NOTE

Those Rules set forth below, heretofore adopted and promulgated and now in effect, will be amended and restated as as shown below. The purpose of these amendments is to clarify the meaning of the word "shall" formerly appearing in these Rules and not to change existing law; as revised, the Rules implement and comply with any statutory mandates addressing these topics. The Rules will be promulgated in accord with the requirements and timetables of Virginia Code § 8.01-3.

The revised portions of the Rules will read as follows:

Rule 1:1. Finality of Judgments, Orders and Decrees.

(a) *Expiration of Court's Jurisdiction.* — All final judgments, orders, and decrees, irrespective of terms of court, remain under the control of the trial court and may be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, will not extend the time limits hereinafter prescribed for applying for a writ of error. The date of entry of any final judgment, order, or decree is the date it is signed by the judge either on paper or by electronic means in accord with Rule 1:17.

* * *

Rule 1:1A. Recovery of Appellate Attorney's Fees in Circuit Court.

a) Notwithstanding any provision of Rule 1:1, in any civil action in which an appeal lies from the circuit court to the Supreme Court and a petition for appeal is denied by the Supreme Court (and, if a petition for rehearing has been filed pursuant to Rule 5:20, such petition has been denied), an appellee who has recovered attorneys' fees, costs or both in the circuit court pursuant to a contract, statute or other applicable law may make application in the circuit court in which judgment was entered for attorneys' fees, costs or both incurred on appeal. The application must be filed within thirty (30) days after denial of the petition for appeal or of any petition for rehearing, whichever is later, and may be made in the same case from which the appeal was taken, which case will be reinstated on the circuit court docket upon the filing of the application. The appellee is not required to file a separate suit or action to recover the fees and costs incurred on appeal, and the circuit court has continuing jurisdiction of the case for the purpose of adjudicating the application. The circuit court's order granting or refusing the application, in whole or in part, is a final order for purposes of Rule 1:1.

b) Nothing in this Rule restricts or prohibits the exercise of any other right or remedy for the recovery of attorneys' fees or costs, by separate suit or action, or otherwise.

* * *

Rule 1:1C. Jurisdictional Transfer During Appeal of Interlocutory Orders.

(a) When a petition for review is filed pursuant to Code § 8.01-626, the appellate court has exclusive jurisdiction over the appealable interlocutory order and the circuit court retains jurisdiction over any part of the case that has not been appealed, unless the circuit court or the appellate court enters an order staying the proceedings in the circuit court.

(b) In any other appeal of an interlocutory order, the circuit court retains concurrent jurisdiction over the case unless the circuit court or the appellate court enters an order staying all or part of the proceedings in the circuit court.

* * *

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

* * *

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

* * *

Rule 1:3. Reporters and Transcripts of Proceedings in Courts.

Reporters must be first duly sworn to take down and transcribe the proceedings faithfully and accurately to the best of their ability, and are subject to the control and discipline of the judge.

When a reporter takes down any proceeding in a court, any person interested is entitled to obtain a transcript of the proceedings or any part thereof upon terms and conditions to be fixed in each case by the judge.

The proceedings may be taken down by means of any recording device approved by the judge.

* * *

Rule 1:4. General Provisions as to Pleadings.

* * *

(c) Counsel or an unrepresented party who files a pleading must sign it and state his address.

(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. 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.

* * *

(l) 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. 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 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.

(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 file and serve on all parties a notice of limited-scope appearance: (A) providing evidence that the attorney is (i) employed by a qualified legal services provider, as that is defined in Section IV, Paragraph 3(e) 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. Service of all papers after the filing of a notice of limited scope appearance as provided in this Rule 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, providing at least seven (7) days' notice to the party on whose behalf the attorney appeared. 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) Pilot Project. The provisions of this subpart (f) will remain in effect until December 31, 2021, unless by Order of the Supreme Court operation of these provisions is ended, modified, or extended; except that any limited scope appearance commenced prior to December 31, 2021, may be completed in accordance with these provisions.

(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 1:6. Res Judicata Claim Preclusion.

(a) *Definition of Cause of Action.* A party whose claim for relief arising from identified conduct, a transaction, or an occurrence, is decided on the merits by a final judgment, is forever barred from prosecuting any second or subsequent civil action against the same opposing party or parties on any claim or cause of action that arises from that same conduct, transaction or occurrence, whether or not the legal theory or rights asserted in the second or subsequent action were raised in the prior lawsuit, and regardless of the legal elements or the evidence upon which any claims in the prior proceeding depended, or the particular remedies sought. A claim for relief pursuant to this rule includes those set forth in a complaint, counterclaim, cross-claim or third-party pleading.

(b) *Effective Date.* This rule applies to all Virginia judgments entered in civil actions commenced after July 1, 2006.

(c) *Exceptions.* The provisions of this Rule do not bar a party or a party's insurer from prosecuting separate personal injury and property damage suits arising out of the same conduct, transaction or occurrence, and do not bar a party who has pursued mechanic's lien remedies pursuant to Virginia Code § 43-1 et seq. from prosecuting a subsequent claim against the same or different defendants for relief not recovered in the prior mechanic's lien proceedings, to the extent heretofore permitted by law.

(d) *Privity.* The law of privity as heretofore articulated in case law in the Commonwealth of Virginia is unaffected by this Rule and remains intact. For purposes of this Rule, party or parties include all named parties and those in privity.

* * *

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) 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 mail.

(c) three days will be added to the prescribed time if the paper is served 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.

* * *

Rule 1:8. Amendments.

No amendments may be made to any pleading after it is filed save by leave of court. Leave to amend should be liberally granted in furtherance of the ends of justice. Unless otherwise provided by order of the court in a particular case, any written motion for leave to file an amended pleading must be accompanied by a properly executed proposed amended pleading, in a form suitable for filing. If the motion is granted, the amended pleading accompanying the motion will be deemed filed in the clerk's office as of the date of the court's order permitting such amendment. If the motion is granted in part, the court may provide for filing an amended pleading as the court may deem reasonable and proper. Where leave to amend is granted other than upon a written motion, whether on demurrer or oral motion or otherwise, the amended pleading must be filed within 21 days after leave to amend is granted or in such time as the court may prescribe. In granting leave to amend the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper.

* * *

Rule 1:9. Discretion of Court.

All steps and procedures in the clerk's office touching the filing of pleadings and the maturing of suits or actions may be reviewed and corrected by the court.

The time allowed for filing pleadings may be extended by the court in its discretion and such extension may be granted although the time fixed already has expired; but the time fixed for the filing of a motion challenging the venue will in no case be extended except to the extent permitted by § 8.01-264.

* * *

Rule 1:10. Verification.

If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed. In an Electronically Filed Case, verification is subject to the provisions of Rule 1:17.

* * *

Rule 1:11. Motion to Strike the Evidence.

If the court sustains a motion to strike the evidence of either party in a civil case being tried before a jury, or the evidence of the Commonwealth in a criminal case being so tried, then the court should enter summary judgment or partial summary judgment in conformity with its ruling on the motion to strike.

If the court overrules a motion to strike the evidence and there is a hung jury, the moving party may renew the motion immediately after the discharge of the jury, and, if the court is of opinion that it erred in denying the motion, it should enter summary judgment or partial summary judgment in conformity with its ruling on the motion to strike.

* * *

Rule 1:12. Service of Papers after the Initial Process.

All pleadings, motions and other papers served after the initial process in an action and not required to be served otherwise and requests for subpoenas duces tecum must be served by delivering, dispatching by commercial delivery service for same-day or next-day delivery, 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.

Subject to the provisions of Rule 1:17, service pursuant to this Rule is 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 attempted service did not reach the person to be served.

At the foot of such pleadings and requests must be appended either acceptance of service or a certificate of counsel that copies were served as this Rule requires, showing the date of delivery and method of service, dispatching, transmitting, or mailing. 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 1:13. 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 upon all counsel of record who have not endorsed them.

Compliance with this Rule and with Rule 1:12 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 1:15. Local Rules of Court.

(a) Whenever a local rule is prescribed by a circuit court it must be spread upon the order book and a copy with the date of entry must be forthwith posted in the clerk's office, filed with the Executive Secretary of the Supreme Court, and furnished to attorneys regularly practicing before that circuit court; and whenever an attorney becomes counsel of record in any proceedings in a circuit court in which he does not regularly practice, it is his responsibility to ascertain the rules of that court and abide thereby. The clerk must, upon request, promptly furnish a copy of all rules then in force and effect.

(b) Whenever a local rule is prescribed by a circuit court providing for the orderly management of the civil docket by use of the praecipe system, the praecipe must be substantially in the form appearing in the appendix of forms at the end of this Part One.

(c) Whenever a local rule is prescribed by a circuit court providing for the submission of instructions prior to trial, such local rule must be substantially in the form appearing in the appendix of forms at the end of this Part One.

(d) The chief judges of the circuit and juvenile and domestic relations district courts must, on or before December 31 of each year, furnish the Executive Secretary of the Supreme Court current general information relating to the management of the courts within each circuit and

district. This information will be assembled and published electronically by the Executive Secretary.

* * *

Rule 1:16. Filing Format and Procedure.

(a) Except as provided in Rules 1:17, 3:3, 3A:23, 7A:7(c), and 8:8(f) pertaining to Electronically Filed Cases,

(1) All pleadings, motions, briefs, depositions, requests for discovery and responses thereto, and all other documents filed in any clerk's office in any proceeding pursuant to these Rules must be produced on pages 8 1/2 by 11 inches in size and all typed material must be double spaced except for quotations.

(2) Subdivision (a)(1) of this Rule does not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(b) No paper will be refused for failure to comply with the provisions of this Rule, but the clerk may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel must certify that the substituted paper is identical in content to the paper initially filed.

* * *

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).

* * *

(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.

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

(5) Remote electronic access to documents submitted in an electronically filed case and stored electronically will be limited to judges, court personnel, any persons assisting such persons in the administration of the electronic filing system, and to active members of the

Virginia State Bar and their authorized agents, who have complied with the registration requirements to use the electronic filing system.

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

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

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

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

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

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

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

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

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

(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 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.

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

* * *

Rule 1:18. Pretrial Scheduling Order.

A. In any civil case the parties, by counsel of record, may agree and submit for approval and entry by the court a pretrial scheduling order. If the court determines that the submitted order is not consistent with the efficient and orderly administration of justice, then the court will notify counsel and provide an opportunity to be heard.

B. In any civil case in which a pretrial scheduling order has not otherwise been entered pursuant to the court's normal scheduling procedure, the court may, upon request of counsel of record for any party, or in its own discretion, enter the pretrial scheduling order contained in Section 3 of the Appendix of Forms at the end of Part I of these Rules (Uniform Pretrial Scheduling Order). The court will cause copies of the order so entered to forthwith be transmitted to counsel for all parties. If any party objects to or requests modification of that order, the court will (a) hold a hearing to rule upon the objection or request or (b) with the consent of all parties and the approval of the court, enter an amended pretrial scheduling order.

* * *

Rule 1:20. Scheduling Civil Cases for Trial.

The circuit courts of the Commonwealth must adopt one or a combination of the following procedures for scheduling civil cases for trial.

(a) Counsel of record may agree to a trial date and may secure approval of the court by telephone call or other electronic communication to the designated court official.

(b) Counsel of record may agree to a trial date as a part of a written plan prepared and submitted to the court for approval pursuant to Rule 1:18.

(c) The court may, at the request of counsel of record, or may in its own discretion, direct counsel of record to appear, in person or by telephone, for a conference to set a trial date and consider other matters set forth in Rule 1:19 or Rule 4:13.

(d) The court may set civil cases for trial at a docket call held on a day as provided by § 17.1-517.

(e) Following the submission of a praecipe, the court may set civil cases for trial at a docket call held on a day as provided by § 17.1-517.

The Executive Secretary must make accessible these procedures on the Internet.

The clerk of each district and circuit court must make their respective procedures available in the office of the clerk of that court.

* * *

Rule 1:21. Preliminary Voir Dire Information.

At the outset of jury selection in any civil or criminal case, the court must deliver preliminary instructions that: (1) explain the purpose of the voir dire examination, (2) explain the difference between peremptory challenges and removals for cause, (3) summarize the nature of the case, (4) estimate how long the trial may last, and (5) indicate whether it is anticipated that the jury will be sequestered.

* * *

Rule 1:22. Exercise of Challenges to Prospective Jurors.

Counsel must be afforded the opportunity to challenge jurors for cause out of the presence of the panel.

* * *

Rule 1:23. Note Taking by Jurors.

A. The court, in the exercise of its discretion, may permit jurors to take notes during the trial.

B. If notes are taken by any of the jurors, at the conclusion of each day of a trial, the court must collect juror notes and provide for their security until the trial resumes. Upon conclusion of the trial, the court must collect and destroy all juror notes.

* * *

Rule 1:24. Requirements for Court Payment Agreements for the Collection of Fines and Costs.

The purposes of the statutory court collection process are (i) to facilitate the payment of fines, court costs, penalties, restitution and other financial responsibilities assessed against defendants convicted of a criminal offense or traffic infraction, (ii) to collect the monies due to the Commonwealth and localities as a result of these convictions, and (iii) to assure payment of court-ordered restitution to victims of crime. To achieve these purposes, this Rule is intended to ensure that all courts approve deferred and installment payment agreements consistent with §§ 19.2-354, 19.2-354.1, and the provisions of this Rule and to further the legal values of predictability, fairness, and similarity in the collection of fines, court costs, penalties, and restitution throughout the courts of the Commonwealth.

(a) *Definitions*. —

(1) "Fines and costs" mean all the fines, court costs, forfeitures, and penalties assessed in all cases by a single court against a defendant for the commission of crimes or traffic infractions. "Fines and costs" also include restitution unless the court orders a separate payment schedule for restitution.

(2) An "installment payment agreement" is an agreement in which the defendant agrees to make monthly or other periodic payments until the fines and costs are paid in full.

(3) A "deferred payment agreement" is an agreement in which the defendant agrees to pay the full amount of the fines and costs at the end of the agreement's stated term and no installment payments are required.

(4) A "modified deferred payment agreement" is a deferred payment agreement in which the defendant also agrees to use best efforts to make monthly or other periodic payments.

(b) *Access to payment alternatives*. — Any defendant who is unable to pay in full fines and costs for a particular offense within 30 days of conviction, or other disposition authorized by law, must be offered by the convicting court the opportunity to enter into a deferred payment agreement, a modified deferred payment agreement or an installment payment agreement to pay those fines and costs. The court may not deny a defendant the opportunity to enter into a deferred, modified deferred, or installment payment agreement solely because (i) the defendant previously defaulted under the terms of a payment agreement, (ii) the fines and costs have been referred for collection pursuant to § 19.2-349, (iii) a defendant has not established a payment history, (iv) of the category of offense for which the defendant was convicted or found not innocent, or (v) of the total amount of all fines and costs.

(c) *Notice of payment alternatives*. — The court must give the defendant written notice of deferred, modified deferred, and installment payment agreements and, if a community service program has been established, the availability of earning credit toward discharge of fines and costs through the performance of community service work.

(d) *Conditions of a payment agreement*. — All the fines and costs that a defendant owes for all cases in any single court may be incorporated into one payment agreement, unless otherwise ordered by the court in specific cases. A payment agreement may include only those outstanding fines and costs for which the limitations period set forth in § 19.2-341 has not run.

In determining the length of time to pay under a deferred, modified deferred, or installment payment agreement and the amount of the payments, a court must take into account the defendant's financial resources and obligations, including any fines and costs the defendant owes in other courts. In assessing the defendant's ability to pay, the court must use a written financial statement, on a form developed by the Executive Secretary of the Supreme Court,

setting forth the defendant's financial resources and obligations or conduct an oral examination of the defendant to determine his financial resources and obligations. The court may require the defendant to present a compliance summary prepared by the Department of Motor Vehicles of the other courts in which the defendant also owes fines and costs.

The length of a payment agreement and the amount of the payments may not be based solely on the amount of fines and costs and must be reasonable in light of the defendant's financial resources and obligations.

If a down payment is required to enter into a payment agreement, it should be a minimal amount to demonstrate the defendant's commitment to paying the fines and costs. In the case of an installment payment agreement, if the fines and costs owed are $500 or less, the required down payment may not exceed 10 percent of such amount owed or, if the fines and costs owed are more than $500, the required down payment may not exceed 5 percent of such amount owed or $50, whichever is greater. A defendant may choose to make a larger down payment.

Where available, the court may provide community service work as an option to defray fines and costs, especially when the defendant is indigent or otherwise unable to make meaningful payments. Any portion of the community service completed should be credited to the defendant’s obligations. Community service may not be credited against any amount owed as restitution, the interest which has accrued on restitution, and any collection fee required.

At any time during the duration of a payment agreement, the defendant may request a modification of the agreement in writing, on a form provided by the Executive Secretary of the Supreme Court, and the court may grant such modification based on a good faith showing of need.

(e) *Timeliness of payments*. — Any payment which is received within 10 days of the date due is considered timely made.

(f) *Combined payment agreements*. — The court may offer a payment agreement combining an appropriate initial period during which no payment of fines and costs is required, followed by a period of installment payments. Such a combined payment plan may be appropriate when the defendant is incarcerated, but should not be limited only to these circumstances.

(g) *Re-entry into a payment agreement after default.* — A court must consider a request by a defendant who has defaulted on a payment agreement to enter into a subsequent payment agreement. In determining whether to approve the request for a subsequent payment agreement, the court must consider any change in the defendant’s circumstances.

A court must require a down payment to enter into a subsequent payment agreement, provided that (i) if the fines and costs owed are $500 or less, the required down payment may not exceed 10 percent of such amount or (ii) if the fines and costs owed are more than $500, the required down payment may not exceed 5 percent of such amount or $50, whichever is greater.

* * *

Form 2. Instructions (Rule 1:15(c)).

Counsel for all parties, unless compliance is waived by the court, must, two days before a civil jury trial date, submit to the court a copy of all instructions such counsel proposes to request – in electronic or paper form as directed by the court – and noting thereon the authority or authorities relied upon for such instructions. Counsel may be required to exchange copies of proposed instructions. This rule does not preclude the offering of additional instructions at the trial.

* * *

Form 3. Uniform Pretrial Scheduling Order (Rule 1:18B).

I. Trial

The trial date is ..... (with a jury) (without a jury).

The estimated length of trial is .....

II. Discovery

The parties must complete discovery, including depositions, by 30 days before trial; however, depositions taken in lieu of live testimony at trial will be permitted until 15 days before trial. "Complete" means that all interrogatories, requests for production, requests for admissions and other discovery must be served sufficiently in advance of trial to allow a timely response at least 30 days before trial. Depositions may be taken after the specified time period by agreement of counsel of record or for good cause shown, provided however, that the taking of a deposition after the deadline established herein will not provide a basis for continuance of the trial date or the scheduling of motions inconsistent with the normal procedures of the court. The parties have a duty to seasonably supplement and amend discovery responses pursuant to Rule 4:1(e) of the Rules of Supreme Court of Virginia. Seasonably means as soon as practical. No provision of this Order supersedes the Rules of Supreme Court of Virginia governing discovery. Any discovery motion filed must contain a certification that counsel has made a good faith effort to resolve the matters set forth in the motion with opposing counsel.

III. Designation of Experts

If requested in discovery, plaintiff’s, counter-claimant's, third party plaintiff’s, and cross-claimant’s experts must be identified on or before 90 days before trial. If requested in discovery, defendant’s and all other opposing experts must be identified on or before 60 days before trial. If requested in discovery, experts or opinions responsive to new matters raised in the opposing parties, identification of experts must be designated no later than 45 days before trial. If requested, all information discoverable under Rule 4:1(b)(4)(A)(i) of the Rules of Supreme Court of Virginia must be provided or the expert will not ordinarily be permitted to express any nondisclosed opinions at trial. The foregoing deadlines do not relieve a party of the obligation to respond to discovery requests within the time periods set forth in the Rules of Supreme Court of Virginia, including, in particular, the duty to supplement or amend prior responses pursuant to Rule 4:1(e).

