearly and concisely and without extraneous argument, the specific errors in the rulings below—or the issue(s) on which the tribunal or court appealed from failed to rule—upon which the party intends to rely, or the specific existing case law that should be overturned, extended, modified or reversed. An exact reference to the page(s) of the record or appendix where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken must be included with each assignment of error but is not part of the assignment of error. If the error relates to failure of the tribunal or court below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the record or appendix where the alleged error has been preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(1) Effect of Failure to Assign Error. Only assignments of error listed in the brief will be noticed by this Court. If the brief does not contain assignments of error, the appeal will be dismissed.

(2) Insufficient Assignments of Error. An assignment of error that does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. If the assignments of error are insufficient, the appeal will be dismissed.

(3) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the brief contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c) of this Rule, a rule to show cause will issue pursuant to Rule 5A:1A. If there is a deficiency in the reference to the page(s) of the record or appendix where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken—including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s)—a rule to show cause will issue pursuant to Rule 5A:1A.

(4) Assignments of error listed in the opening brief of appellant are binding on the appellant for substantive purposes, unless the Court has granted a motion to amend.

(d) A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record or appendix. Any quotation from the

record should be brief. When the facts are in dispute, the brief must so state. The testimony of individual witnesses should not be summarized seriatim unless the facts are in dispute and such a summary is necessary to support the appellant's version of the facts.

(e) The standard of review and the argument (including principles of law and authorities) relating to each assignment of error. When the assignment of error was not preserved in the trial court, counsel must state why the good cause and/or ends of justice exceptions to Rule 5A:18 are applicable. With respect to each assignment of error, the standard of review and the argument—including principles of law and the authorities—must be stated in one place and not scattered through the brief. At the option of counsel, the argument may be preceded by a short summary.

(f) A short conclusion stating the precise relief sought.

(g) The signature (which need not be in handwriting) of at least one counsel and counsel's Virginia State Bar number, address, telephone number, facsimile number (if any), and email address.

(h) A certificate (which need not be signed in handwriting) stating (1) that it was served on opposing counsel as provided in Rule 1:12, and (2) whether counsel desires to waive oral argument. The certificate must also state the number of words (headings, footnotes, and quotations are included in the page and word limits; the cover page, table of contents, table of authorities, signature blocks, and certificate are not included in the page and word limits). Additionally, any party may waive oral argument without leave of this Court by written notification to the clerk of this Court within 21 days after the date on which the appellee's brief is due to be filed or has been filed.

(i) Procedure for an *Anders* appeal. — If counsel for appellant finds the client's appeal to be without merit, counsel must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Akbar v. Commonwealth*, 7 Va. App. 611 (1989). In such an appeal, counsel must file (1) an opening brief that refers to anything in the record that might arguably support the appeal and that demonstrates 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 brief. The opening brief and the motion for leave to withdraw as counsel should specifically cite *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 briefing that may be filed. The appellee brief must be filed in the office of the clerk of this Court within 30 days after the filing of the supplemental brief or, if no supplemental brief is filed, within 30 days after the supplemental brief was due.

Rule 5A:21. Requirements for Brief of Appellee or Guardian Ad Litem.

The brief of appellee or the brief of the guardian ad litem must contain:

2992 (a) A table of contents and table of authorities with cases alphabetically arranged.
2993 Citations of all authorities must include the year thereof.

2994 (b) A statement of the case if the appellee disagrees with the statement presented
2995 by the appellant and a statement of any additional assignments of error the appellee
2996 wishes to present with a clear and exact reference to the page(s) of the record or appendix
2997 where each additional assignment of error was preserved in the trial court.

2998 (c) A statement of the facts necessary to correct or amplify the statement in the
2999 brief of appellant with appropriate references to the pages of the record or appendix. The
3000 testimony of individual witnesses should not be summarized seriatim unless the facts are
3001 in dispute and such a summary is necessary to support the appellee's version of the facts.

3002 (d) The standard of review and the argument (including principles of law and
3003 authorities) relating to each assignment of error. For any additional assignment of error
3004 by appellee which was not preserved in the trial court, counsel must state why the good
3005 cause and/or ends of justice exceptions to Rule 5A:18 are applicable. With respect to
3006 each assignment of error, the standard of review and the argument—including principles
3007 of law and the authorities—must be stated in one place and not scattered through the
3008 brief. At the option of counsel, the argument may be preceded by a short summary.

3009 e) With respect to the assignments of cross-error, if any:

3010 (1) A statement of the assignment of cross-error, with a clear and exact reference
3011 to the pages of the record or appendix where the alleged cross-error has been preserved.

3012 (2) The standard of review, the argument, and the authorities relating to each
3013 assignment of cross-error. With respect to each such assignment of cross-error, the
3014 standard of review and the argument—including principles of law and the authorities—
3015 must be stated in one place and not scattered through the brief.

