

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 1st day of November, 2016.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective January 1, 2017.

Relocate Rule 5:8A by removing it and replacing Rule 1:2 to read as follows:

Rule 1:2. Appeal From Partial Final Judgment in Multi-Party Cases.

(a) *When Available.* – When claims for relief are presented in a civil action against multiple parties – whether in a complaint, counterclaim, cross-claim, or third-party claim – the trial court may enter final judgment as to one or more but fewer than all of the parties only by entering an order expressly labeled “Partial Final Judgment” which contains express findings that (i) the interests of such parties, and the grounds on which judgment is entered as to them, are separate and distinct from those raised by the issues in the claims against remaining parties, and (ii) the results of any appeal from the partial final judgment cannot affect decision of the claims against the remaining parties, and (iii) decision of the claims remaining in the trial court cannot affect the disposition of claims against the parties subject to the Partial Final Judgment if those parties are later restored to the case by reversal of the Partial Final Judgment on appeal.

(b) *Time to Appeal.* – Entry of an order of Partial Final Judgment as provided in subparagraph (a) of this Rule commences the period for filing a notice of appeal from such Partial Final Judgment under Rule 5:9 and a petition for appeal under Rule 5:17, subject to the provisions of Rule 1:1 and these Rules.

(c) *Refusal of Partial Final Judgment.* – No appeal shall lie from a refusal by the trial court to enter a Partial Final Judgment under this Rule.

(d) *Other Dispositions Adjudicating Claims Against Fewer than All Parties.* – In the absence of the entry of a Partial Final Judgment order as provided in subparagraph (a) of this Rule, any order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties in the action is not a final judgment.

Amend Rule 1:5 to read as follows:

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. Papers filed electronically may be signed electronically or by inclusion of a digital image of the signature, as provided in Rule 1:17. Signatures to briefs and petitions for rehearing may be printed or typed and need not be in handwriting.

(3) Service on one member or associate of such firm shall constitute 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 – shall sign every pleading, motion, or other paper that he or she serves or files, and shall state his or her address.

(d) (1) Counsel of record shall not withdraw from a case except by leave of court after notice to the client of the time and place of a motion for leave to withdraw.

(2) Any order permitting withdrawal shall 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 shall 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 shall 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 shall 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 shall 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.

Amend Rule 4:1(b)(4)(D) to read as follows:

Rule 4:1. General Provisions Governing Discovery.

* * *

(b) *Scope of Discovery.* –

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

* * *

(D) Notwithstanding the provisions of subdivision (b)(4)(C) of this Rule, the condemnor in eminent domain proceedings, when it initiates discovery, shall pay all reasonable costs thereof, including the cost and expense of those experts discoverable

under subdivision (b) of this Rule. The condemnor shall be deemed to have initiated discovery if it uses, or gives notice of the use of, any discovery method before the condemnee does so, even though the condemnee subsequently engages in discovery.

* * *

Amend Rule 5:24 to read as follows:

Rule 5:24. Security for Appeal.

(a) *Compliance With Forms.* — All security for appeal required under Code § 8.01-676.1 shall substantially conform to the forms set forth in the Appendix to this Part Five.

(b) *Procedure Concerning Defects.* — The time for initially filing the appeal bond or letter of credit prescribed by Code § 8.01-676.1(B) is not jurisdictional under Code § 8.01-676.1(P). No appeal shall be dismissed because of a defect in any appeal bond or irrevocable letter of credit unless an appellee, within 21 days after the issuance of the certificate pursuant to Rule 5:23, 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 such period of 21 days, an appellee may move that the appeal be dismissed and it shall 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 in the required form.

Amend Rule 5A:17 to read as follows:

Rule 5A:17. Security for Appeal.


(a) *Form for Security.* — All security for appeal required under Code § 8.01-676.1 shall 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 shall contemporaneously give notice in writing of said filing to counsel for appellee. The time for initially filing the appeal bond or letter of credit prescribed by

Code § 8.01-676.1(A) and (B) is not jurisdictional under Code § 8.01-676.1(P). No appeal shall be dismissed because of defect in any appeal bond or irrevocable letter of credit unless an appellee, within 21 days after the giving of such notice, files with the clerk of the Court of Appeals 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 shall be dismissed unless the appellant satisfies the Court of Appeals that the bond or irrevocable letter of credit, either as originally given or as amended, has been filed as required by law.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "Pat L. Hamner".

Clerk