IV. Dispositive Motions

All dispositive motions should be presented to the court for hearing as far in advance of the trial date as practical. All counsel of record are encouraged to bring on for hearing all demurrers, special pleas, motions for summary judgment or other dispositive motions not more than 60 days after being filed.

V. Exhibit and Witness List

Counsel of record must exchange 15 days before trial a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at trial. The lists of exhibits and witnesses must be filed with the Clerk of the Court simultaneously therewith but the exhibits should not then be filed. Any exhibit or witness not so identified and filed will not be received in evidence, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses must state

the legal reasons therefor except on relevancy grounds, and must be filed with the Clerk of the Court and a copy delivered to opposing counsel at least five days before trial or the objections will be deemed waived absent leave of court for good cause shown.

* * *

VII. Motions in Limine

Absent leave of court, any motion in limine which requires argument exceeding five minutes must be duly noticed and heard before the day of trial.

* * *

X. Jury Instructions

Counsel of record, unless compliance is waived by the court, must, two business days before a civil jury trial date, exchange proposed jury instructions. At the commencement of trial, counsel of record must tender the court the originals of all agreed upon instructions and copies of all contested instructions with appropriate citations. This requirement does not preclude the offering of additional instructions at the trial.

XI. Deposition Transcripts to be Used at Trial

Counsel of record must confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial at the earliest reasonable opportunity. Other than trial depositions taken after completion of discovery under Paragraph II, designations of portions of non-party depositions, other than for rebuttal or impeachment, must be exchanged no later than 30 days before trial, except for good cause shown or by agreement of counsel. It becomes the obligation of the non-designating parties of any such designated deposition to file any objection or counter-designation within seven days after the proponent's designation. Further, it becomes the obligation of the non-designating parties to bring any objections or other unresolved issues to the court for hearing no later than 5 days before the day of trial.

* * *

3-A. Alternate Uniform Pretrial Scheduling Order For Use in Eminent Domain Proceedings (Rule 1:18B).

I. Trial

The trial date is scheduled for , commencing at _ a.m., before a freeholder jury, _ panel of commissioners or bench trial (select applicable option). The estimated length of trial is days. If the case is set before a panel of commissioners, each party must submit nominations of at least six (6) qualified persons on or before so that at least nine (9) commissioners and two (2) alternates can be summoned for trial. Counsel for petitioner must prepare and submit a sketch order for the court's use in appointing and summoning commissioners for trial.

II. Discovery

The parties must complete discovery, including depositions, by 30 days before trial; however, depositions taken in lieu of live testimony at trial will be permitted until 15 days before trial. "Complete" means that all interrogatories, requests for production, requests for admissions and other discovery must be served sufficiently in advance of trial to allow a timely response at least 30 days before trial. Depositions may be taken after the specified time period by agreement of counsel of record or for good cause shown, provided however, that the taking of a deposition

after the deadline established herein will not provide a basis for continuance of the trial date or the scheduling of motions inconsistent with the normal procedures of the court. The parties have a duty to seasonably supplement and amend discovery responses pursuant to Rule 4:1(e) of the Rules of Supreme Court of Virginia. Seasonably means as soon as practical. No provision of this Order supersedes the Rules of Supreme Court of Virginia governing discovery. Any discovery motion filed must contain a certification that counsel has made a good faith effort to resolve the matters set forth in the motion with opposing counsel.

III. Designation of Experts

If requested in discovery, petitioner's experts must be identified on or before 120 days before trial. If requested in discovery, defendant's and all other opposing experts must be identified on or before 90 days before trial. If requested in discovery, experts or opinions responsive to new matters raised in the opposing parties' identification of experts must be designated no later than 60 days before trial. If requested, all information discoverable under Rule 4:1(b)(4)(A)(i) of the Rules of Supreme Court of Virginia must be provided. An expert will not ordinarily be permitted to express any nondisclosed opinions at trial. The foregoing deadlines will not relieve a party of the obligation to respond to discovery requests within the time periods set forth in the Rules of Supreme Court of Virginia, including, in particular, the duty to supplement or amend prior responses pursuant to Rule 4:1(e).

IV. Dispositive Motions

All dispositive motions must be presented to the court for hearing as far in advance of the trial date as practical. All counsel of record are encouraged to bring on for hearing all demurrers, special pleas, motions for summary judgment or other dispositive motions not more than 60 days after being filed.

V. Exhibit and Witness List

Counsel of record must exchange 15 days before trial a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at trial. The lists of exhibits and witnesses must be filed with the Clerk of the Court simultaneously therewith but the exhibits should not then be filed. Any exhibit or witness not so identified and filed will not be received in evidence, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses must state the legal reasons therefor except on relevancy grounds, and must be filed with the Clerk of the Court and a copy delivered to opposing counsel at least five days before trial or the objections will be deemed waived absent leave of court for good cause shown.

VI. Pretrial Conferences

Pursuant to Rule 4:13 of the Rules of Supreme Court of Virginia, when requested by any party or upon its own motion, the court may order a pretrial conference wherein motions in limine, settlement discussions or other pretrial motions which may aid in the disposition of this action can be heard.

VII. Motions in Limine

Absent leave of court, any motion in limine which requires argument exceeding five minutes must be duly noticed and heard before the day of trial.

VIII. Witness Subpoenas

Early filing of a request for witness subpoenas is encouraged so that such subpoenas may be served at least 10 days before trial.

IX. Continuances

Continuances will only be granted by the court for good cause shown.

X. Instructions

Counsel of record must, two business days before trial, exchange proposed instructions. Any instructions from VMJI may be identified by instruction number. Counsel for petitioner must prepare and have available at the commencement of trial the originals of all agreed upon instructions. Each party may also submit originals and copies of all contested instructions with appropriate citations. This requirement will not preclude the offering of additional instructions at the trial.

XI. Deposition Transcripts to be Used at Trial

Counsel of record must confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial at the earliest reasonable opportunity. Other than trial depositions taken after completion of discovery under Paragraph II, designations of portions of non-party depositions, other than for rebuttal or impeachment, must be exchanged no later than 15 days before trial, except for good cause shown or by agreement of counsel. It becomes the obligation of the opponent of any such deposition to bring any objection or other unresolved issues to the court for hearing before the day of trial, and to counter-designate any additional portions of designated depositions at least 5 days before such hearing.

XII. Transportation Arrangements

Counsel for petitioner is responsible for contacting the Sheriff’s Department in advance of trial to assure that arrangements are in place to transport the commissioners/jury to and from the subject property.

* * *

Regulations Governing Applications for Admission to Virginia Bar Pursuant to Rule of the Supreme Court of Virginia 1A:1, effective December 1, 2018.

INTRODUCTION

* * *

In addition to admission to the Bar by examination, the Supreme Court of Virginia, in its discretion under Code § 54.1-3931, has determined that a person who has been admitted to practice law before the court of last resort of a state or territory of the United States or of the District of Columbia for a minimum of five years, who has been admitted to the bar of a Reciprocal Jurisdiction, hereinafter defined, and who has been engaged in the lawful practice of law on a full-time basis for at least three of the immediately preceding five years, may seek to demonstrate that he or she has made such progress in the practice of law that it would be unreasonable to require the person to take an examination to demonstrate current minimum competency. In other words, an applicant's experience in the practice of law may, at the discretion of the Court, be accepted as adequate evidence of current minimum competency in lieu of the bar examination. For purposes of admission without examination, “full-time” means practicing law for a minimum of 32 hours per week.

* * *

THRESHOLD REQUIREMENTS

1. *Reciprocity*. The Board will consider an application for admission without examination only from a person who has been admitted to practice before the court of last resort of a jurisdiction (i.e., a state or territory of the United States, or the District of Columbia) that permits lawyers licensed in Virginia to be admitted to practice without examination in such jurisdiction (a "Reciprocal Jurisdiction"). The purpose of the reciprocity requirement is to encourage other jurisdictions to grant the same privilege to Virginia lawyers.

2. *Minimum Period of Bar Admission*. Before being eligible to apply for admission without examination, the applicant must have been admitted to practice law before the court of last resort of a state or territory of the United States, or of the District of Columbia, for at least five (5) years.

3. *Requirement of Minimum Current Practice*. An applicant may apply for admission without examination only if the applicant has been engaged in the full-time practice of law for at least three (3) of the last five (5) years immediately preceding his or her application for admission to the Virginia Bar. Except as provided in Threshold Requirement 4 below, the applicant must have been licensed to engage in the practice of law in the jurisdiction where such practice occurred. Practice from an office located in a foreign country will not be accepted as qualifying practice. Persons holding a Virginia Corporate Counsel Certificate under Part I of Rule 1A:5 may receive credit as provided in such Rule.

4. *Practice of law*. For purposes of admission without examination, "practice of law" ordinarily means (i) private practice as a sole practitioner or for a law firm, legal services office, legal clinic, or similar entity; (ii) practice as an attorney for a corporation, limited liability company, partnership, trust, individual or other entity, provided such practice involved the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law, and preparing, trying or presenting cases before courts or administrative agencies; (iii) practice as an attorney for the federal or a state or local government with the same primary duties as described above regarding attorneys for a corporation; (iv) employment as a judge for the federal or a state government; (v) service as a judicial law clerk for a state or federal court; or (vi) service on active duty in a branch of the armed forces of the United States as a judge advocate or law specialist, as those terms are defined in the Uniform Code of Military Justice, 10 U.S.C. § 801, as amended, provided that such position requires a valid license to practice law and involves the same primary duties as described above regarding attorneys for a corporation. With the exception of the positions described in (iv) and (v) above, qualifying law practice must have involved an attorney-client relationship and, with the exception of the positions described in (iv), (v) and (vi) above, must have occurred subsequent to having been issued a license to engage in the practice of law in the jurisdiction where the law practice was conducted, unless the applicant establishes, by satisfactory evidence, that such practice is permitted by statute, rule, court order, or by written confirmation from the admitting or disciplinary authority of the jurisdiction where the practice occurred. The applicant must demonstrate that he or she meets the practice of law requirement to the satisfaction of the Board. The Board may require the applicant to produce substantiating evidence which may include, but is not limited to, a detailed description of legal services provided, letters from clients and/or opposing counsel, certification of a judge, samples of work product, and detailed time records. In addition, the Board may require the applicant to appear personally before the Board and furnish such additional information as may be required. For purposes of admission without examination, “practice of law” ordinarily does not mean document review work.

* * *

ASSESSMENT OF FITNESS AND PROGRESS

If an applicant provides satisfactory evidence that he or she meets all of the above threshold requirements, the Board will thereafter determine from the evidence provided by the applicant and the results of any investigation conducted by the Board or its designee whether such applicant (i) is a person of honest demeanor and good moral character and possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney, and (ii) has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination to demonstrate current minimum competency. The applicant has the burden to prove by clear and convincing evidence that he or she is a person of honest demeanor and good moral character and possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney and thus is a proper person to practice law in Virginia. If an applicant fails to answer any question on the Character and Fitness Questionnaire or which is otherwise propounded by the Board, or to supply any requested documentary material, the Board may find that the applicant has not met the burden of proving his or her good moral character.

* * *

The Board will determine whether the present character and fitness of an applicant qualifies the applicant for admission to the practice of law. In making this determination, the following factors will be considered in assigning weight and significance to the applicant's prior conduct:

i. age of the applicant at the time of the conduct;

ii. recency of the conduct;

iii. reliability of the information concerning the conduct;

iv. seriousness of the conduct;

v. factors underlying the conduct;

vi. cumulative effect of the conduct or information;

vii. evidence of rehabilitation;

viii. positive social contributions of the applicant since the conduct;

ix. candor of the applicant in the admissions process; and

x. materiality of any omissions or misrepresentations.

* * *

Rule 1A:1. Admission to Practice in This Commonwealth Without Examination

(a) *Reciprocity* — Any person who has been admitted to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia may file an application to be admitted to practice law in this Commonwealth without examination, if counsel licensed to practice law in this Commonwealth may be admitted in that jurisdiction without examination.

(b) *Application* — An applicant for admission to practice law without examination in this Commonwealth must:

(1) File with the Secretary of the Virginia Board of Bar Examiners (the Board) an application under oath on a form furnished by the Board;

(2) Furnish a certificate, signed by the presiding judge of the court of last resort or other proper official for every jurisdiction in which the applicant is or has been licensed to practice law, stating:

(i) that the applicant is in good standing, and if not the reasons why;

(ii) the length of time the applicant has been or was licensed in that jurisdiction; and

(iii) any restriction or condition placed on the applicant's license to practice law in that jurisdiction.

(3) Certify in writing under oath that the applicant has completed 12 hours of instruction approved by the Virginia Continuing Legal Education Board on Virginia substantive and/or procedural law within the preceding six-month period;

(4) Certify in writing under oath that the applicant has read and is familiar with the Virginia Rules of Professional Conduct;

(5) Complete the Applicant's Character and Fitness Questionnaire and furnish a report of the National Conference of Bar Examiners, or such other report as the Board may require, concerning the applicant's past practice and record, and pay the fee for such report; and

(6) Pay such filing fee as may be fixed from time to time by the Board.

(c) *Board Review* — Upon receipt of a completed application, the Board will determine in accordance with the regulations issued by the Supreme Court of Virginia whether the applicant has established by satisfactory evidence that he or she:

(1) Is a proper person to practice law; and

(2) Pursuant to Code § 54.1-3931, has been admitted to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia for at least five years; and

(3) Has practiced law for at least three of the immediately preceding five years and has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination. The Board may require the applicant to appear personally before the Board, the Character and Fitness Committee (the Committee) of the Board, or a member of either the Board or the Committee, and furnish any such additional information as may be required. If the applicant's license to practice law in any other jurisdiction is subject to any restriction or condition, the Board will determine whether the nature of such restriction or condition is inconsistent with the practice of law and, if so, will deny the application. If the Board determines that the applicant is qualified to be admitted to the practice of law in this Commonwealth without examination, the Board will approve the application and notify the applicant of its decision.

(d) *Admission* — Upon notification by the Board that the applicant's application has been approved, the applicant may be issued a certificate, pursuant to Code § 54.1-3931, to practice law in this Commonwealth if:

(1) A member of the Virginia State Bar who is qualified to practice before the Supreme Court moves the applicant's admission to practice law in this Commonwealth in open court;

(2) The motion is granted; and

(3) The applicant takes and subscribes to the oaths required of attorneys at law.

(e) *Active Membership* — Upon payment of applicable dues, and completion of other membership obligations set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia, the applicant will become an active member of the Virginia State Bar. An attorney admitted pursuant to the Rule is subject to the same membership obligations as other active members of the Virginia State Bar, and all legal services provided in Virginia by an attorney admitted pursuant to this Rule will be deemed the practice of law and will subject the attorney to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct. The rules set forth in Part 6, Section IV, governing how members may change their

status to associate, judicial, disabled, retired or emeritus, apply to attorneys admitted pursuant to this Rule.

(f) An attorney admitted to practice law in this Commonwealth without examination under prior versions of this Rule is no longer subject to the requirement that he or she intends to practice law full time as a member of the Virginia State Bar.

* * *

Rule 1A:2. Foreign Patent and Trademark Attorneys - When Admitted to Practice in the Courts of This State Limited to Patent and Trademark Law Without Examination.

No lawyer admitted to practice limited to patent and trademark law as defined in § 54.1-3901(A) prior to July 1, 2000, pursuant to this Rule 1A:2 prior to July 1, 2000, may hold himself or herself out as authorized to practice law generally in this Commonwealth.

* * *

Rule 1A:4. Out-of-State Lawyers - When Allowed by Comity to Participate in a Case Pro Hac Vice.

1. *Introduction.* A lawyer who is not a member of the Virginia State Bar, but is currently licensed and authorized to practice law in another state, territory, or possession of the United States of America (hereinafter called an "out-of-state lawyer") may apply to appear as counsel pro hac vice in a particular case before any court, board or administrative agency (hereinafter called "tribunal") in the Commonwealth of Virginia upon compliance with this rule.

2. *Association of Local Counsel*. No out-of-state lawyer may appear pro hac vice before any tribunal in Virginia unless the out-of-state lawyer has first associated in that case with a lawyer who is an active member in good standing of the Virginia State Bar (hereinafter called "local counsel"). The name of local counsel must appear on all notices, orders, pleadings, and other documents filed in the case. Local counsel must personally appear and participate in pretrial conferences, hearings, trials, or other proceedings actually conducted before the tribunal. Local counsel associating with an out-of-state lawyer in a particular case must accept joint responsibility with the out-of-state lawyer to the client, other parties, witnesses, other counsel and to the tribunal in that particular case. Any pleading or other paper required to be served (whether relating to discovery or otherwise) is invalid unless it is signed by local counsel. The tribunal in which such case is pending has full authority to deal with local counsel exclusively in all matters connected with the pending case. If it becomes necessary to serve notice or process in the case, any notice or process served upon local counsel is valid as if served on the out-of-state lawyer.

3. *Procedure for applying*. Appearance pro hac vice in a case is subject to the discretion and approval of the tribunal where such case is pending. An out-of-state lawyer desiring to appear pro hac vice under this rule must comply with the procedures set forth herein for each case in which pro hac vice status is requested. For good cause shown, a tribunal may permit an out-of-state lawyer to appear pro hac vice on a temporary basis prior to completion by the out-of-state lawyer of the application procedures set forth herein. At the time such temporary admission is granted, the tribunal will specify a time limit within which the out-of-state lawyer must complete the application procedures, and any temporary pro hac vice admission is deemed revoked in the event the out-of-state lawyer fails to complete the application procedure within the time limit.

(a) *Notarized Application*. In order to appear pro hac vice as counsel in any matter pending before a tribunal in the Commonwealth of Virginia, an out-of- state lawyer must deliver to local

counsel to file with the tribunal an original notarized application and a non-refundable application fee of $250.00 payable to the Clerk of the Supreme Court. Pro hac vice counsel must submit a notarized application with the non-refundable application fee of $250.00 for each separate case before a tribunal. The fee must be paid to the Clerk of the Supreme Court of Virginia. The tribunal must file a copy of the notarized application, as well order granting pro hac vice admission in the case and the $250.00 fee, with the Clerk of the Supreme Court of Virginia. Original, notarized applications and orders granting, denying or revoking applications to appear pro hac vice must be retained in a separate file containing all applications. The clerk of the tribunal must maintain the application for a period of three years after completion of the case and all appeals.

(b) *Motion to associate counsel pro hac vice*. Local counsel must file a motion to associate the out-of-state lawyer as counsel pro hac vice with the tribunal where the case is pending, together with proof of service on all parties in accordance with the Rules of the Supreme Court of Virginia. The motion of local counsel must be accompanied by: (1) the original, notarized application of the out-of-state lawyer; (2) a proposed order granting or denying the motion; and (3) the required application fee.

(c) *Entry of Order*. The order granting or denying the motion to associate counsel pro hac vice must be entered by the tribunal promptly and a copy of the order must be forwarded to the Clerk of the Supreme Court. An out-of-state lawyer may make no appearance in a case until the tribunal where the case is pending enters the order granting the motion to associate counsel pro hac vice unless temporary admission has been approved pursuant to this rule. The order granting pro hac vice status is valid until the case is concluded in the courts of this Commonwealth or a court revokes the pro hac vice admission.

4. Notarized Application. The notarized application required by this rule must be on a form approved by the Supreme Court of Virginia and available at the office of the clerk of the tribunal where the case is pending.

5. Discretion and Limitation on Number of Matters. The grant or denial of a motion pursuant to this rule by the tribunal is discretionary. The tribunal should deny the motion if the out-of-state lawyer has been previously admitted pro hac vice before any tribunal or tribunals in Virginia in twelve (12) cases within the last twelve (12) months preceding the date of the current application. In the enforcement of this limitation, the tribunal may consider whether the pending case is a related or consolidated matter for which the out-of-state lawyer has previously applied to appear pro hac vice. Before ruling on a pro hac vice motion, the tribunal will verify with the Supreme Court of Virginia the number of cases during the preceding twelve (12) months in which the out-of-state lawyer was admitted in Virginia pro hac vice.