3016 (3) Additional assignments of error listed in the brief of appellee or the brief of
3017 the guardian ad litem are binding on that party for substantive purposes, unless the Court
3018 has granted a motion to amend.

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3020 (f) A statement of the precise relief sought.

3021 (g) The signature (which need not be in handwriting) of at least one counsel and
3022 counsel's Virginia State Bar number, address, telephone number, facsimile number (if
3023 any), and email address.

3024 (h) A certificate (which need not be signed in handwriting) stating (1) that it was
3025 served on opposing counsel as provided in Rule 1:12 and (2) whether counsel desires to
3026 waive oral argument. The certificate must also state the number of words (headings,
3027 footnotes, and quotations are included in the page and word limits; the cover page, table
3028 of contents, table of authorities, signature blocks, and certificate are not included in the
3029 page and word limits). Additionally, any party may waive oral argument without leave of
3030 this Court by written notification to the clerk of this Court within 21 days after the date
3031 on which the appellee's brief is due to be filed or has been filed.

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 the longer of 25 pages or 5,300 words, 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~~ served on opposing counsel as provided in Rule 1:12 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 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.

(2) *Appellant's Opening Brief Upon Rehearing En Banc.* The party who was the appellant before the panel of this Court remains the appellant before the en banc Court. The appellant may not change an assignment of error from the one assigned before the panel but may seek leave of Court to make technical corrections or non-substantive changes that do not prejudice the appellee. The appellant must file an en banc opening brief in the office of the clerk within 21 days following the date of the order of this Court granting rehearing en banc. The opening brief is subject to the requirements of Rule 5A:19(a), (d), (e), and (f), and of Rule 5A:20(a)-(h), except that the opening brief must omit assignments of error for which the Court did not grant en banc review.

(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 within 14 days after the en banc opening brief has been filed. The appellee's answering brief is subject to the requirements of Rule 5A:19(a), (d), (e), and (f), and of Rule 5A:21, except that Rule 5A:21(e) applies to any assignment of cross-error only if the Court has granted en banc review of such cross-error. The appellee's answering brief must omit assignments of cross-error for which the Court did not grant en banc review. Appellee may be heard orally whether or not the answering brief is filed.

(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.

PART TEN

Form 1. Registration Statement For Lawyer Engaging In Temporary Practice Following Determination Of Major Disaster.

IN THE SUPREME COURT OF VIRGINIA

REGISTRATION STATEMENT FOR LAWYER ENGAGING IN TEMPORARY PRACTICE FOLLOWING DETERMINATION OF MAJOR DISASTER

Pursuant to Virginia Supreme Court Rule 10(f), the undersigned must complete the following and file it with the **Clerk of the Supreme Court of Virginia, 100 North 9th Street, 5th Floor, Richmond, Virginia 23219** **within 30 days of the commencement of the provision of legal services.** The attorney's oath must be administered by a **Judge or Justice of a court of record.**

1. Name

Lawyer's full name.

Name of lawyer's firm.

2. Home State Information

Lawyer's residential address in home state.

Lawyer's business address in home state.

Lawyer's telephone number in home state.

Lawyer's ~~e-mail~~email address.

3. Virginia Information

Lawyer's residential address in Virginia.

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Lawyer's business address in Virginia.

Lawyer's telephone number in Virginia.

Lawyer's ~~e-mail~~email address.

4. Bar admission

List the courts before which you have been admitted to practice, the respective periods of admission, and your registration or bar numbers.

Is your license to practice currently subject to disbarment, suspension, or restrictions in any jurisdiction?

☐ Yes ☐ No

If yes, explain the proceedings on a separate page and attach copies of all related documents.

5. Temporary Practice Following Determination of Major Disaster

(Check all that apply)

Specify whether you will engage in temporary practice pursuant to:

☐ Virginia Supreme Court Rule 10(b) (pro bono legal services)

☐ Virginia Supreme Court Rule 10(c) (legal services reasonably related to lawyer's practice of law in jurisdiction or area where the disaster occurred)

Attachment 1

I agree that I am subject to the disciplinary authority of Virginia and the Virginia Rules of Professional Conduct, as set forth in Rule 8.5 of the Virginia Rules of Professional Conduct.

[] Yes [] No

ATTORNEY CERTIFICATION

I certify under penalty of perjury and pursuant to the laws of the Commonwealth of Virginia that the preceding is true and correct. I also certify under penalty of perjury that I have taken the required attorney oath and have attached the motion and oath documents, signed by the Judge or Justice of a court of record who administered the oath.

I certify under penalty of perjury and pursuant to the laws of the Commonwealth of Virginia that I am licensed and in good standing and authorized to practice law in each jurisdiction listed above and my license is not subject to suspension or restriction in any jurisdiction.

DATE

SIGNATURE