6. Transfer of Venue and Appeal. The out-of-state lawyer's pro hac vice admission will be deemed to continue in the event the venue in the case or proceeding is transferred to another tribunal or is appealed; provided, however, that the tribunal having jurisdiction over such transferred or appealed case has the discretion to revoke the authority of the out-of-state lawyer to appear pro hac vice.

7. Duty to Report Status. An out-of-state lawyer admitted pro hac vice has a continuing obligation during the period of such admission to advise the tribunal promptly of any disposition made of pending disciplinary charges or the institution of any new disciplinary proceedings or investigations. The tribunal must advise the Clerk of the Supreme Court of Virginia if the tribunal denies or revokes the out-of-state lawyer's permission to appear pro hac vice.

8. Record-keeping. The Clerk of the Supreme Court of Virginia will maintain an electronic database necessary for the administration and enforcement of this rule.

9. Disciplinary Jurisdiction of the Virginia State Bar. An out-of-state lawyer admitted pro hac vice pursuant to this rule is subject to the jurisdiction of all tribunals and agencies of the Commonwealth of Virginia, and the Virginia State Bar, with respect to the laws and rules of Virginia governing the conduct and discipline of out-of- state lawyers to the same extent as an active member of the Virginia State Bar. An applicant or out-of-state lawyer admitted pro hac vice may be disciplined in the same manner as a member of the Virginia State Bar.

* * *

Rule 1A:5. Virginia Corporate Counsel & Corporate Counsel Registrants.

Introduction

Notwithstanding any rule of this Court to the contrary, any person employed in Virginia as a lawyer exclusively for a for-profit or a non-profit corporation, association, or other business entity, including its subsidiaries and affiliates, that is not a government entity, and the business of which consists solely of lawful activities other than the practice of law or the provisions of legal services ("Employer"), for the primary purpose of providing legal services to such Employer, including one who holds himself or herself out as "in-house counsel," "corporate counsel," "general counsel," or other similar title indicating that he or she is serving as legal counsel to such Employer, must either (i) be a regularly admitted active member of the Virginia State Bar; (ii) be issued a Corporate Counsel Certificate as provided in Part I of this rule and thereby become an active member of the Virginia State Bar with his or her practice limited as provided therein; or (iii) register with the Virginia State Bar as provided in Part II of this rule; provided, however, no person who is or has been a member of the Virginia State Bar, and whose Virginia License, at the time of application, is revoked or suspended, may be issued a Corporate Counsel Certificate or permitted to register under this Rule.

Part I

Virginia Corporate Counsel

(a) A lawyer admitted to the practice of law in a state (other than Virginia), or territory of the United States, or the District of Columbia may apply to the Virginia Board of Bar Examiners ("Board") for a certificate as a Virginia Corporate Counsel ("Corporate Counsel Certificate") to practice law as in-house counsel in this state when he or she is employed by an Employer in Virginia.

(b) Required Evidence. Each applicant for a Corporate Counsel Certificate must file with the Secretary of the Board an application under oath on a form furnished by the Board and must submit evidence satisfactory to the Board that he or she:

* * *

(8) has filed an affidavit, upon a form furnished by the Board, from an officer of the applicant's Employer attesting to the fact that the applicant is employed as legal counsel to provide legal services exclusively to the Employer, including its subsidiaries and affiliates; that the nature of the applicant's employment conforms to the requirements of Part I of this rule; and that the Employer must notify the Virginia State Bar immediately upon the termination of the applicant's employment.

(c) Provisional Certificate. During the period in which an application for a Corporate Counsel Certificate is pending with the Board until the applicant is notified that either (i) his or her application is rejected; or (ii) he or she is eligible to practice pursuant to Part I of this rule, the applicant may be employed in Virginia as Certified Corporate Counsel on a provisional basis by an Employer furnishing the affidavit required by Part I(b)(8) of this rule.

(d) Admission. Upon a finding by the Board that the applicant has complied with the requirements of Part I(b) of this rule, the Board will notify the applicant that he or she is eligible to be issued a Corporate Counsel Certificate. After the applicant has taken and subscribed to the oath required of attorneys at law, the applicant will be issued a Corporate Counsel Certificate, which permits the applicant to practice law in Virginia solely as provided in Part I(e) of this rule. The applicant may take the required oath by appearing before the Justices of the Supreme Court of Virginia in Richmond at an appointed date and time.

(e) Scope. The practice of a lawyer certified pursuant to Part I of this rule is limited to practice exclusively for the Employer furnishing the affidavit required by Part I(b)(8) of this rule, including its subsidiaries and affiliates, and may include appearing before a Virginia court or tribunal as counsel for the Employer. Except as specifically authorized under Part I(f), no lawyer certified pursuant to Part I of this rule may (i) undertake to represent any person other than his or her Employer before a Virginia court or tribunal; (ii) offer or provide legal services to any person other than his or her Employer; (iii) undertake to provide legal services to any other person through his or her Employer; or (iv) hold himself or herself out to be authorized to provide legal services or advice to any person other than his or her Employer.

(f) Pro Bono Service. Notwithstanding the restrictions set out in Part I(e) on the scope of practice, a lawyer certified pursuant to Part I of this rule may, and is encouraged to, provide voluntary pro bono publico services in accordance with Rule 6.1 of the Virginia Rules of Professional Conduct.

(g) Rights and Obligations. A lawyer issued a Corporate Counsel Certificate immediately becomes an active member of the Virginia State Bar, with his or her practice limited as provided in Part I(e) of this rule, and must pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar.

(1) All legal services provided in Virginia by a lawyer certified pursuant to Part I of this rule is deemed the practice of law in Virginia and subjects the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the Virginia State Bar continues whether or not the lawyer retains the Corporate Counsel Certificate and irrespective of the lawyer's presence in Virginia.

(2) A lawyer certified pursuant to Part I of this rule is subject to the same membership obligations as other active members of the Virginia State Bar, including Mandatory Continuing Legal Education requirements. A lawyer certified pursuant to Part I of this rule must use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer furnishing the affidavit required by Part I(b)(8) of this rule.

(3) A lawyer certified pursuant to Part I of this rule must promptly report to the Virginia State Bar any change in employment, any change in bar membership status in any state, territory of the United States or the District of Columbia in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state, territory of the United States or the District of Columbia or by any federal court or agency before which the lawyer has been admitted to practice.

(4) The period of time a lawyer practices law under a Corporate Counsel Certificate issued pursuant to Part I of this rule will be considered in determining whether the lawyer has fulfilled the active practice of law requirement for admission to practice law in Virginia without examination pursuant to Rule 1A:1 and any guidelines approved by the Supreme Court of Virginia for review of applications for admission without examination.

(h) Termination. A lawyer's authority to practice law which may be permitted pursuant to Part I of this rule will be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part I(b)(8) of this rule is terminated, (ii) the lawyer fails to comply with any provision of Part I of this rule, or (iii) when the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States or the District of Columbia or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above may be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of Part I of this rule, which evidence must include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. Any lawyer whose authority to practice is suspended or terminated under (iii) above may petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13-25 of the Rules of the Supreme Court of Virginia.

(i) No time spent as Corporate Counsel Registrant will be considered in determining eligibility for admission to the Virginia Bar without examination.

(j) The Board and the Virginia State Bar may adopt regulations as needed to implement the requirements of Part I of this rule.

* * *

Part II

Corporate Counsel Registrants

* * *

(b) A registrant must:

(1) Register with the Virginia State Bar upon a form, under oath, furnished by the Virginia State Bar, which must include affirmations that (i) he or she will at no time undertake to represent his or her Employer or any other person, organization or business entity before a Virginia court or tribunal except as permitted pursuant to Rule 1A:4 of this Court, (ii) his or her work is limited to business and legal services related to issues confronting his or her Employer at a regional, national or international level with no specific nexus to Virginia, and (iii) he or she will not provide legal advice or services to any person other than his or her Employer.

(2) Furnish a certificate, signed by the presiding judge of the court of last resort of a jurisdiction in which the registrant is admitted to practice law, stating that the registrant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction.

(3) File an affidavit, upon a form furnished by the Virginia State Bar, from an officer of the registrant's Employer attesting to the fact that the registrant is employed as legal counsel to provide legal services exclusively to the Employer, including its subsidiaries and affiliates; that the nature of the registrant's employment conforms to the requirements of Part II of this rule; and that the Employer will notify the Virginia State Bar immediately upon the termination of the registrant's employment.

* * *

(d) Upon completion of the requirements of Part II(b) of this rule, the registrant will immediately be recorded by the Virginia State Bar as a Corporate Counsel Registrant. Each registrant must pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar. No lawyer registered pursuant to Part II of this rule may (i) undertake to represent his or her Employer or any other person or entity before a Virginia court or tribunal except as permitted for lawyers licensed and in good standing in another United

States jurisdiction pursuant to Rule 1A:4 of this Court; (ii) offer or provide legal services to any person other than his or her Employer; (iii) undertake to provide legal services to another through his or her Employer; or (iv) hold himself or herself out to be authorized to provide legal services or advice to any person other than his or her Employer.

(e) The provision of legal services to his or her Employer by a lawyer registered pursuant to Part II of this rule is deemed the practice of law in Virginia only for purposes of subjecting the lawyer to the Virginia Rules of Professional Conduct; the jurisdiction of the disciplinary system of the Virginia State Bar; and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the Virginia State Bar will continue whether or not the lawyer maintains the registration and irrespective of the lawyer's presence in Virginia.

(f) A lawyer registered pursuant to Part II of this rule must use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer furnishing the affidavit required by Part II(b)(3) of this rule.

(g) A lawyer registered pursuant to Part II of this rule must promptly report to the Virginia State Bar any change in employment, any change in bar membership status in any state, territory of the United States, the District of Columbia, or other country in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state, territory of the United States, the District of Columbia, or other country, or by any federal court or agency before which the lawyer has been admitted to practice.

(h) A lawyer's authority to provide legal services which may be permitted pursuant to Part II of this rule will be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part II(b)(3) of this rule is terminated, (ii) the lawyer fails to comply with any provision of Part II of this rule, or (iii) the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States, the District of Columbia, other country, or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above may be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of Part II of this rule, which must include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. Any lawyer whose authority to practice is suspended or terminated pursuant to (iii) above, may petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13-25 of the Rules of the Supreme Court of Virginia.

(i) No time spent as Corporate Counsel Registrant will be considered in determining eligibility for admission to the Virginia Bar without examination.

* * *

Rule 1A:6. Foreign Attorneys - Registered Military Legal Assistance Attorneys.

* * *

(b) Each applicant for a Military Legal Assistance Attorney Certificate must:

(1) File with the secretary of the Virginia Board of Bar Examiners an application, under oath, upon a form furnished by the Board.

(2) Furnish a certificate, signed by the presiding judge of the court of last resort, or other appropriate official of the jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction.

(3) File an affidavit, upon a form furnished by the Board, from commanding officer, staff judge advocate or chief legal officer of the military base in Virginia where the applicant is employed, stationed, or assigned, attesting to the fact that the applicant is serving as a lawyer to provide legal services exclusively for the military, that the nature of the applicant's employment or service conforms to the requirements of this rule, and that the commanding officer, staff judge advocate or chief legal officer, or his or her successor, will notify the Virginia State Bar immediately upon the termination of the applicant's employment or service at the military base.

(c) Upon a finding by the Board of Bar Examiners that the applicant has produced evidence sufficient to satisfy the Board that the applicant is a person of honest demeanor and good moral character who possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law and satisfies all other requirements of this rule, the Board will notify the applicant that he or she is eligible to be issued a Military Legal Assistance Attorney Certificate. After the applicant has taken and subscribed to the oaths required of attorneys at law, the Board will issue to the applicant a Military Legal Assistance Attorney Certificate, which entitles the applicant to represent clients eligible for legal assistance in the courts and tribunals of this Commonwealth solely as provided in this rule.

(d) Each lawyer issued a Military Legal Assistance Attorney Certificate must immediately register as an active member of the Virginia State Bar, with his or her practice limited as provided in this rule, and pay to the Virginia State Bar the same dues required of regularly admitted active members. (The requirement to pay dues is waived for a lawyer during the first two years immediately following the initial issue of a Military Legal Assistance Attorney Certificate to that lawyer.)

(e) The practice of a lawyer registered under this rule is limited within this Commonwealth to practice exclusively pursuant to the laws, rules, and regulations governing the military services, and may include appearing before a court or tribunal of this Commonwealth as counsel for a client eligible for legal assistance on:

* * *

(f) Representation in proceedings before courts or tribunals of this Commonwealth is limited to low-income legal assistance clients for whom hiring a lawyer in private practice would entail a substantial financial hardship to themselves or their families. All pleadings filed by a legal assistance attorney will cite this rule, include the name, complete address, and telephone number of the military legal office representing the client and the name, rank or grade, and armed service of the lawyer registered under this rule providing representation.

(g) No lawyer registered under this rule may (i) undertake to represent any person other than an eligible legal assistance client before a court or tribunal of this Commonwealth, (ii) offer to provide legal services in this Commonwealth to any person other than as authorized by his or her military service, (iii) undertake to provide legal services in this Commonwealth to any person other than as authorized by his or her military service, or (iv) hold himself or herself out in this Commonwealth to be authorized to provide legal services to any person other than as authorized by his or her military service.

(h) Representing clients eligible for legal assistance in the courts or tribunals of this Commonwealth under this rule is deemed the practice of law and will subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and the Rules of Procedure for Disciplining Lawyers (Rules of Court, Pt. 6, Section IV, Paragraph 13). Jurisdiction of the Virginia State Bar will continue whether or not the lawyer retains the Military Legal Assistance Attorney Certificate and irrespective of the lawyer's presence in Virginia.

(i) Each person registered with the Virginia State Bar as an active member on the basis of a Military Legal Assistance Attorney Certificate is subject to the same membership obligations as other active members, including completion of the required Professionalism Course and annual Mandatory Continuing Education requirements. A lawyer registered under this rule must use as his or her address of record with the Virginia State Bar the military address in Virginia of the commanding officer, staff judge advocate or chief legal officer which filed the affidavit on the lawyer's behalf.

(j) Each person issued a Military Legal Assistance Attorney Certificate must promptly report to the Virginia State Bar any change in employment or military service, any change in bar membership status in any state or territory of the United States, or the District of Columbia where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or the District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.

(k) The limited authority to practice law which may be granted under this rule is automatically terminated when (i) the lawyer is no longer employed, stationed, or assigned at the military base in Virginia from which affidavit required by this rule was filed, (ii) the lawyer has been admitted to the practice of law in this state by examination or pursuant to any other provision of part 1A of these Rules, (iii) the lawyer fails to comply with any provision of this rule, (iv) the lawyer fails to maintain current good standing as an active member of a bar in at least one state or territory of the United States, other than Virginia, or the District of Columbia, or (v) when suspended or disbarred for disciplinary reasons in any state or territory of the United States or the District of Columbia or by any federal court or agency where the lawyer has been admitted to the practice of law. If a lawyer is no longer employed, stationed, or assigned at the military base in Virginia from which affidavit required by this rule was filed, but the lawyer, within six months after the last day of employment or service, is re-employed by, or militarily reassigned to, the same military base or by another military base in Virginia filing the affidavit required by this rule, the Military Legal Assistance Attorney Certificate will be reinstated upon evidence satisfactory to the Board that the lawyer remains in full compliance with all requirements of this rule.

The period of time a lawyer practices law full time on the basis of a Military Legal Assistance Attorney Certificate issued pursuant to this rule may be considered in determining whether such lawyer has fulfilled the requirements for admission to practice law in this Commonwealth without examination under Rule 1A:1 and any guidelines approved by the Supreme Court of Virginia for review of applications for admission without examination.

* * *

Rule 1A:7. Certification of Foreign Legal Consultants.

* * *

(b) *Proof Required.* An applicant under this rule must file with the secretary of the Board:

* * *

(e) *Rights and Obligations*. Subject to the scope of practice limitations set forth in paragraph (d) of this rule, a person certified as a foreign legal consultant under this rule is entitled and subject to:

* * *

(3) No time spent practicing as a foreign legal consultant will be considered in determining eligibility for admission to the Virginia bar without examination.

(f) *Disciplinary Provisions.* A person certified to practice as a foreign legal consultant under this Rule is subject to professional discipline in the same manner and to the same extent as any member of the Bar and to this end:

(1) Every person certified to practice as a foreign legal consultant under these Rules:

(i) is subject to regulation by the Bar and to admonition, reprimand, suspension, removal or revocation of his or her certificate to practice in accordance with the rules of procedure for disciplinary proceedings set forth in Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia; and

(ii) must execute and file with the Bar, in such form and manner as the Bar may prescribe:

(A) his or her commitment to observe the Virginia Rules of Professional Conduct and any other rules of court governing members of the bar to the extent they may be applicable to the legal services authorized under paragraph (d) of this Rule;

(B) a written undertaking to notify the Bar of any change in such person's good standing as a member of any foreign legal profession referred to in paragraph (a)(1) of this rule and of any final action of any professional body or governmental authority referred to in paragraph (b)(2) of this rule imposing any disciplinary censure, suspension, or other sanction upon such person; and

(C) a duly acknowledged instrument, in writing, setting forth his or her address in this Commonwealth which must be both his or her address of record with the Bar and such person's actual place of business for rendering services authorized by this rule. Such address must be one where process can be served and the foreign legal consultant has a duty to promptly notify the Membership Department of the Bar in writing of any changes in his or her address of record.

(g) *Application and Renewal Fees*. An applicant for a certificate as a foreign legal consultant under this rule must pay to the Virginia Board of Bar Examiners the application fee and costs as may be fixed from time to time by the Board. A person certified as a foreign legal consultant must pay an annual fee to the Virginia State Bar which will also be fixed by the Supreme Court of Virginia. A person certified as a foreign legal consultant who fails to complete and file the renewal form supplied by the Bar or pay the annual fee will have his or her certificate as a foreign legal consultant administratively suspended in accordance with the procedures set out in Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia.

(h) *Revocation of Certificate for Non-Compliance*. In the event that the Bar determines that a person certified as a foreign legal consultant under this rule no longer meets the requirements under this rule, it will revoke the certificate granted to such person hereunder.

(i) *Reinstatement*. Any foreign legal consultant whose authority to practice is suspended may be reinstated upon evidence satisfactory to the Bar that such person is in full compliance with this rule; however, a reinstatement of a foreign legal consultant's certificate following a suspension for non-compliance with paragraph (g) of this rule is governed by Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia; and reinstatement of a foreign legal consultant's certificate following a disciplinary suspension or revocation is governed by Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia.

(j) *Admission to Bar*. In the event that a person certified as a foreign legal consultant under this rule is subsequently admitted as a member of the Bar under the provisions of the rules governing such admission, the certificate granted to such person hereunder is deemed superseded by the admission of such person to the Bar.

(k) *Regulations*. The Bar and the Board may adopt regulations as needed to implement their respective responsibilities under this rule.

(l) *Effective Date*. This rule becomes effective on January 1, 2009.

* * *

Rule 1A:8. Military Spouse Provisional Admission.

1. *Requirements*. A person who meets all requirements of subparagraphs (a) through (m) of paragraph 2 of this Rule 1A:8 may, upon motion, be provisionally admitted to the practice of law in Virginia.

2. *Required Evidence*. The applicant for provisional admission must submit evidence satisfactory to the Virginia Board of Bar Examiners (the "Board") that he or she:

* * *

3. *Issuance, Admission, Duration and Renewal.*

(a) Issuance. - The Board having certified that all prerequisites have been complied with, the applicant for provisional admission will, upon payment of applicable dues and completion of the other membership obligations set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia, become an active member of the Virginia State Bar. An attorney provisionally admitted pursuant to this Rule is subject to the same membership obligations as other active members of the Virginia State Bar, and all legal services provided in Virginia by a lawyer admitted pursuant to this Rule are deemed the practice of law and will subject the attorney to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct.

(b) Admission. - Upon notification by the Board that the applicant's application has been approved, the applicant must take and subscribe to the oath required of attorneys at law. The applicant may take the required oath by appearing before the Justices of the Supreme Court of Virginia in Richmond at an appointed date and time or by appearing before a judge of a court of record in Virginia. Once the attorney has taken the oath, it remains effective until the attorney's provisional admission is terminated pursuant to paragraph 5 of this Rule.

(c) Duration. - A provisional admission may be renewed by July 31 of each year, upon filing with the Virginia State Bar (i) a written request for renewal, (ii) an affidavit by supervising Local Counsel, who certifies to the provisionally admitted attorney's continuing employment by or association with Local Counsel and to Local Counsel's adherence to the supervision requirements as provided under this Rule, and (iii) compliance with the membership obligations of Part 6, Section IV of the Rules of the Supreme Court of Virginia applicable to active members of the Virginia State Bar.

(d) Renewal. - When the active duty service member is assigned to an unaccompanied or remote follow-on assignment and the attorney continues to physically reside in Virginia, the provisional admission may be renewed until that unaccompanied or remote assignment ends, provided that the attorney complies with the other requirements for renewal.

4. *Supervision of Local Counsel.* A person provisionally admitted to practice under this Rule may engage in the practice of law in this jurisdiction only under the supervision and direction of Local Counsel.

(a) As used in this Rule, Local Counsel means an active member in good standing of the Virginia State Bar, whose office is in Virginia.

(b) Local Counsel must provide to the Virginia State Bar his or her Virginia State Bar number, physical office address, mailing address, email address, telephone number, and written consent to serve as Local Counsel, on the form provided by the Board.

(c) Unless specifically excused from attendance by the trial judge, Local Counsel must personally appear with the provisionally admitted attorney on all matters before the court.

(d) Local Counsel will be responsible to the courts, the Virginia State

Bar, the Supreme Court of Virginia, and the client for all services provided by the provisionally admitted attorney pursuant to this Rule.

(e) Local Counsel is obligated to notify the Executive Director of the Virginia State Bar when the supervising relationship between the provisionally admitted attorney and Local Counsel is terminated.

5. *Events of Termination.* An attorney's provisional admission to practice law pursuant to this Rule will immediately terminate and the attorney must immediately cease all activities under this Rule upon the occurrence of any of the following:

* * *

6. *Notices Required*.

(a) An attorney provisionally admitted under this Rule must provide written notice to the Virginia State Bar of any Event of Termination within thirty (30) days of the occurrence thereof.

(b) Within thirty (30) days of the occurrence of any Event of Termination, the attorney must:

(i) provide written notice to all his or her clients that he or she can no longer represent such clients and furnish proof to the Executive Director of the Virginia State Bar within sixty (60) days of such notification; and

(ii) file in each matter pending before any court or tribunal in this Commonwealth a notice that the attorney will no longer be involved in the matter, which must include the substitution of the Local Counsel, or such other attorney licensed to practice law in Virginia selected by the client, as counsel in the place of the provisionally admitted attorney.

7. *Benefits and Responsibilities.* An attorney provisionally admitted under this Rule is entitled to the benefits and subject to all responsibilities and obligations of active members of the Virginia State Bar, and is subject to the jurisdiction of the courts and agencies of the Commonwealth of Virginia and to the Virginia State Bar with respect to the laws and rules of this Commonwealth governing the conduct and discipline of attorneys to the same extent as an active member of the Virginia State Bar.

* * *

Rule 2A:1. Authorization; Definitions; Application.

(a) These rules are promulgated pursuant to § 2.2-4026 of the Code of Virginia. They apply to the review of, by way of direct appeal from, the adoption of a regulation or the decision of a case by an agency.

(b) All terms used in this part that are defined in Chapter 40, Article 1 of Title 2.2 are used with the definitions therein contained. Every agency may designate some individual to perform the function of "agency secretary." If there is no designated "agency secretary," that term means the executive officer of the agency.

(c) The term "party" means any person affected by and claiming the unlawfulness of a regulation, or a party aggrieved who asserts a case decision is unlawful or any other affected

person or aggrieved person who appeared in person or by counsel at a hearing, as defined in § 2.2-4001, with respect to the regulation or case decision as well as the agency itself. Whenever a case decision disposes of an application for a license, permit or other benefit, the applicant, licensee or permittee is a necessary party to any proceeding under this part.

* * *

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 of 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 2A:3. Record on Appeal.

(a) If a formal hearing was held before the agency, the appellant must deliver to the agency secretary with his notice of appeal, or within 30 days thereafter, a transcript of the testimony if it was taken down in writing, or if it was not taken down in writing, a statement of the testimony in narrative form. If the agency secretary deems the statement inaccurate, he may append a further statement specifying the inaccuracies.

(b) The agency secretary must prepare and certify the record as soon as possible after the notice of appeal and transcript or statement of testimony is filed and served. Once the court has entered an order overruling any motions, demurrers and other pleas filed by the agency, or if none have been filed within the time provided by Rule 3:8 for the filing of a response to the process served under Rule 2A:4, the agency secretary must, as soon as practicable or within such time as the court may order, transmit the record to the clerk of the court named in the notice of appeal. In the event of multiple appeals in the same proceeding, only one record need be prepared and it must be transmitted to the clerk of the court named in the first notice of appeal filed. If there are multiple appeals to different courts from the same regulation or case decision, all such appeals will be transferred to and heard by the court having jurisdiction that is named in the notice of appeal that is the first to be filed. The agency secretary must notify all parties in

writing when the record is transmitted, naming the court to which it is transmitted. Papers filed in any other clerk's office must be forwarded by such clerk to the proper clerk's office.

(c) The record on appeal from an agency proceeding consists of all notices of appeal, any application or petition, all orders or regulations promulgated in the proceeding by the agency, the opinions, the transcript or statement of the testimony filed by appellant, and all exhibits accepted or rejected, together with such other material as may be certified by the agency secretary to be a part of the record.

(d) Upon the adoption of standards for the preparation of electronic or digital records for use in appeals, records under this Rule must comply with such standards.

(e) In the event the agency secretary determines that the record is so voluminous that its certification and filing pursuant to part (b) of this Rule would be unduly burdensome upon the agency or upon the clerk of the court, the agency may, prior to and in lieu of filing the entire record, move the court for leave to file an index to such record. A party must have the opportunity to respond to the agency's motion within 10 days of filing the motion. Thereafter, if the court grants the agency's motion, the record, or such parts thereof as the parties may agree upon or as the court may determine, must be filed in the form of a joint appendix or in such other form as the court may direct. The agency must nevertheless retain the entire record and make it available to the parties on reasonable request during the pendency of the appeal.

* * *

Rule 2A:4. Petition for Appeal.

(a) Within 30 days after the filing of the notice of appeal, the appellant must file a petition for appeal with the clerk of the circuit court named in the first notice of appeal to be filed. Such filing must include within such 30-day period both the payment of all fees and the taking of all steps provided in Rules 3:2, 3:3 and 3:4 to cause a copy of the petition for appeal to be served (as in a civil action) on the agency secretary and on every other party. The petition may be filed electronically as provided under Rule 1:17.

(b) The petition for appeal must designate the regulation or case decision appealed from, specify the errors assigned, state the reasons why the regulation or case decision is deemed to be unlawful and conclude with a specific statement of the relief requested.

* * *

Rule 2A:5. Further Proceedings.

Further proceedings in an appeal under this Part Two-A are governed by the rules contained in Part Three, where not in conflict with the Code of Virginia or this part, subject to the following:

(1) No appeal or issue under this Part Two-A may be referred to a commissioner in chancery.

(2) Except for Rule 4:15 where applicable under this Rule, the provisions of Part Four do not apply to appeals under this part and, unless ordered by the court, depositions may not be taken.

(3) Once any motions, demurrers or other pleas filed by the agency have been overruled, or if none have been filed within the time provided by Rule 3:8 for the filing of a response to the process served under Rule 2A:4, the appeal is deemed submitted and no answer or further pleadings will be required except as provided herein or by order of the court.

(4) When the case is submitted and the record has been filed as provided in Rule 2A:3, the court will establish by order a schedule for briefing and argument of the issues raised in the petition for appeal.

(5) The court will dispose of the appeal by an order consistent with its authority set forth in §§ 2.2-4029 and 2.2-4030 of the Code of Virginia.

* * *

Rule 2A:6. Small Business Challenges

(a) In addition to the other remedies established in this Part Two-A, as provided by § 2.2-4027 of the Code of Virginia, a "small business" as defined in § 2.2-4007.1(A) of the Code of Virginia that is adversely affected or aggrieved by final agency regulatory action as described therein may seek judicial review for the limited purpose of appealing the issue of compliance with the requirements of §§ 2.2-4007.04 and 2.2-4007.1. Such appeal may be initiated by filing a notice of appeal as described in Rule 2A:2 within one year of the date of such final agency action.

(b) In all other respects, the provisions of this Part Two-A apply to such appeals.

* * *

Rule 2:101 TITLE

These Rules are known as Virginia Rules of Evidence.

* * *

Rule 2:102 SCOPE AND CONSTRUCTION OF THESE RULES

These Rules state the law of evidence in Virginia. They are adopted to implement established principles under the common law and not to change any established case law rendered prior to the adoption of the Rules. Common law case authority, whether decided before or after the effective date of the Rules of Evidence, may be argued to the courts and considered in interpreting and applying the Rules of Evidence. As to matters not covered by these Rules, the existing law remains in effect. Where no rule is set out on a particular topic, adoption of the Rules has no effect on current law or practice on that topic.

* * *

Rule 2:104 PRELIMINARY DETERMINATIONS

(a) *Determinations made by the court*. The qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence is decided by the court, subject to the provisions of subdivision (b).

(b) *Relevancy conditioned on proof of connecting facts*. Whenever the relevancy of evidence depends upon proof of connecting facts, the court may admit the evidence upon or, in the court's discretion, subject to, the introduction of proof sufficient to support a finding of the connecting facts.

(c) *Hearing of jury*. Hearings on the admissibility of confessions in all criminal cases must be conducted out of the hearing of the jury. Hearings on other preliminary matters in all cases must be so conducted whenever a statute, rule, case law or the interests of justice require, or when an accused is a witness and so requests.

* * *

Rule 2:105 PROOF ADMITTED FOR LIMITED PURPOSES

When evidence is admissible as to one party or for one purpose but not admissible as to another party or for another purpose, the court upon motion must restrict such evidence to its proper scope and instruct the jury accordingly. The court may give such limiting instructions sua sponte, to which any party may object.

* * *

Rule 2:202 JUDICIAL NOTICE OF LAW (derived from Code §§ 8.01-386 and 19.2-265.2)

(a) *Notice To Be Taken.* Whenever, in any civil or criminal case it becomes necessary to ascertain what the law, statutory, administrative, or otherwise, of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same, or under an applicable treaty or international convention is, or was, at any time, the court may take judicial notice thereof whether specially pleaded or not.

(b) *Sources of Information*. The court, in taking such notice, must in a criminal case and may in a civil case consult any book, record, register, journal, or other official document or publication purporting to contain, state, or explain such law, and may consider any evidence or other information or argument that is offered on the subject.

* * *

Rule 2:203 JUDICIAL NOTICE OF OFFICIAL PUBLICATIONS (derived from Code § 8.01-388)

The court must take judicial notice of the contents of all official publications of the Commonwealth and its political subdivisions and agencies required to be published pursuant to the laws thereof, and of all such official publications of other states, of the United States, of other countries, and of the political subdivisions and agencies of each published within those jurisdictions pursuant to the laws thereof.

* * *

Rule 2:407 SUBSEQUENT REMEDIAL MEASURES (derived from Code § 8.01-418.1)

When, after the occurrence of an event, measures are taken which, if taken prior to the event, would have made the event less likely to occur, evidence of such subsequent measures is not admissible to prove negligence or culpable conduct as a cause of the occurrence of the event; provided that evidence of subsequent measures is not required to be excluded when offered for another purpose for which it may be admissible, including, but not limited to, proof of ownership, control, feasibility of precautionary measures if controverted, or for impeachment.

* * *

Rule 2:409 EVIDENCE OF ABUSE ADMISSIBLE IN CERTAIN CRIMINAL TRIALS

(derived from Code § 19.2-270.6)

In any criminal prosecution alleging personal injury or death, or the attempt to cause personal injury or death, relevant evidence of repeated physical and psychological abuse of the accused by the victim is admissible, subject to the general rules of evidence.

* * *

Rule 2:410 WITHDRAWN PLEAS, OFFERS TO PLEAD, AND RELATED STATEMENTS

Admission of evidence concerning withdrawn pleas in criminal cases, offers to plead, and related statements is governed by Rule 3A:8(c)(5) of the Rules of Supreme Court of Virginia and by applicable provisions of the Code of Virginia.

* * *

Rule 2:412 ADMISSIBILITY OF COMPLAINING WITNESS' PRIOR SEXUAL CONDUCT; CRIMINAL SEXUAL ASSAULT CASES; RELEVANCE OF PAST BEHAVIOR (derived from Code § 18.2-67.7)

(a) In prosecutions under Article 7, Chapter 4 of Title 18.2 of the Code of Virginia, under clause (iii) or (iv) of § 18.2-48, or under §§ 18.2-370, 18.2-370.01, or 18.2-370.1, general reputation or opinion evidence of the complaining witness' unchaste character or prior sexual conduct must not be admitted. Unless the complaining witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct may be admitted only if it is relevant and is:

1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness' intimate parts; or

2. Evidence of sexual conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness' mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case; or

3. Evidence offered to rebut evidence of the complaining witness' prior sexual conduct introduced by the prosecution.

(b) Nothing contained in this Rule prohibits the accused from presenting evidence relevant to show that the complaining witness had a motive to fabricate the charge against the accused. If such evidence relates to the past sexual conduct of the complaining witness with a person other than the accused, it may not be admitted and may not be referred to at any preliminary hearing or trial unless the party offering same files a written notice generally describing the evidence prior to the introduction of any evidence, or the opening statement of either counsel, whichever first occurs, at the preliminary hearing or trial at which the admission of the evidence may be sought.

(c) Evidence described in subdivisions (a) and (b) of this Rule may not be admitted and may not be referred to at any preliminary hearing or trial until the court first determines the admissibility of that evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary hearing or trial. The court must exclude from the evidentiary hearing all persons except the accused, the complaining witness, other necessary witnesses, and required court personnel. If the court determines that the evidence meets the requirements subdivisions (a) and (b) of this Rule, it is admissible before the judge or jury trying the case in the ordinary course of the preliminary hearing or trial. If the court initially determines of that the evidence is inadmissible, but new information is discovered during the course of the preliminary hearing or trial which may make such evidence admissible, the court must determine in an evidentiary

hearing whether such evidence is admissible.

* * *

Rule 2:413. EVIDENCE OF SIMILAR CRIMES IN CHILD SEXUAL OFFENSE CASES

(derived from Code § 18.2-67.7:1)

(a) In a criminal case in which the defendant is accused of a felony sexual offense involving a child victim, evidence of the defendant's conviction of another sexual offense or offenses is admissible and may be considered for its bearing on any matter to which it is relevant.

(b) The Commonwealth must provide to the defendant 14 days prior to trial notice of its intention to introduce copies of final orders evidencing the defendant's qualifying prior criminal convictions. Such notice must include (i) the date of each prior conviction, (ii) the name and jurisdiction of the court where each prior conviction was obtained, and (iii) each offense of which the defendant was convicted. Prior to commencement of the trial, the Commonwealth must provide to the defendant photocopies of certified copies of the final orders that it intends to introduce.

(c) This Rule must not be construed to limit the admission or consideration of evidence under any other rule of court or statute.

(d) For purposes of this Rule, "sexual offense" means any offense or any attempt or conspiracy to engage in any offense described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 or § 18.2-370, 18.2-370.01, or 18.2-370.1 or any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

(e) Evidence offered in a criminal case pursuant to the provisions of this Rule is subject to exclusion in accordance with the Virginia Rules of Evidence, including but not limited to Rule 2:403.

* * *

Rule 2:501 PRIVILEGED COMMUNICATIONS

Except as otherwise required by the Constitutions of the United States or the Commonwealth of Virginia or provided by statute or these Rules, the privilege of a witness, person, government, State, or political subdivision thereof, is governed by the principles of common law as they may be interpreted by the courts of the Commonwealth in the light of reason and experience.

* * *

Rule 2:502 ATTORNEY-CLIENT PRIVILEGE

Except as may be provided by statute, the existence and application of the attorney-client privilege in Virginia, and the exceptions thereto, are governed by the principles of common law as interpreted by the courts of the Commonwealth in the light of reason and experience.

* * *

Rule 2:503 CLERGY AND COMMUNICANT PRIVILEGE (derived from Code §§ 8.01-400 and 19.2-271.3)

A clergy member means any regular minister, priest, rabbi, or accredited practitioner over the age of 18 years, of any religious organization or denomination usually referred to as a church. A clergy member must not be required:

(a) in any civil action, to give testimony as a witness or to disclose in discovery proceedings the contents of notes, records or any written documentation made by the clergy member, where such testimony or disclosure would reveal any information communicated in a confidential manner, properly entrusted to such clergy member in a professional capacity and necessary to enable discharge of the functions of office according to the usual course of the clergy member's practice or discipline, wherein the person so communicating such information about himself or herself, or another, was seeking spiritual counsel and advice relating to and growing out of the information so imparted; and

* * *

Rule 2:504 SPOUSAL TESTIMONY AND MARITAL COMMUNICATIONS PRIVILEGES (Rule 2:504(a) derived from Code § 8.01-398; and Rule 2:504(b) derived from Code § 19.2-271.2)

(a) *Privileged Marital Communications in Civil Cases.*

1. Husband and wife are competent witnesses to testify for or against each other in all civil actions.

2. In any civil proceeding, a person has a privilege to refuse to disclose, and to prevent anyone else from disclosing, any confidential communication between such person and his or her spouse during their marriage, regardless of whether such person is married to that spouse at the time he or she objects to disclosure. This privilege may not be asserted in any proceeding in which the spouses are adverse parties, or in which either spouse is charged with a crime or tort against the person or property of the other or against the minor child of either spouse. For the purposes of this Rule, "confidential communication" means a communication made privately by a person to his or her spouse that is not intended for disclosure to any other person.

(b) *Testimony of Husband and Wife in Criminal Cases.*

1. In criminal cases husband and wife must be allowed, and, subject to the Rules of Evidence governing other witnesses, may be compelled to testify in behalf of each other, but neither may be compelled to be called as a witness against the other, except (i) in the case of a prosecution for an offense committed by one against the other, against a minor child of either, or against the property of either; (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other; or (i) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371). The failure of either husband or wife to testify, however, creates no presumption against the accused, and may not be the subject of any comment before the court or jury by any attorney.

* * *

Rule 2:505 HEALING ARTS PRACTITIONER AND PATIENT PRIVILEGE (derived from Code § 8.01-399)

The scope and application of the privilege between a patient and a physician or practitioner of the healing arts in a civil case are as set forth in any specific statutory provisions, including Code § 8.01-399, as amended from time to time, which presently provides:

A. Except at the request or with the consent of the patient, or as provided in this section, no duly licensed practitioner of any branch of the healing arts is permitted to testify in any civil action, respecting any information that he may have acquired in attending, examining or treating the patient in a professional capacity.

B. If the physical or mental condition of the patient is at issue in a civil action, the diagnoses, signs and symptoms, observations, evaluations, histories, or treatment plan of the practitioner, obtained or formulated as contemporaneously documented during the course of the practitioner's treatment, together with the facts communicated to, or otherwise learned by, such practitioner in connection with such attendance, examination or treatment may be disclosed but only in discovery pursuant to the Rules of Court or through testimony at the trial of the action. In addition, disclosure may be ordered when a court, in the exercise of sound discretion, deems it necessary to the proper administration of justice. However, no order may be entered compelling a party to sign a release for medical records from a health care provider unless the health care provider is not located in the Commonwealth or is a federal facility. If an order is issued pursuant to this section, it must be restricted to the medical records that relate to the physical or mental conditions at issue in the case. No disclosure of diagnosis or treatment plan facts communicated to, or otherwise learned by, such practitioner may occur if the court determines, upon the request of the patient, that such facts are not relevant to the subject matter involved in the pending action or do not appear to be reasonably calculated to lead to the discovery of admissible evidence. Only diagnosis offered to a reasonable degree of medical probability is admissible at trial.

C. This section will not (i) be construed to repeal or otherwise affect the provisions of § 65.2-607 relating to privileged communications between physicians and surgeons and employees under the Workers' Compensation Act; (ii) apply to information communicated to any such practitioner in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug; or (iii) prohibit a duly licensed practitioner of the healing arts, or his agents, from disclosing information as required by state or federal law.

D. Neither a lawyer nor anyone acting on the lawyer's behalf may obtain, in connection with pending or threatened litigation, information concerning a patient from a practitioner of any branch of the healing arts without the consent of the patient, except through discovery pursuant to the Rules of Supreme Court as herein provided. However, the prohibition of this subsection does not apply to:

1. Communication between a lawyer retained to represent a practitioner of the healing arts, or that lawyer's agent, and that practitioner's employers, partners, agents, servants, employees, co-employees or others for whom, at law, the practitioner is or may be liable or who, at law, are or may be liable for the practitioner's acts or omissions;

2. Information about a patient provided to a lawyer or his agent by a practitioner of the healing arts employed by that lawyer to examine or evaluate the patient in accordance with Rule 4:10 of the Rules of Supreme Court; or

3. Contact between a lawyer or his agent and a nonphysician employee or agent of a practitioner of healing arts for any of the following purposes: (i) scheduling appearances, (ii) requesting a written recitation by the practitioner of handwritten records obtained by the lawyer or his agent from the practitioner, provided the request is made in writing and, if litigation is

pending, a copy of the request and the practitioner's response is provided simultaneously to the patient or his attorney, (iii) obtaining information necessary to obtain service upon the practitioner in pending litigation, (iv) determining when records summoned will be provided by the practitioner or his agent, (v) determining what patient records the practitioner possesses in order to summons records in pending litigation, (vi) explaining any summons that the lawyer or his agent caused to be issued and served on the practitioner, (vii) verifying dates the practitioner treated the patient, provided that if litigation is pending the information obtained by the lawyer or his agent is promptly given, in writing, to the patient or his attorney, (viii) determining charges by the practitioner for appearance at a deposition or to testify before any tribunal or administrative body, or (ix) providing to or obtaining from the practitioner directions to a place to which he is or will be summoned to give testimony.

E. A clinical psychologist duly licensed under the provisions of Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 is considered a practitioner of a branch of the healing arts within the meaning of this section.

F. Nothing herein prevents a duly licensed practitioner of the healing arts, or his agents, from disclosing any information that he may have acquired in attending, examining or treating a patient in a professional capacity where such disclosure is necessary in connection with the care of the patient, the protection or enforcement of a practitioner's legal rights including such rights with respect to medical malpractice actions, or the operations of a health care facility or health maintenance organization or in order to comply with state or federal law.

* * *

Rule 2:506 MENTAL HEALTH PROFESSIONAL AND CLIENT PRIVILEGE (derived from Code § 8.01-400.2)

Except at the request of or with the consent of the client, no licensed professional counselor, as defined in Code § 54.1-3500; licensed clinical social worker, as defined in Code § 54.1-3700; licensed psychologist, as defined in Code § 54.1-3600; or licensed marriage and family therapist, as defined in Code § 54.1-3500, may be required in giving testimony as a witness in any civil action to disclose any information communicated in a confidential manner, properly entrusted to such person in a professional capacity and necessary to enable discharge of professional or occupational services according to the usual course of his or her practice or discipline, wherein the person so communicating such information about himself or herself, or another, is seeking professional counseling or treatment and advice relating to and growing out of the information so imparted; provided, however, that when the physical or mental condition of the client is at issue in such action, or when a court, in the exercise of sound discretion, deems such disclosure necessary to the proper administration of justice, no fact communicated to, or otherwise learned by, such practitioner in connection with such counseling, treatment or advice will be privileged, and disclosure may be required. The privileges conferred by this Rule do not extend to testimony in matters relating to child abuse and neglect nor serve to relieve any person from the reporting requirements set forth in § 63.2-1509.

* * *

Rule 2:507 PRIVILEGED COMMUNICATIONS INVOLVING INTERPRETERS
(derived from Code §§ 8.01-400.1, 19.2-164, and 19.2-164.1)

Whenever a deaf or non-English-speaking person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such

person could not be compelled to testify as to the communications, the privilege also applies to the interpreter.

* * *

Rule 2:603 OATH OR AFFIRMATION

Before testifying, every witness must be required to declare that he or she will testify truthfully, by oath or affirmation administered in a form calculated to awaken the conscience and impress the mind of the witness with the duty to do so.

* * *

Rule 2:604 INTERPRETERS (derived from Code § 8.01-406)

An interpreter must be qualified as competent and must be placed under oath or affirmation to make a true translation.

* * *

Rule 2:605 COMPETENCY OF COURT PERSONNEL AS WITNESSES (derived from Code § 19.2-271)

(a) No judge is competent to testify in any criminal or civil proceeding as to any matter which came before the judge in the course of official duties.

(b) Except as otherwise provided in this Rule, no clerk of any court, magistrate, or other person having the power to issue warrants, is competent to testify in any criminal or civil proceeding, as to any matter which came before him or her in the course of official duties. Such person may be competent to testify in any criminal proceeding wherein the defendant is charged with perjury or pursuant to the provisions of § 18.2-460 or in any proceeding authorized pursuant to § 19.2-353.3. Notwithstanding any other provision of this section, any judge, clerk of any court, magistrate, or other person having the power to issue warrants, who is the victim of a crime, is not incompetent solely because of his or her office to testify in any criminal or civil proceeding arising out of the crime. Nothing in this subpart (b) precludes otherwise proper testimony by a clerk or deputy clerk concerning documents filed in the official records.

* * *

Rule 2:607 IMPEACHMENT OF WITNESSES (Rule 2:607(b) derived from Code § 8.01-401(A); and Rule 2:607(c) derived from Code § 8.01-403)

* * *

(c) *Witness proving adverse*.

(i) If a witness proves adverse, the party who called the witness may, subject to the discretion of the court, prove that the witness has made at other times a statement inconsistent with the present testimony as provided in Rule 2:613.

(ii) In a jury case, if impeachment has been conducted pursuant to this subdivision (c), the court, on motion by either party, must instruct the jury to consider the evidence of such inconsistent statements solely for the purpose of contradicting the witness.

* * *

Rule 2:613 PRIOR STATEMENTS OF WITNESS (Rule 2:613(a)(i) derived from Code § 8.01-403; Rule 2:613(b)(i) derived from Code §§ 8.01-404 and 19.2-268.1; and Rule 2:613(b)(ii) derived from Code § 8.01-404)

* * *

(b) *Contradiction by prior inconsistent writing.*

(i) General rule. In any civil or criminal case, a witness may be cross-examined as to previous statements made by the witness in writing or reduced to writing, relating to the subject matter of the action, without such writing being shown to the witness; but if the intent is to contradict such witness by the writing, his or her attention must, before such contradictory proof can be given, be called to the particular occasion on which the writing is supposed to have been made; the witness may be asked whether he or she made a writing of the purport of the one to be offered, and if the witness denies making it, or does not admit its execution, it must then be shown to the witness, and if the witness admits its genuineness, the witness must be allowed to make an explanation of it; but the court may, at any time during the trial, require the production of the writing for its inspection, and the court may then make such use of it for the purpose of the trial as it may think best.

(ii) Personal Injury or Wrongful Death Cases. Notwithstanding the general principles stated in this subpart (b), in an action to recover for personal injury or wrongful death, no ex parte affidavit or statement in writing other than a deposition, after due notice, of a witness and no extrajudicial recording made at any time other than simultaneously with the wrongful act or negligence at issue of the voice of such witness, or reproduction or transcript thereof, as to the facts or circumstances attending the wrongful act or neglect complained of, may be used to contradict such witness in the case. Nothing in this subdivision may be construed to prohibit the use of any such ex parte affidavit or statement in an action on an insurance based upon a judgment recovered in a personal injury or wrongful death case.

* * *

Rule 2:615 EXCLUSION OF WITNESSES (Rule 2:615(a) derived from Code §§ 8.01-375, 19.2-184, and 19.2-265.1; Rule 2:615(b) derived from Code § 8.01-375; and Rule 2:615(c) derived from Code § 19.2-265.1)

(a) The court, in a civil or criminal case, may on its own motion and must on the motion of any party, require the exclusion of every witness including, but not limited to, police officers or other investigators. The court may also order that each excluded witness be kept separate from all other witnesses. But each named party who is an individual, one officer or agent of each party which is a corporation, limited liability entity or association, an attorney alleged in a habeas corpus proceeding to have acted ineffectively, and in an unlawful detainer action filed in general district court, a managing agent as defined in § 55.1-1200 are exempt from the exclusion as a matter of right.

(b) Where expert witnesses are to testify in the case, the court may, at the request of all parties, allow one expert witness for each party to remain in the courtroom; however, in cases pertaining to the distribution of marital property pursuant to § 20-107.3 or the determination of child or spousal support pursuant to § 20-108.1, the court may, upon motion of any party, allow one expert witness for each party to remain in the courtroom throughout the hearing.

(c) Any victim as defined in Code § 19.2-11.01 who is to be called as a witness may remain in the courtroom and may not be excluded unless pursuant to Code § 19.2-265.01 the court

determines, in its discretion, that the presence of the victim would impair the conduct of a fair trial.

* * *

Rule 2:704 OPINION ON ULTIMATE ISSUE (Rule 2:704(a) derived from Code § 8.01-401.3(B) and (C))

(a) *Civil cases*. In civil cases, no expert or lay witness may be prohibited from expressing an otherwise admissible opinion or conclusion as to any matter of fact solely because that fact is the ultimate issue or critical to the resolution of the case. But in no event may such witness be permitted to express any opinion which constitutes a conclusion of law. Any other exceptions to the "ultimate fact in issue" rule recognized in the Commonwealth remain in full force.

* * *

Rule 2:705 FACTS OR DATA USED IN TESTIMONY (Rule 2:705(a) derived from Code § 8.01-401.1)

* * *

(b) *Criminal cases.* In criminal cases, the facts on which an expert may give an opinion must be disclosed in the expert's testimony, or set forth in a hypothetical question.

* * *

Rule 2:706 USE OF LEARNED TREATISES WITH EXPERTS (Rule 2:706(a) derived from Code § 8.01-401.1)

(a) *Civil cases*. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by testimony or by stipulation may not be excluded as hearsay. If admitted, the statements may be read into evidence but may not be received as exhibits. If the statements are to be introduced through an expert witness upon direct examination, copies of the specific statements must be designated as literature to be introduced during direct examination and provided to opposing parties 30 days prior to trial unless otherwise ordered by the court. If a statement has been designated by a party in accordance with and satisfies the requirements of this rule, the expert witness called by that party need not have relied on the statement at the time of forming his opinion in order to read the statement into evidence during direct examination at trial.

(b) *Criminal cases*. Where an expert witness acknowledges on cross-examination that a published work is a standard authority in the field, an opposing party may ask whether the witness agrees or disagrees with statements in the work acknowledged. Such proof will be received solely for impeachment purposes with respect to the expert's credibility.

Rule 2:803 HEARSAY EXCEPTIONS APPLICABLE REGARDLESS OF AVAILABILITY OF THE DECLARANT (Rule 2:803(10)(a) derived from Code § 8.01-390(C); Rule 2:803(10)(b) derived from Code § 19.2-188.3; Rule 2:803(17) derived from Code § 8.2-724; and Rule 2:803(23) is derived from Code § 19.2-268.2)

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * *

(10) *Absence of entries in public records and reports.*

* * *

(b) Criminal Cases. In any criminal hearing or trial, an affidavit signed by a government official who is competent to testify, deemed to have custody of an official record, or signed by such official's designee, stating that after a diligent search, no record or entry of such record is found to exist among the records in such official's custody, is admissible as evidence that the office has no such record or entry, provided that if the hearing or trial is a proceeding other than a preliminary hearing the procedures set forth in subsection G of § 18.2-472.1 for admission of an affidavit have been satisfied, mutatis mutandis, and the accused has not objected to the admission of the affidavit pursuant to the procedures set forth in subsection H of § 18.2-472.1, mutatis mutandis. Nothing in this subsection (b) affects the admissibility of affidavits in civil cases under subsection (a) of this Rule.

* * *

(17) *Market quotations.* Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market are admissible in evidence. The circumstances of the preparation of such a report may be shown.

* * *

Rule 2:803.1. Statements by Child Describing Acts Relating to Offense Against Children (Derived from Code § 19.2-268.3).

(a) Proof of an out-of-court statement made by a child who is under 13 years of age at the time of trial or hearing, and who is the alleged victim of an offense against children as provided in Code § 19.2-268.3(A), which statement describes any act directed against the child relating to such alleged offense, may not be excluded as hearsay under Rule 2:802 if both of the following apply:

* * *

(b) At least 14 days prior to the commencement of the proceeding in which a statement will be offered as evidence, the party intending to offer the statement must notify the opposing party, in writing, of the intent to offer the statement and must provide or make available copies of the statement to be introduced.

(c) This provision does not limit the admission of any statement offered under any other hearsay exception or applicable rule of evidence.

* * *

Rule 2:804 HEARSAY EXCEPTIONS APPLICABLE WHERE THE DECLARANT IS UNAVAILABLE (Rule 2:804(b)(5) derived from Code § 8.01-397)

* * *

(b) *Hearsay exceptions*. The following are not excluded by the hearsay rule:

* * *

(5) Statement by party incapable of testifying. Code § 8.01-397, entitled "Corroboration required and evidence receivable when one party incapable of testifying," presently provides:

> In an action by or against a person who, from any cause, is incapable of testifying, or by or against the committee, trustee, executor, administrator, heir, or other representative of the person so incapable of testifying, no judgment or decree may be rendered in favor of an adverse or interested party founded on his uncorroborated testimony. In any such action, whether such adverse party testifies or not, all entries, memoranda, and declarations by the party so incapable of testifying made while he was capable, relevant to the matter in issue, may be received as evidence in all proceedings including without limitation those to which a person under a disability is a party. The phrase "from any cause" as used in this section does not include situations in which the party who is incapable of testifying has rendered himself unable to testify by an intentional self-inflicted injury.
>
> For the purposes of this section, and in addition to corroboration by any other competent evidence, an entry authored by an adverse or interested party contained in a business record may be competent evidence for corroboration of the testimony of an adverse or interested party. If authentication of the business record is not admitted in a request for admission, such business record may be authenticated by a person other than the author of the entry who is not an adverse or interested party whose conduct is at issue in the allegations of the complaint.

* * *

Rule 2:902 SELF-AUTHENTICATION (Rule 2:902(6) derived from Code § 8.01-390.3 and Code § 8.01-391(D))

Additional proof of authenticity as a condition precedent to admissibility is not required with respect to the following:

* * *

(6) Certified Records of a Regularly Conducted Activity.

(a) In any proceeding where a business record is material and otherwise admissible, authentication of the record and the foundation required by subdivision (6) of Rule 2:803 may be laid by (i) witness testimony, (ii) a certification of the authenticity of and foundation for the record made by the custodian of such record or other qualified witness either by affidavit or by declaration pursuant to Code § 8.01-4.3, or (iii) a combination of witness testimony and a certification.

(b) The proponent of a business record must (i) give written notice to all other parties if a certification under this section will be relied upon in whole or in part in authenticating and laying the foundation for admission of such record and (ii) provide a copy of the record and the certification to all other parties, so that all parties have a fair opportunity to challenge the record and certification. The notice and copy of the record and certification must be provided no later

than 15 days in advance of the trial or hearing, unless an order of the court specifies a different time. Objections must be made within five days thereafter, unless an order of the court specifies a different time. If any party timely objects to reliance upon the certification, the authentication and foundation required by subdivision (6) of Rule 2:803 must be made by witness testimony unless the objection is withdrawn.

(c) A certified business record that satisfies the requirements of this section is self-authenticating and requires no extrinsic evidence of authenticity.

(d) A copy of a business record may be offered in lieu of an original upon satisfaction of the requirements of Code § 8.01-391(D) by witness testimony, a certification, or a combination of testimony and a certification.

* * *

Rule 2:1003 USE OF SUBSTITUTE CHECKS (derived from Code § 8.01-391.1(A) and (B))

(a) *Admissibility generally*. A substitute check created pursuant to the federal Check Clearing for the 21st Century Evidence Act, 12 U.S.C. § 5001 et seq., is admissible in evidence in any Virginia legal proceeding, civil or criminal, to the same extent the original check would be.

(b) *Presumption from designation and legend.* A document received from a banking institution that is designated as a "substitute check" and that bears the legend "This is a legal copy of your check. You can use it the same way you would use the original check" is presumed to be a substitute check created pursuant to the Act applicable under subdivision (a) of this Rule.

* * *

Rule 2:1005 ADMISSIBILITY OF COPIES (derived from Code § 8.01-391)

In addition to admissibility of copies of documents as provided in Rules 2:1002 and 2:1004, and by statute, copies may be used in lieu of original documents as follows:

* * *

(b) If any department, division, institution, agency, board, or commission of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, acting pursuant to the law of the respective jurisdiction or other proper authority, has copied any record made in the performance of its official duties, such copy is as admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy either by the custodian of said record or by the person to whom said custodian reports, if they are different, and is accompanied by a certificate that such person does in fact have the custody.

(c) If any court or clerk's office of a court of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, has copied any record made in the performance of its official duties, such copy is admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy by a clerk or deputy clerk of such court.

(d) If any business or member of a profession or calling in the regular course of business or activity has made any record or received or transmitted any document, and again in the regular course of business has caused any or all of such record or document to be copied, the copy is as admissible in evidence as the original, whether the original exists or not, provided that such copy is satisfactorily identified and authenticated as a true copy by a custodian of such record or by

the person to whom said custodian reports, if they be different, and is accompanied by a certificate that said person does in fact have the custody. Copies in the regular course of business are deemed to include reproduction at a later time, if done in good faith and without intent to defraud. Copies in the regular course of business include items such as checks which are regularly copied before transmission to another person or bank, or records which are acted upon without receipt of the original when the original is retained by another party.

* * *

(g) Copy, as used in these Rules, includes photographs, microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

* * *

Rule 2:1006 SUMMARIES

The contents of voluminous writings that, although admissible, cannot conveniently be examined in court may be represented in the form of a chart, summary, or calculation. Reasonably in advance of the offer of such chart, summary, or calculation, the originals or duplicates must be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

* * *

Rule 3:1. Scope

There is one form of civil case, known as a civil action. These Rules apply to all civil actions, in the circuit courts, whether the claims involved arise under legal or equitable causes of action, unless otherwise provided by law. These rules apply in cases appealed or removed to such courts from inferior courts whenever applicable to such cases. These Rules do not apply in petitions for a writ of habeas corpus. In matters not covered by these Rules, the established practices and procedures are continued.

Whenever in this Part Three the words "action" or "suit" appear they refer to a civil action, which may include legal and equitable claims.

* * *

Rule 3:2. Commencement of Civil Actions.

(a) *Commencement*. A civil action is commenced by filing a complaint in the clerk's office. When a statute or established practice requires, a proceeding may be commenced by a pleading styled "Petition." Upon filing of the pleading, the action is then instituted and pending as to all parties defendant thereto. The statutory writ tax and clerk's fees must be paid before the summons is issued.

(b) *Caption.* The complaint must be captioned with the name of the court and the full style of the action, which must include the names of all the parties. The requirements of Code § 8.01-290 may be met by giving the address or other data after the name of each defendant.

(c) *Form and Content of the Complaint.*

(i) It is sufficient for the complaint to ask for the specific relief sought. Without more it will be understood that all defendants mentioned in the caption are made parties defendant and required to answer the complaint; that proper process against them is requested; that answers under oath are waived, except when required by law, and that all relief authorized by law and demanded in the complaint may be granted. No formal conclusion is necessary.

(ii) Every complaint requesting an award of money damages must contain an ad damnum clause stating the amount of damages sought. Leave to amend the ad damnum clause is available under Rule 1:8.

* * *

Rule 3:3. Filing of Pleadings; Return of Certain Writs.

(a) *Filing Generally*. The clerk must receive and file all pleadings when tendered, without order of the court. The clerk must note and attest the date of filing thereon. In an Electronically Filed Case, the procedures of Rule 1:17 apply to the notation by the clerk of the date of filing. Any controversy over whether a party who has filed a pleading has a right to file it will be decided by the court.

(b) *Electronic Filing*. In any circuit court which has established an electronic filing system pursuant to Rule 1:17:

(1) Any civil action for which electronic filing is available in the circuit court may be designated as an Electronically Filed Case upon consent of all parties in the case. Such designation must be made promptly, complying with all filing and procedural requirements for making such designations as may be prescribed by such circuit court.

(2) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other filings in an Electronically Filed Case must be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party must notify the clerk of court that the original document must be retained.

(i) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(d)(5).

(ii) Any last will and testament or other testamentary document, whether or not it is holographic.

(iii) Any contract or deed.

(iv) Any prenuptial agreement or written settlement agreement, including any property settlement agreement.

(v) Any check or other negotiable instrument.

(vi) Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.

(vii) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.

(viii) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.

(c) *Return of writs*. No writ may be returnable more than 90 days after its date unless a longer period is provided by statute.

(d) *Additional summonses*. The clerk must on request issue additional summonses, dating them as of the day of issuance.

* * *

Rule 3:4. Copies of Complaint.

(a) *Copies for Service.* Except in cases where service is waived pursuant to Code § 8.01-286.1, the plaintiff must furnish the clerk when the complaint is filed with as many paper copies thereof as there are defendants upon whom it is to be served. In an Electronically Filed Case, the plaintiff must file the complaint electronically and furnish paper copies to the clerk as provided in this Rule.

(b) *Exhibits.* It is not required that physical copies of exhibits filed with the complaint be furnished or served. Unless an individual case is exempted by order of the court for good cause shown, an electronic or digitally imaged copy of all exhibits that are incorporated by reference in the pleading must be filed with the complaint. Upon the adoption of standards for the preparation of electronic or digital records for use in appeals, exhibits under this Rule must comply with such standards.

(c) *Additional copies*. A deficiency in the number of copies of the complaint will not affect the pendency of the action.

(1) If the plaintiff fails to furnish the required number of copies, the clerk may request that additional copies be furnished by the plaintiff as needed, and if the plaintiff fails to do so promptly, the clerk may bring the fact to the attention of the judge, who will notify the plaintiff's

counsel, or the plaintiff personally if no counsel has appeared for plaintiff, to furnish them by a specified date. If the required copies are not furnished on or before that date, the court may enter an order dismissing the suit.

(2) Additionally, in an Electronically Filed Case, if the clerk has been provided by the plaintiff with a credit or payment account through which to obtain payment of fees for duplication of required copies of filings, the clerk must promptly prepare additional copies of the pleading as needed, and process payment through such credit or payment account; or, if processing by the clerk of the proper payment for duplication of additional copies of the pleading through a credit or payment account authorized by the filing party is not feasible, the clerk may proceed as provided in subpart (c)(1) of this Rule.

* * *

Rule 3:5. The Summons.

(a) *Form of process.* The process of the courts in civil actions is a summons in substantially this form:

* * *

(b) *Affixing summons for service; voluntary appearance.* Upon the commencement of a civil action defendants may appear voluntarily and file responsive pleadings and may appear voluntarily and waive process, but in cases of divorce or annulment of marriage only in accordance with the provisions of the controlling statutes. With respect to defendants who do not appear voluntarily or file responsive pleadings or waive service of process, the clerk must issue summonses and securely attach one to and upon the front of each copy of the complaint to be served. The copies of the complaint, with a summons so attached, must be delivered by the clerk for service together as the plaintiff may direct.

* * *

(d) *Additional summonses.* The clerk must on request issue additional summonses, dating them as of the day of issuance.

(e) *Service more than one year after commencement of the action.* No order, judgment or decree will be entered against a defendant who was served with process more than one year after the institution of the action against that defendant unless the court finds as a fact that the plaintiff exercised due diligence to have timely service on that defendant.

* * *

Rule 3:6. Proof of Service

Returns must be made on a paper styled "Proof of Service" which must be substantially in this form:

Virginia:

In the ..... Court of the ..... of ..... :

.....)

v. (short style)) Proof of Service

.....)

Returns must be made hereon, showing service of the summons issued

....., 20 ....., with copy of the complaint filed ....., 20 , attached.

The clerk must prepare as many as may be needed and deliver them with the summons and copies of the complaint.

The summons with copy of the complaint attached constitutes and must be served as one paper.

It is the duty of all persons eligible to serve process to make service within five days after receipt, and make return as to those served within 72 hours after the earliest service upon any party shown on each Proof of Service; but failure to make timely service and return does not prejudice the rights of any party except as provided in Rule 3:5.

Additional copies of the Proof of Service may be obtained from the clerk and returns thereon made in similar manner.

* * *

Rule 3:7. Bills of Particulars

* * *

(c) *Date for Filing Bill of Particulars.* An order requiring or permitting a bill of particulars or amended bill of particulars must fix the time within which it must be filed.

(d) *Date for Responding to Amplified Pleading*. If the bill of particulars amplifies a complaint, a defendant must respond to the amplified pleading within 21 days after the filing thereof, unless the defendant relies on pleadings already filed. If the bill of particulars amplifies any other pleading, any required response must be filed within 21 days after the filing of the bill of particulars, or within such shorter or longer time as the court may prescribe.

* * *

Rule 3:8. Answers, Pleas, Demurrers and Motions

(a) *Response Requirement.* A defendant must file pleadings in response within 21 days after service of the summons and complaint upon that defendant, or if service of the summons has been timely waived on request under Code § 8.01-286.1, within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth. A demurrer, plea, motion to dismiss, and motion for a bill of particulars will each be deemed a pleading in response for the count or counts addressed therein. If a defendant files no other pleading than the answer, it must be filed within said time. An answer must respond to the paragraphs of the complaint. A general denial of the entire complaint or plea of the general issue is not permitted.

(b) *Response After Demurrer, Plea or Motion.* When the court has entered its order overruling all motions, demurrers and other pleas filed by a defendant, such defendant must, unless the defendant has already done so, file an answer within 21 days after the entry of such order, or within such shorter or longer time as the court may prescribe.

* * *

Rule 3:9. Counterclaims.

* * *

(b) *Time for initiation.*

(i) A counterclaim may, subject to the provisions of Rule 1:9, be filed within 21 days after service of the summons and complaint upon the defendant asserting the counterclaim, or if

service of the summons has been timely waived on request under Code §8.01-286.1, within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth.

(ii) If a demurrer, plea, motion to dismiss, or motion for a bill of particulars is filed within the period provided in subsection (b)(i) of this Rule, the defendant may file any counterclaim at any time up to 21 days after the entry of the court's order ruling upon all such motions, demurrers and other pleas, or within such shorter or longer time as the court may prescribe.

(c) *Response to counterclaim*. The plaintiff must file pleadings in response to such counterclaim within 21 days after it is served.

(d) *Separate trials*. The court in its discretion may order a separate trial of any cause of action asserted in a counterclaim.

* * *

Rule 3:10. Cross-Claims.

* * *

(b) *Time for initiation*. A cross-claim may, subject to the provisions of Rule 1:9, be filed within 21 days after service of the summons and complaint on the defendant asserting the cross-claim, or if service of the summons has been timely waived on request under Code § 8.01-286.1, within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth.

(c) *Response to cross-claim.* The cross-claim defendant must file pleadings in response to such cross-claim within 21 days after it is served.

(d) *Separate trials.* The court in its discretion may order a separate trial of any cause of action asserted in a cross-claim.

* * *

Rule 3:11. Reply.

Responding to new matter. If a pleading, motion or affirmative defense sets up new matter and contains words expressly requesting a reply, the adverse party must within 21 days file a reply admitting or denying such new matter. If it does not contain such words, the allegation of new matter will be taken as denied or avoided without further pleading. All allegations contained in a reply will be taken as denied or avoided without further pleading.

* * *

Rule 3:12. Joinder of Additional Parties.

* * *

(b) *Method of Joinder*. A motion to join an additional party may, subject to the provisions of Rule 1:9, be filed with the clerk within 21 days after service of the complaint and must be served on the party sought to be joined who is thereafter subject to all provisions of these Rules, except the provisions requiring payment of writ tax and clerk's fees.

(c) *Determination by Court Whenever Joinder Not Feasible*. If a person as described in subdivision (a) hereof cannot be made a party, the court must determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court

include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the absent person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(d) *Pleading Reasons for Nonjoinder.* A pleading asserting a claim for relief must state the names, if known to the pleader, of any persons as described in subdivision (a) hereof who are not joined, and the reasons why they are not joined.

* * *

Rule 3:13. Third-Party Practice.

(a) *When Defendant May Bring in Third Party.* At any time after commencement of the action a defending party, as a third-party plaintiff, may file and serve a third-party complaint upon a person not a party to the action who is or may be liable to the third- party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave therefore if the third-party complaint is filed not later than 21 days after the third-party plaintiff serves an original pleading in response. Otherwise the third-party plaintiff must obtain leave therefore on motion after notice to all parties to the action. The person served with the third-party complaint, hereinafter called the third-party defendant, must make defenses to the third-party plaintiff's claim as provided in Rules 3:7 and 3:8. The third-party defendant may plead counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rules 3:9 and 3:10. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may, at plaintiff's option, within 21 days after service of the third-party complaint upon the third-party defendant, assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon may assert defenses as provided in Rules 3:7 and 3:8 and any counterclaims and cross-claims, including claims against the plaintiff, as provided in Rules 3:9 and 3:10. Any party may move to strike the third-party complaint, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

* * *

Rule 3:14. Intervention.

A new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding.

All provisions of these Rules applicable to civil cases, except those provisions requiring payment of writ tax and clerk's fees, apply to such pleadings. The parties on whom such pleadings are served must respond thereto as provided in these Rules.

* * *

Rule 3:15. Statutory Interpleader.

Proceedings brought pursuant to statutory provisions relating to interpleader must, to the extent not inconsistent with the governing statutes, be conducted in accordance with the Rules contained in this Part Three.

* * *

Rule 3:16. New Parties.

A new party may be added, on motion of the plaintiff by order of the court at any stage of the case as the ends of justice may require. The motion, accompanied by a properly executed proposed amended complaint, must be served on the existing parties as required by Rule 1:12. If the motion is granted, the amended pleading accompanying the motion will be deemed filed in the clerk's office as of the date of the court's order permitting such amendment and all the provisions of Rule 3:4 apply as to the new parties, but no writ tax, clerk's fee or deposit for costs is required. All defendants must file pleadings in response thereto as required by these Rules unless otherwise ordered by the court.

* * *

Rule 3:17. Substitution of Parties.

* * *

(b) *Motion, Consent, Procedure*. Substitution may be made on motion of the successor or of any party to the suit. If the successor does not make or consent to the motion, the party making the motion may file the motion and a proposed amended pleading effecting the substitution in the clerk's office and serve a copy of the motion and the proposed amended pleading upon the party to be substituted in the manner prescribed by the Code of Virginia for serving original process upon such party. Unless the movant and the party to be substituted agree otherwise, or the court orders a different schedule, the party sought to be substituted must file a written response to the motion for substitution within 21 days after service of the motion and proposed amended pleading upon the party sought to be substituted.

* * *

Rule 3:18. General Provisions as to Pleadings.

* * *

(c) *Contributory negligence as a defense.* Contributory negligence will not constitute a defense unless pleaded or shown by the plaintiff's evidence.

* * *

Rule 3:19. Default.

(a) *Failure Timely to Respond.* A defendant who fails timely to file a responsive pleading as prescribed in Rule 3:8 is in default. A defendant in default is not entitled to notice of any further proceedings in the case, including notice to take depositions, except that written notice of any further proceedings must be given to counsel of record, if any. The defendant in default is deemed to have waived any right to trial of issues by jury.

* * *

(c) *Default Judgment and Damages.*

(1) Except in suits for divorce or annulling a marriage, the court will, on motion of the plaintiff, enter judgment for the relief appearing to the court to be due. When service of process is effected by posting, no judgment by default will be entered until the requirements of Code § 8.01-296(2)(b) have been satisfied.

(2) If the relief demanded is unliquidated damages, the court will hear evidence and fix the amount thereof, unless the plaintiff demands trial by jury, in which event, a jury will be impaneled to fix the amount of damages.

(3) If a defendant participates in the hearing to determine the amount of damages such defendant may not offer proof or argument on the issues of liability, but may (i) object to the plaintiff's evidence regarding damages, (ii) offer evidence regarding the quantum of damages, (iii) participate in jury selection if a jury will hear the damage inquiry, (iv) submit proposed jury instructions regarding damages, and (v) make oral argument on the issues of damages.

* * *

Rule 3:20. Motion for Summary Judgment.

Any party may make a motion for summary judgment at any time after the parties are at issue, except in an action for divorce or for annulment of marriage. If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, that the moving party is entitled to judgment, the court shall grant the motion. Summary judgment, interlocutory in nature, may be entered as to the undisputed portion of a contested claim or on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment may not be entered if any material fact is genuinely in dispute. No motion for summary judgment or motion to strike the evidence will be sustained when based in whole or in part upon any discovery depositions under Rule 4:5, unless all parties to the action agree that such deposition may be so used, or unless the motion is brought in accordance with the provisions of subsection B of § 8.01-420. As further provided in subsection C of § 8.01-420, depositions and affidavits may be used to support or oppose a motion for summary judgment in any action where the only parties to the action are business entities and the amount at issue is $50,000 or more.

* * *

Rule 3:21. Jury Trial of Right.

(a) *Jury Trial Situations Unchanged.* The right of trial by jury as declared by the Constitution of Virginia, or as given by an applicable statute or other authority, is unchanged by these rules, and will be implemented as established law provides. Established practice for the trial and decision of equitable claims by the judge alone is continued.

(b) *Demand*. Any party may demand a trial by jury of any issue triable of right by a jury in the complaint or by (1) serving upon other parties a demand therefore in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to the issue, and (2) filing the demand with the trial court. Such demand may be endorsed upon a pleading of the party. In an Electronically Filed Case, endorsement of such demand may be made as provided in Rule 1:17. The court may set a final date for service of jury demands. Leave to file amended pleadings will not extend the time for serving and filing a jury demand unless the order granting leave to amend expressly so states.

(c) *Specification of Issues.* In the demand a party may specify the issues which the party wishes so tried; otherwise the party is deemed to have demanded trial by jury for all the issues so

triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) *Waiver*. Absent leave of court for good cause shown, the failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury.

* * *

Rule 3:22. Trial by Jury or by the Court.

(a) *By Jury*. When trial by jury has been demanded as provided in Rule 3:21, the action will be designated upon the docket as a jury action. The trial of all issues so demanded must be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury; or (2) the court upon motion or of its own initiative finds that a right of trial by jury on some or all of those issues does not exist under applicable law.

(b) *By the Court.* Except as otherwise provided in this Rule, issues not demanded for trial by jury as provided in Rule 3:21, and issues as to which a right of trial by jury does not exist, will be tried by the court.

(c) *Statutory Jury Rights in Certain Equitable Claims.*

(1) In an equitable claim where no right to a jury trial otherwise exists, where impaneling of an advisory jury pursuant to Code § 8.01-336(E) to hear an issue will be helpful to the court concerning disputed fact issues, such a jury may be seated. Decision on such claims and issues will be made by the judge.

(2) Where a jury trial on a defendant's plea in an equitable claim is authorized under Code § 8.01-336(D), trial of the issues presented by the plea will be by a jury whose verdict on those issues has the same effect as if trial by jury had been a matter of right.

(d) *Party Consent to Jury*. As to any claim not triable of right by a jury, the court, with the consent of the parties, may (i) order trial of any claim or issue with an advisory jury or, (ii) a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(e) *Trial by Mixed Jury and Non-Jury Claims.* In any case when there are both jury and non-jury issues to be tried, the court must adopt trial procedures and a sequence of proceedings to assure that all issues properly heard by the jury are decided by it, and applicable factual determinations by the jury will be used by the judge in resolving the non-jury issues in the case.

* * *

Rule 3:22A. Examination of Prospective Trial Jurors (Voir Dire).

(a) *Examination.* After the prospective jurors are sworn on the voir dire, the court must question them individually or collectively to determine whether anyone:

* * *

(b) *Challenge for Cause*. The court, on its own motion or following a challenge for cause, may excuse a prospective juror if it appears the juror is not qualified, and another will be drawn or called and placed in the juror's stead for the trial of that case.

* * *

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. 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 3:24. Appeal of Orders of Quarantine or Isolation regarding Communicable Diseases of Public Health Threat.

A. Where an order of quarantine has been issued relating to a communicable disease of public health threat pursuant to § 32.1-48.09, the provisions of § 32.1-48.010, and related sections of Article 3.02 of Title 32.1 of the Code of Virginia, govern any appeal of such order to the appropriate circuit court.

B. Where an order of isolation has been issued relating to a communicable disease of public health threat pursuant to § 32.1-48.012, the provisions of § 32.1-48.013 and related sections of Article 3.02 of Title 32.1 of the Code of Virginia govern any appeal of such order to the appropriate circuit court.

C. The circuit court must hold hearings under this rule in a manner to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, witnesses, and the general public. To this end, the circuit court may take measures including, but not limited to, ordering the hearing to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment.

* * *

Rule 3:25. Claims for Attorney's Fees.

* * *

B. *Demand.* A party seeking to recover attorney's fees must include a demand therefor in the complaint filed pursuant to Rule 3:2, in a counterclaim filed pursuant to Rule 3:9, in a cross-claim filed pursuant to Rule 3:10, in a third-party pleading filed pursuant to Rule 3:13, or in a responsive pleading filed pursuant to Rule 3:8. The demand must identify the basis upon which the party relies in requesting attorney's fees.

* * *

D. *Procedure.* Upon the motion of any party, the court must, or upon its own motion, the court may, in advance of trial, establish a procedure to adjudicate any claim for attorney's fees.

* * *

Rule 3A:1. Scope.

These Rules govern criminal proceedings in circuit courts and juvenile and domestic relations district courts (except proceedings concerning a child in a juvenile and domestic relations district court) and before the magistrates defined in Rule 3A:2 except for cases which have been returned to the general district court. Special statutes applicable to practices and procedures in juvenile and domestic relations district courts are incorporated herein by this reference and in such cases prevail over the general rule set forth in Part 3A.

* * *

Rule 3A:2. Purpose and Interpretation; Definitions.

(a) *Purpose and Interpretation.* These Rules are intended to provide for the just determination of criminal proceedings. They should be interpreted so as to promote uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. Errors, defects, irregularities or variances that do not affect substantive rights do not constitute reversible error.

(b) *Definitions.* Except as otherwise expressly provided in this Part Three A or unless the context otherwise requires:

* * *

(6) "Recognizance" means an undertaking, with or without surety or other security, made before a magistrate to perform one or more acts - for example, to appear in court. A recognizance may be written or oral but, if oral, must be evidenced by a memorandum signed by the magistrate.

(7) Writings or memoranda under these Rules, and any required signatures or sworn verifications, are valid in the form of electronic files or digital images as provided in Rule 1:17.

* * *

Rule 3A:3. The Complaint.

The complaint must consist of sworn statements of a person or persons of facts relating to the commission of an alleged offense. The statements must be made upon oath before a magistrate empowered to issue arrest warrants. The magistrate may require the sworn statements

to be reduced to writing and signed if the complainant is a law- enforcement officer, but must require the sworn statements to be reduced to writing if the complainant is not a law enforcement officer.

* * *

Rule 3A:4. Arrest Warrant or Summons

(a) *Issuance.* More than one warrant or summons may issue on the same complaint. A warrant may be issued by a judicial officer if the accused fails to appear in response to a summons.

(b) *Form of Summons.* A summons, whether issued by a magistrate or a law- enforcement officer, must command the accused to appear at a stated time and place before a court of appropriate jurisdiction in the county, city or town in which the summons is issued. It must (i) state the name of the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (ii) describe the offense charged and state whether the offense is a violation of state, county, city or town law, and (iii) be signed by the magistrate or the law-enforcement office, as the case may be.

(c) *Execution and Return. If* a warrant has been issued but the officer does not have the warrant in his possession at the time of the arrest, he must (i) inform the accused of the offense charged and that a warrant has been issued, and (ii) deliver a copy of the warrant to the accused as soon thereafter as practicable.

* * *

Rule 3A:5. The Grand Jury

(a) *Who May Be Present.* Only the grand jurors and the witness under examination and, if directed by the court, an interpreter may be present during the hearing of evidence by a grand jury. Only the grand jurors may be present during their deliberations and voting.

(b) *Secrecy*. No obligation of secrecy may be imposed upon any person except in accordance with law.

(c) *Finding and Return of Indictment.* The indictment must be endorsed "A True Bill" or "Not a True Bill" and signed by the foreman. The indictment must be returned by the grand jury in open court.

(d) *Motion to Dismiss.* A motion to dismiss the indictment may be based on constitutional objections to the array or on the lack of legal qualification of an individual juror.

* * *

Rule 3A:6. The Indictment and the Information

(a) *Contents.* The indictment or information, in describing the offense charged, must cite the statute or ordinance that defines the offense or, if there is no defining statute or ordinance, prescribes the punishment for the offense. Error in the citation of the statute or ordinance that defines the offense or prescribes the punishments therefor, or omission of the citation, will not be grounds for dismissal of an indictment or information, or for reversal of a conviction, unless the court finds that the error or omission prejudiced the accused in preparing his defense.

* * *

(d) *Form.* The indictment or information need not contain a formal commencement or conclusion. The return of an indictment must be signed by the foreman of the grand jury, and the information must be signed by the Commonwealth's attorney.

* * *

3A:7. Capias or Summons Upon Indictment or Information

(a) *Form.*

(1) Capias. The form of the capias must be the same as that provided for a warrant except that it must be signed by the clerk and must state that an indictment or information has been filed against the accused.

(2) Summons. The summons must be in the same form as the capias except that it must summons the accused to appear before the court at a stated time and place.

(b) *Execution and Return.*

(1) Execution. The capias must be executed as provided in Rule 3A:4(c).

(2) Return. The officer executing a capias or summons must endorse the date of execution thereon and make return thereof to the court that issued the capias or summons. At the request of the Commonwealth's attorney made at any time while the indictment or information is pending, a capias returned unexecuted and not cancelled or a summons returned unexecuted or a duplicate thereof may be delivered by the clerk to any authorized person for execution.

* * *

Rule 3A:8. Pleas

(a) *Pleas by a Corporation.* A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

(b) *Determining Voluntariness of Pleas of Guilty or Nolo Contendere.*

(1) A circuit court may not accept a plea of guilty or nolo contendere to a felony charge without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea.

(2) A circuit court may not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

(c) *Plea Agreement Procedure.*

(1) The attorney for the Commonwealth and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon entry by the defendant of a plea of guilty, or a plea of nolo contendere, to a charged offense, or to a lesser or related offense, the attorney for the Commonwealth will do any of the following:

(A) Move for nolle prosequi or dismissal of other charges;

(B) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request will not be binding on the court;

(C) Agree that a specific sentence is the appropriate disposition of the case.

In any such discussions under this Rule, the court may not participate.

(2) If a plea agreement has been reached by the parties, it must, in every felony case, be reduced to writing, signed by the attorney for the Commonwealth, the defendant, and, in every

case, his attorney, if any, and presented to the court. The court must require the disclosure of the agreement in open court or, upon a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (c) (1) (A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report. If the agreement is of the type specified in subdivision (c) (1) (B), the court must advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw his plea, unless the Commonwealth fails to perform its part of the agreement. In that event, the defendant has the right to withdraw his plea.

(3) If the court accepts the plea agreement, the court must inform the defendant that it will embody in its judgment and sentence the disposition provided for in the agreement.

(4) If the agreement is of the type specified in subdivision (c) (1) (A) or (C) and if the court rejects the plea agreement, the court must inform the parties of this fact, and advise the defendant personally in open court or, on a showing of good cause, in camera, that the court will not accept the plea agreement. Thereupon, neither party will be bound by the plea agreement. The defendant has the right to withdraw his plea of guilty or plea of nolo contendere and the court must advise the defendant that, if he does not withdraw his plea, the disposition of the case may be less favorable to him than that contemplated by the plea agreement; and the court must further advise the defendant that, if he chooses to withdraw his plea of guilty or of nolo contendere, his case will be heard by another judge, unless the parties agree otherwise.

(5) Upon rejecting a plea agreement, a judge must immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

(6) Except as otherwise provided by law, evidence of a plea of guilty later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged, or any other crime, or of statements made in connection with and relevant to any of the foregoing pleas or offers, is not admissible in the case-in-chief in any civil or criminal proceeding against the person who made the plea or offer. But evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, a plea of nolo contendere, or any offer to plead guilty or nolo contendere to the crime charged or to any other crime, is admissible in any criminal proceeding for perjury or false statement, if the statement was made by the defendant under oath and on the record. In the event that a plea of guilty or a plea of nolo contendere is withdrawn in accordance with this Rule, the judge having received the plea may take no further part in the trial of the case, unless the parties agree otherwise.

* * *

Rule 3A:9. Pleadings and Motions for Trial; Defenses and Objections.

(a) *Pleadings and Motions*. Pleadings in a criminal proceeding are the indictment, information, warrant or summons on which the accused is to be tried and the plea of not guilty, guilty or nolo contendere. Defenses and objections made before trial that heretofore could have been made by other pleas or by demurrers and motions to quash must be made only by motion to dismiss or to grant appropriate relief, as provided in these Rules.

(b) *The Motion Raising Defenses and Objections.*

(1) Defenses and Objections That Must Be Raised Before Trial. Defenses and objections based on defects in the institution of the prosecution or in the written charge upon which the accused is to be tried, other than that it fails to show jurisdiction in the court or to charge an offense, must be raised by motion made within the time prescribed by paragraph (c) of this Rule.

The motion must include all such defenses and objections then available to the accused. Failure to present any such defense or objection as herein provided constitutes a waiver thereof. Lack of jurisdiction or the failure of the written charge upon which the accused is to be tried to state an offense may be noticed by the court at any time during the pendency of the proceeding.

(2) Defenses and Objections That May Be Raised Before Trial. In addition to the defenses and objections specified in subparagraph (b) (1) of this Rule, any defense or objection that is capable of determination without the trial of the general issue may be raised by motion before trial. Failure to present any such defense or objection before the jury returns a verdict or the court finds the defendant guilty constitutes a waiver thereof.

(3) Form of Motion. Any motion made before trial must be in writing if made in a circuit court, unless the court for good cause shown permits an oral motion. A motion must state with particularity the grounds or grounds on which it is based.

(4) Hearing on Motion. A motion before trial raising defenses or objections must be determined before the trial unless the court orders that it be deferred for determination at the trial of the general issue. An issue of fact must be heard and determined by the court, unless a jury trial is required by constitution or statute.

(5) Effect of Determination. If a motion is determined adversely to the accused, his plea may stand or he may plead over or, if the accused has not previously pleaded, he must be permitted to plead. The motion need not be renewed if the accused properly saves the point for the purpose of appeal when the court first determines the motion.

(c) *Time of Filing Notice or Making Motion.* A motion referred to in subparagraph (b) (1) must be filed or made before a plea is entered and, in a circuit court, at least 7 days before the day fixed for trial, or, if the motion raises speedy trial or Double Jeopardy grounds as specified in Code § 19.2-266.2 A (ii), at such time prior to trial as the grounds for the motion or objection arise, whichever occurs last. A copy of such motion must, at the time of filing, be submitted to the judge of the circuit court who will hear the case, if known.

(d) *Relief From Waiver*. For good cause shown the court may grant relief from any waiver provided for in this Rule.

* * *

Rule 3A:10. Trial Together of More Than One Accused or More Than One Offense.

(a) *More Than One Accused - Joinder of Defendants*. On motion of the Commonwealth, for good cause shown, the court should order persons charged with participating in contemporaneous and related acts or occurrences or in a series of acts or occurrences constituting an offense or offenses to be tried jointly unless such joint trial would constitute prejudice to a defendant.

(b) *More Than One Accused - Severance of Defendants.* If the court finds that a joint trial would constitute prejudice to a defendant, the court must order severance as to that defendant or provide such other relief as justice requires.

* * *

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.

* * *

(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 are subject to the provisions of subparts (c)(1) and (c)(2) of this Rule regarding redaction and restrictions on dissemination of designated material.

* * *

(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.

(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.

* * *

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

* * *

(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.

(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*. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the Commonwealth the court may permit the Commonwealth to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court denies discovery or inspection following a showing in camera, the entire text of the Commonwealth's statement must be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the accused.

(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:12. Subpoena.

(a) *For Attendance of Witnesses*. — (1) A subpoena for the attendance of a witness to testify before a court not of record may be issued by the judge, clerk, magistrate, attorney for the Commonwealth or by the attorney for the accused.

(2) A subpoena for the attendance of a witness to testify before a circuit court or a grand jury may be issued by the clerk or attorney for the Commonwealth and, for the attendance of a witness to testify before a circuit court, by the attorney for the accused as well.

(3) A subpoena must (i) be directed to an appropriate officer or officers, (ii) name the witness to be summoned, (iii) state the name of the court and the title, if any, of the proceeding, (iv) command the officer to summon the witness to appear at the time and place specified in the subpoena for the purpose of giving testimony, and (v) state on whose application the subpoena was issued.

(4) No subpoena or subpoena duces tecum may be issued in any criminal case or proceeding, including any proceeding before any grand jury, which is (i) directed to a member of the bar of this Commonwealth or any other jurisdiction, and (ii) compels production or testimony concerning any present or former client of the member of the bar, unless the subpoena request has been approved in all specifics, in advance, by a judge of the circuit court wherein the subpoena is requested after reasonable notice to the attorney who is the subject of the proposed subpoena. The proceedings for approval may be conducted in camera, in the judge's discretion, and the judge may seal such proceedings. Such subpoena request must be made by the attorney

for the Commonwealth for the jurisdiction involved, either on motion of the attorney for the Commonwealth or upon request to the attorney for the Commonwealth by the foreman of any grand jury. An accused may also initiate such a subpoena request.

(b) *For Production of Documentary Evidence and of Objects Before a Circuit Court.* — (1) Upon notice to the adverse party and on affidavit by the party applying for the subpoena that the requested writings or objects are material to the proceedings and are in the possession of a person not a party to the action, the judge or the clerk may issue a subpoena duces tecum for the production of writings or objects described in the subpoena. Such subpoena may command either (i) that the person to whom it is addressed must appear with the items described either before the court or the clerk, or (ii) that such person must deliver the items described to the clerk. The subpoena may direct that the writing or object be produced at a time before the trial or before the time when it is to be offered in evidence. The term "material to the proceedings" as used in this subpart (b) does not require that the subpoenaed writings or objects be admissible at trial or that they be exculpatory.

(2) Any subpoenaed writings and objects, regardless of which party sought production of them, must be available for examination and review by all parties and counsel. Subpoenaed writings or objects will be received by the clerk and must be placed under seal and will not be open for examination and review except by the parties and counsel unless otherwise directed by the court. The clerk must adopt procedures to ensure compliance with this subpart of the Rule. Until such time as the subpoenaed materials are admitted into evidence they must remain under seal unless the court orders that some or all of such materials be unsealed.

(3) Where subpoenaed writings and objects are of such nature or content that disclosure to other parties would be unduly prejudicial, the court, upon written motion and notice to all parties, may grant such relief as it deems appropriate, including: (i) quashing the subpoena in whole or in part, (ii) prohibiting or limiting disclosure, removal and copying, (iii) redacting confidential or immaterial information, (iv) prohibiting or restricting further disclosure by parties to the litigation, and/or (v) ordering return of all copies of the subpoenaed material upon completion of the litigation. Such motions may be brought by a party to the litigation, by the entity or individual subpoenaed, or by the entity or individual who is the subject of the subpoenaed material.

(4) If a subpoena requires the production of information that is stored in an electronic format, the person to whom it is addressed must produce a tangible copy of the information. If a tangible copy cannot be reasonably produced, the subpoenaed person must permit the parties to review the information on a computer or by other electronic means during normal business hours, provided that the information can be accessed and isolated. If a tangible copy cannot reasonably be produced and the information is commingled with information other than that requested in the subpoena and cannot reasonably be isolated, the person to whom the subpoena is addressed may file a motion to quash the subpoena or a motion for limitations on disclosure or other appropriate relief.

(c) *Service and Return.* — A subpoena may be executed anywhere in the Commonwealth by an officer authorized by law to execute the subpoena in the place where it is executed. The officer executing a subpoena must make return thereof to the court named in the subpoena.

(d) *Contempt.* — Failure by any person without adequate excuse to obey a properly served subpoena may be deemed a contempt of the court to which the subpoena is returnable.

(e) *Recognizance of a Witness.* — If it appears that the testimony of a person is material in any criminal proceeding, a judicial officer may require him to give a recognizance for his appearance.

(f) *Photocopying of Subpoenaed Documents.* — Subject to the provisions of subpart (b) of this Rule, removal and photocopying of subpoenaed documents by any party or counsel must be permitted. The court will direct a procedure for removal, photocopying and return of such documents.

(g) *Undue Burden.* — Where subpoenaed material is so voluminous that its production would place an undue burden on the subpoenaed entity, the court may order that the subpoena duces tecum be satisfied by making the writings and documents reasonably available for inspection by the requesting party, subject to review by the court.

(h) *Virginia Freedom of Information Act.* — In accordance with Virginia Code § 2.2-3703.1, the provisions of the Virginia Freedom of Information Act do not govern a court's determinations with regard to the applicability of this Rule.

(i) *Subpoena Issued to a Party.* — In a criminal proceeding, a subpoena duces tecum may not be used to obtain material from a party. Nor may a subpoena duces tecum be used to obtain material from an agency or entity participating in, or charged with responsibility for, the investigation or prosecution of a criminal case such that the agency and its employees are deemed agents of the Commonwealth. A subpoenaed agency or entity claiming party status may move for relief from a subpoena on that basis and – if the court quashes the subpoena – discovery will be governed by Rule 3A:11 and orders issued pursuant to that Rule. For purposes of this rule, the Department of Forensic Science and the Division of Laboratory Consolidated Services are not parties.

(j) *In Camera Review.* — In determining whether a protective order should issue, or other relief be granted, a court may in its discretion review subpoenaed material in camera.

(k) *Confidentiality Provisions of Code §19.2-11.2*. — Where the confidentiality provisions of Virginia Code §19.2-11.2 apply, any material produced pursuant to a subpoena duces tecum must be treated in accordance with the provisions of that statute.

(l) *Health Records Privacy.* — Any subpoena duces tecum seeking health records, or records concerning the provision of health services, as those terms are defined by Virginia Code § 32.1-127. l :03, are subject to the procedures and requirements of § 32.1-127.1:03(H), including the provisions for objecting to disclosure by a motion to quash.

(m) *Decision of the Court.* — A court must state on the record, or in writing, its reasons for making a decision pursuant to this Rule.

* * *

Rule 3A:13. Trial by Jury or by Court.

(a) *Right to Jury; Duty of Court in Nonjury Trial*. The accused is entitled to a trial by jury only in a circuit court on a plea of not guilty.

(b) *Waiver of Jury in Circuit Court*. If an accused who has pleaded not guilty in a circuit court consents to trial without a jury, the court may, with the concurrence of the Commonwealth's attorney, try the case without a jury. The court may determine before trial that the accused's consent was voluntarily and intelligently given, and his consent and the concurrence of the court and the Commonwealth's attorney must be entered of record.

* * *

Rule 3A:14. Trial Jurors.

(a) *Examination.* After the prospective jurors are sworn on the voir dire, the court must question them individually or collectively to determine whether anyone:

(1) Is related by blood, adoption, or marriage to the accused or to a person against whom the alleged offense was committed;

* * *

Thereafter, the court, and counsel as of right, may examine on oath any prospective juror and ask any questions relevant to the qualifications as an impartial juror. A party objecting to a juror may introduce competent evidence in support of the objection.

(b) *Challenge for Cause.* The court, on its own motion or following a challenge for cause, may excuse a prospective juror if it appears the juror is not qualified, and another must be drawn or called and placed in the juror's stead for the trial of that case.

* * *

Rule 3A:14.1. Confidentiality of Juror Personal Information.

(a) *Motion for Order Regulating Disclosure of Jurors' Personal Information.* — As provided in Code § 19.2-263.3, on motion of any party or its own motion, and only upon a finding of good cause sufficient to warrant departure from the norm of open proceedings, the court may issue an order which may include provisions:

(1) regulating the disclosure of the names and home addresses of jurors or prospective jurors in a criminal trial. The court may limit or preclude dissemination of such information to particular persons, but in no event may such information be denied to counsel for either party or a pro se defendant; and/or

(2) requiring that during the course of the trial, counsel for the parties, and the jurors themselves, must refer to jurors by number and not by name.

Under this Rule, a finding of "good cause" includes, but is not limited to, a determination by the court in a particular case that if personal information of jurors or prospective jurors is disclosed there is a reasonable possibility of bribery, tampering, physical injury, harassment, intimidation of a juror, or any other material interference with the proper discharge of the jury's functions, such as a reasonably perceived threat to the jury's safety, well-being, or capacity to properly focus upon and perform its trial and deliberative duties.

(b) *Additional Personal Information.* — Additional personal information of a juror who has been impaneled in a criminal case may be released only to the counsel for the defendant, a pro se defendant, and the attorney for the Commonwealth.

* * *

Rule 3A:15. Motion to Strike or to Set Aside Verdict; Judgment of Acquittal or New Trial.

* * *

(c) *Judgment of Acquittal or New Trial.* The court must enter a judgment of acquittal if it strikes the evidence or sets aside the verdict because the evidence is insufficient as a matter of law to sustain a conviction. The court must grant a new trial if it sets aside the verdict for any other reason.

* * *

Rule 3A:16. Instructions.

(a) *Giving of Instructions*. In a felony case, the instructions must be reduced to writing. In all cases the court must instruct the jury before arguments of counsel to the jury.

(b) *Proposed Instructions.* If directed by the court the parties must submit proposed instructions to the court at such reasonable time before or during the trial as the court may specify and, whether or not proposed instructions have been submitted earlier, the parties may submit proposed instructions at the conclusion of all the evidence.

(c) *Objections.* Before instructing the jury, the court must advise counsel of the instructions to be given and must give counsel the opportunity to make objections thereto. Objections must be made out of the presence of the jury, and before the court instructs the jury unless the court grants leave to make objections at a later time.

(d) *Alternative Forms of Verdicts; Separate Verdicts.* The court may submit alternate forms of verdicts to the jury. The jury must be instructed to return a separate verdict on each count of an indictment or presentment.

* * *

Rule 3A:17. Jury Verdicts.

(a) *Return.* In all criminal prosecutions, the verdict must be unanimous, in writing and signed by the foreman, and returned by the jury in open court.

* * *

(d) *Poll of Jury.* When a verdict is returned, the jury must be polled individually at the request of any party or upon the court's own motion. If upon the poll, all jurors do not agree, the jury may be directed to retire for further deliberations or may be discharged.

* * *

Rule 3A:17.1. Proceedings in Bifurcated Jury Trials of Non-Capital Felonies and Class 1 misdemeanors.

(a) *Application.* This Rule applies in cases of trial by jury upon a finding that the defendant is guilty of a non-capital felony or a Class 1 misdemeanor.

(b) *Bifurcated Proceedings.* In any jury trial in which the jury returns a verdict of guilty to one or more non-capital felony offenses, or Class 1 misdemeanor a separate proceeding limited to the ascertainment of punishment must be held as soon as practicable before the same jury.

(c) *Instruction at Guilt Phase.* At the conclusion of all of the evidence in the guilt phase of the trial, the court must instruct the jury as to punishment with respect to any Class 2, 3 or 4 misdemeanor being tried in the same proceeding or any lesser-included Class 2, 3 or 4 misdemeanor of any charged felony offense which may be properly considered by the jury. The jury may not be instructed until the punishment phase with reference to the punishment for any charged or lesser-included felony offense or Class 1 misdemeanor.

(d) *Opening Statements at Penalty Phase.* Both the Commonwealth and the defense are entitled if they choose, to make an opening statement prior to the presentation of any evidence to the jury relevant to the penalty to be imposed. The Commonwealth must give its statement first.

(e) *Presentation of Evidence at Penalty Phase.* If the jury convicts the defendant of one or more non-capital felony offenses, or a Class 1 misdemeanor the penalty phase must proceed in the following order:

(1) The Commonwealth may present any victim impact testimony pursuant to § 19.2-295.3 and may present the defendant's prior criminal history, including prior convictions and the punishments imposed, by certified, attested, or exemplified copies of the final order(s) as provided by law. As a prerequisite to the introduction of such evidence, the Commonwealth must have advised the defense, in accord with the requirements of law, of its intention to introduce such evidence.

(2) The defense may introduce relevant admissible evidence related to punishment. The defense must have the opportunity to present such evidence irrespective of whether or not the Commonwealth presents evidence of previous criminal history.

(3) The Commonwealth may introduce relevant admissible evidence related to punishment in rebuttal.

(4) The defense may introduce relevant, admissible evidence related to punishment in rebuttal.

(f) *Closing Arguments at Penalty Phase*. Both the Commonwealth and defense are entitled to make a closing argument on the subject of punishment if they elect to do so. The Commonwealth must be given the opportunity to argue first, followed by the defense. Rebuttal argument may be made by the Commonwealth.

(g) *Change of Plea*. The accused may enter a plea of guilty to the whole of the indictment at any time until the jury returns a verdict on the issue of the defendant's guilt or innocence.

(h) *Non-Unanimous Jury at the Penalty Phase*. Should the jury fail to reach unanimous agreement as to punishment on any charge for which it returned a verdict of guilty, the court must impanel a different jury to ascertain punishment, unless the defendant, the attorney for the Commonwealth and the court agree that the court may fix punishment in the manner provided in Section 19.2-257, for the offense upon which the jury unanimously returned a verdict of guilty.

* * *

Rule 3A:18. Death Penalty

The trial of capital cases must proceed in accordance with the provisions of Article 4.1 of Chapter 15 of Title 19.2 and, except to the extent conflicting therewith, the provisions of this Part Three A are applicable thereto.

Except for good cause shown, the separate proceeding provided for in Section 19.2-264.3 C must commence as if it were a continuation of the original trial and continue from day to day until concluded.

* * *

Rule 3A:19. Appeals.

(a) *Appeal From Conviction in a Circuit Court.* See Part Five of these Rules.

(b) *Appeal From Conviction in a Juvenile and Domestic Relations District Court.* The accused or his counsel must advise the judge or clerk of the juvenile and domestic relations district court, within 10 days after conviction, of his intention to appeal. The appeal will be noted on the warrant or summons and, if the accused does not withdraw his appeal before the expiration of the 10-day period, the papers will be filed with the circuit court at the end of such period. Paying a fine or beginning to serve a sentence does not impair the right to appeal.

* * *

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 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 delivery or mailing.

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

* * *

Rule 3A:23. Electronic Filing.

In any circuit court which has established an electronic filing system for criminal cases pursuant to Rule 1:17:

* * *

(b) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other instruments in an Electronically Filed Case must be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party must notify the clerk of court that the original document will be retained.

(1) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(e)(5).

(2) Any check or other negotiable instrument.

(3). Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.

(4) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.

(5) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.

* * *

Rule 3A:24. Special Rule Applicable to Post-Conviction Proceedings: Circuit Court Orders Denying Petitions for Writs of Habeas Corpus.

Any Order of a circuit court denying a petition for a writ of habeas corpus must include findings of fact and conclusions of law as required by Code § 8.01-654(B)(5). The order must identify the substance of the claims asserted in the petition, and state the specific reason for the denial of each claim. Any such order may adopt a trial court's written opinion explaining its decision or a transcribed explanation of the court's ruling from the bench; however, an order may not deny the petition without explanation, or rely upon incorporation by reference of a pleading filed in the case.

* * *

Rule 3B:2. Uniform Fine Schedule.

For any offense listed below, whether prescribed by the specified State statute or by a parallel local ordinance adopted pursuant to the authority granted in Virginia Code § 46.2-1300, a driver may enter a written appearance, waiver of court hearing, plea of guilty, and pay fines and costs. For traffic offenses not listed below, a court hearing is required. Nothing in this Rule affects bonding procedures for those offenses not listed below. Likewise, nothing in this Rule should be construed to alter the operation of or the penalties prescribed pursuant to §§ 46.2-1220 through 46.2-1230.

This schedule is applied uniformly throughout the Commonwealth, and a clerk or magistrate may not impose a fine different from the amounts shown here. Costs must be paid in accordance with the provisions of the Code of Virginia or any rules or regulations promulgated thereunder. This schedule does not restrict the fine a judge may impose for an offense listed here in any case for which there is a court hearing.

* * *

Rule 3C:2. Uniform Fine Schedule.

Any person charged with any offense listed below may enter a written appearance, waiver of court hearing, plea of guilty, and pay fines and costs.

This schedule is applied uniformly throughout the Commonwealth, and a clerk or magistrate may not impose a fine different from the amounts shown here. Costs must be paid in accordance with the provisions of the Code of Virginia or any rules or regulations promulgated thereunder. The schedule does not restrict the fine a judge may impose for an offense listed here in any case for which there is a court hearing.

* * *

Rule 4:0. Application of Part Four.

(a) The Rules in this Part Four apply in civil cases in the circuit courts. They also apply to proceedings for separate maintenance, divorce or annulment of marriage, for the exercise of the right of eminent domain, and for writs of habeas corpus or in the nature of coram nobis as provided in Rule 4:1(b)(5). Whenever in this Part Four the word "action" appears it means a civil case, whether the claims arise at law or in equity.

(b) No provision of any of the Rules in this Part Four affects the practice of taking evidence at trial in any action; but such practice, including that of generally taking evidence ore tenus in actions upon claims arising at law and of generally taking evidence by deposition in equitable claims, continues unaffected hereby.

* * *

Rule 4:1. General Provisions Governing Discovery.

* * *

(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.

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

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

(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:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to

which the expert is expected to testify and a summary of the grounds for each opinion. (ii) A party may depose any person who has been identified as an expert whose opinion may be presented at trial, subject to the provisions of subdivision (b)(4)(C) of this Rule concerning fees and expenses. (iii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this Rule, concerning fees and expenses as the court may deem appropriate.

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

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

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

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

* * *

(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.

* * *

(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. If a request, response, or objection is not signed, it will be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party is not be obligated to take any action with respect to it until it is signed.

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 4:2. Depositions Before Action or Pending Appeal.

(a) *Before Action.*

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of this Commonwealth may file a verified petition in the circuit court in the county or city of the residence of any expected adverse party. The petition must be entitled in the name of the petitioner and must show: (A) that the petitioner expects to be a party to an action cognizable in a court of this Commonwealth but is presently unable to bring it or cause it to be brought; (B) the subject matter of the expected action and his interest therein; (C) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (D) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (E) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and must ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner must thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice must be served either within the Commonwealth in the manner provided for service of a complaint or without the Commonwealth in the manner provided by Code § 8.01-320; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and may appoint, for persons not so served, an attorney who will represent them, and, in case they are not otherwise represented, may cross- examine the deponent. If any expected adverse party is a person under a disability, a guardian ad litem must be appointed to attend on his behalf.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it will make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions will be taken upon oral examination or written interrogatories. The

depositions may then be taken in accordance with these Rules. The attendance of witnesses may be compelled by subpoena, and the court may make orders of the character provided for by Rules 4:9 and 4:10. For the purpose of applying these Rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending will be deemed to refer to the court in which the petition for such deposition was filed.

(4) Cost. The cost of such depositions must be paid by the petitioner, except that the other parties in interest who produce witnesses on their behalf or who make use of witnesses produced by others must pay their proportionate part of the cost of the transcribed testimony and evidence taken or given on behalf of each of such parties.

(5) Filing. The depositions must be certified as prescribed in Rule 4:5 and then returned to and filed by the clerk of the court which ordered its taking.

(6) Use of Deposition. If a deposition to perpetuate testimony is taken under these Rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a court of this Commonwealth in accordance with the provisions of Rule 4:1.

(b) *Pending Appeal.* If an appeal has been taken from a judgment of a court of record or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in that court. In such case the party who desires to perpetuate the testimony may make a motion in the court in which the judgment was rendered for leave to take the depositions, upon the same notice and service thereof as if the action was pending therein. The motion must show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make orders of the character provided for by Rules 4:9 and 4:10, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions taken in pending actions.

(c) *Perpetuation of Testimony*. This Rule provides the exclusive procedure to perpetuate testimony.

* * *

Rule 4:3. Persons Before Whom Depositions May Be Taken.

* * *

(c) *No Commission Necessary.* No commission by the Governor of this Commonwealth is necessary to take a deposition whether within or without this Commonwealth.

(d) *In Foreign Countries.* In a foreign state or country depositions must be taken

(1) before any American minister plenipotentiary, charge d'affaires, secretary of embassy or legation, consul general, consul, vice-consul, or commercial agent of the United States in a foreign country, or any other representative of the United States therein, including commissioned officers of the armed services of the United States, or (2) before the mayor, or other magistrate of any city, town or corporation in such country, or any notary therein.

(e) *Certificate When Deposition Taken Outside Commonwealth.* Any person before whom a deposition is taken outside this Commonwealth must certify the same with his official seal annexed; and, if he have none, the genuineness of his signature must be authenticated by some officer of the same state or country, under his official seal, except that no seal is required of a

commissioned officer of the armed services of the United States, but his signature must be authenticated by the commanding officer of the military installation or ship to which he is assigned.

* * *

Rule 4:4. Stipulations Regarding Discovery.

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions and (2) modify the procedures provided by these Rules for other methods of discovery, including discovery of electronically stored information. Stipulations may include agreements with non-party witnesses, consistent with Code § 8.01-420.4. Such stipulations must be filed with the deposition or other discovery completed pursuant thereto.

* * *

Rule 4:5. Depositions Upon Oral Examination.

* * *

(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 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.

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

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

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

(6) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named must designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated must testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules.

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

(c) *Examination and Cross-Examination; Record of Examination; Oath; Objections.*

(1) Unless the parties agree otherwise, examination of a witness at deposition is begun by the party noticing the deposition. The officer before whom the deposition is to be taken must put the witness on oath and must personally, or by someone acting under his direction and in his presence, record the testimony of the witness. If requested by one of the parties, the testimony must be transcribed. The preservation or waiver of objections 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.

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

* * *

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.

(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.

* * *

Rule 4:6A. Number of Depositions.

There is no limit on the number of witnesses whose depositions may be taken by a party except by order of the court for good cause shown.

* * *

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:

* * *

(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 and duly filed 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.

* * *

(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 4:7A. Audio-Visual Depositions.

* * *

(b) *Procedure.*

(1) The deposition must begin with an oral or written statement on camera which includes (i) each operator's name and business address or, if applicable, the identity of the video conferencing or teleconferencing proprietor and locations participating in the video conference or teleconference; (ii) the name and business address of the operator's employer; (iii) the date, time and place of the deposition; (iv) the caption of the case; (v) the name of the witness; (vi) the party on whose behalf the deposition is being taken; (vii) with respect to video conferencing or teleconferencing, the identities of persons present at the deposition and the location of each such person; and (viii) any stipulations by the parties; and

(2) In addition, all counsel present on behalf of any party or witness must identify themselves on camera. The oath for witnesses must be administered on camera. If the length of a deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit must be announced on camera. At the conclusion of a deposition, a statement must be made on camera that the deposition is concluded. A statement may be made on camera setting forth any stipulations made by counsel concerning the custody of the audio-visual recording and exhibits or other pertinent matters; and

(3) All objections must be made as in the case of stenographic depositions.

(c) *Editing.* No audio-visual deposition may be edited except pursuant to a stipulation of the parties or pursuant to order of the court and only as and to the extent directed in such stipulation and/or order. In any case where the parties stipulate or the court orders the audio-visual recording to be edited prior to its use, the original recording may not be altered and the editing must be done on a copy or copies.

(d) *Recording and Transcription.*

(1) Any deposition may be recorded by audio-visual means without a stenographic record. The audio-visual recording is an official record of the deposition. A transcript prepared by a court reporter will also be deemed an official record of the deposition. Any party may make, at its own expense, a simultaneous stenographic or audio record of the deposition. Upon request and at his own expense, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

(2) If an appeal is taken in the case, the appellant must cause to be prepared and filed with the clerk a written transcript of that portion of an audio- visual deposition made a part of the record in the trial court to the extent germane to an issue on appeal. The appellee may designate additional portions to be so prepared by the appellant and filed.

(e) *Use.* An audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

(f) *Submission to the Witness; Changes; Signing. The* provisions of Rule 4:5(e) do not apply to an audio-visual deposition. The other provisions of Rule 4:5 apply to the extent practicable.

(g) *Filing.* Unless otherwise stipulated by the parties or ordered by the court, the original audio-visual recording of a deposition, any copy edited pursuant to stipulation or an order of the court, and exhibits may be filed only in accord with Rule 4:5(f)(1).

* * *

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.

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

(d) *Answers.* Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served must serve a copy of the answers, and objections if any, within 21 days after the service of the interrogatories, except that a defendant may serve answers or objections within 28 days after service of the bill of complaint or motion for judgment upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 4:12(a) with respect to any objection to or other failure to answer an interrogatory.

(e) *Scope; Use*. Interrogatories may relate to any matters which can be inquired into under Rule 4:1(b), and the answers may be used to the extent permitted by the rules of evidence and for

the purposes of Rule 3:20. Only such interrogatories and the answers thereto as are offered in evidence will become a part of the record.

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

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

(g) *Limitation on Interrogatories.* No party may serve upon any other party, at any one time or cumulatively, more than thirty written interrogatories, including all parts 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.

* * *

(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. 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 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 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 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.

(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 4:10. Physical and Mental Examination of Persons.

(a) *Order for Examination.* When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending, upon motion of an adverse party, may order the party to submit to a physical or mental examination by one or more health care providers, as defined in § 8.01-581.1, employed by the moving party or to produce for

examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties, must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made, and must fix the time for filing the report and furnishing the copies.

(b) *Out-of-State Examiners.* Examiners named in such an order must be licensed to practice in, and must be residents of or have an office in, this Commonwealth. However, notwithstanding the reference to licensure by this Commonwealth in the definition of health care providers in § 8.01-581.1, the court may, in the exercise of its sound discretion and upon determining that the ends of justice will be served, order an examination by one who is not licensed to practice in, is not a resident of, and does not have an office in, this Commonwealth but who is duly licensed in his or her jurisdiction.

(c) *Report of Examiner.*

(1) A written report of the examination must be made by the examiner to the court and filed with the clerk thereof before the trial and a copy furnished to each party. The report must be detailed, setting out the findings of the examiner, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. In an Electronically Filed Case, the report of examination must be filed in electronic or digital image form as provided in Rule 1:17.

(2) The written report of the examination so filed with the clerk may be read into evidence if offered by the party who submitted to the examination. A party examined who takes the deposition of any examiner who has conducted an examination ordered pursuant to this Rule, waives any privilege that might have been asserted in that action or in any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examination made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of a health care examiner or the taking of a deposition of such examiner in accordance with the provisions of any other Rule.

* * *

Rule 4:11. Requests for Admission.

(a) *Request for Admission.* A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 4:1(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents must be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. 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.

Each matter of which an admission is requested must be separately set forth. The matter is admitted unless, within 21 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant is not required to serve answers or objections before the expiration of 28 days after service of the complaint upon

him. If objection is made, the reasons therefor must be stated. The answer must specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial must fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he must specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 4:12(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it will order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

* * *

(c) *Filing.* Except as provided in Rules 3:3 and 1:17, requests for admissions and answers or objections should be served and filed as provided in Rule 4:8.

(d) *Part of Record.* Only such requests for admissions and the answers thereto as are offered in evidence become a part of the record.

(e) *Limitation on Number of Requests. –*

(1) Requests for admission not related to genuineness of documents. Unless all parties agree, or the court grants leave for good cause shown, no party may serve upon any other party, at any one time or cumulatively, more than 30 requests for admission, including all parts and subparts, that do not relate to the genuineness of documents. Leave to propound additional requests should be liberally granted in the interests of justice.

(2) Requests for admission relating to the genuineness of documents. The number of requests for admissions relating to the genuineness of documents will not be limited unless the court enters a protective order pursuant to the provisions of Rule 4:1(c) upon a finding that justice so requires in order to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden or expense.

* * *

Rule 4:12. Failure to Make Discovery; Sanctions.

(a) *Motion for Order Compelling Discovery*. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the county or city where the deposition is to be taken. An application for an order to a deponent who is not a party must be made to the court in the county or city where the deposition is being taken.

* * *

(4) Award of Expenses of Motion. If the motion is granted, the court must, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or

attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court must, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) *Failure to Comply With Order*.

(1) Sanctions by Court in County or City Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county or city in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 4:5(b) (6) or 4:6(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this Rule or Rule 4:10, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts will be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

* * *

In lieu of any of the foregoing orders or in addition thereto, the court must require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) *Expenses on Failure to Admit*. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 4:11, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court must make the order unless it finds that (1) the request was held objectionable pursuant to Rule 4:11(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) *Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Requests for Production or Inspection.* — If a party or an officer, director, or managing agent of a party or a person designated under Rule 4:5(b)(6) or 4:6(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 4:8, after proper service of the interrogatories, or (3) to serve a written response to a request for production or inspection submitted under Rule 4:9, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may – without prior entry of a Rule 4:12(b) order to compel

regarding this failure – impose any of the sanctions listed in paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the court must require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 4:1(c).

A motion under subdivision (d) of 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.

* * *

Rule 4:13. Pretrial Procedure; Formulating Issues.

The court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

* * *

The court will make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

* * *

Rule 4:14. Disposition of Discovery Material.

Any discovery material not admitted in evidence filed in a clerk's office may be destroyed by the clerk after one year after entry of the final judgment or decree. But if the action or suit is the subject of an appeal, such material may not be destroyed until the lapse of one year after receipt of the mandate on appeal or the entry of any final judgment or decree thereafter.

* * *

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 at least seven days before the hearing. Counsel of record must make a reasonable effort to confer before giving notice of a motion to resolve the subject of the motion and 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 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.

* * *

(c) *Definitions*.

* * *

(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;

* * *

(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.

* * *

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

* * *

Rule 5:3. Convening of Court - When En Banc - When in Division.

(a) This Court will sit en banc or in divisions.

(b) Whenever four or more of the Justices are convened, this Court is deemed to be sitting en banc and vested with all of the powers of this Court. Whenever three of the Justices are convened, this Court is deemed to be sitting as a division, and vested with all of the powers of a division of this Court.

(c) If the Justices composing any division differ as to the judgment to be rendered in any case, or if, within ten days after the decision is rendered by the division any Justice of such division files in the office of the clerk of this Court a certificate that, in the opinion of the Justice, such decision is in conflict with a prior decision of this Court or of one of the divisions thereof, or if this Court so determines, the case will be reheard and decided by this Court sitting en banc.

* * *

Rule 5:4. Motions and Responses; Orders.

(a) *Motions and Responses.* —

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

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

(3) Number of Copies. An original and three copies of all motions or responses must be filed.

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

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

* * *

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

* * *

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

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

* * *

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

(a) *Paper Size, Line Spacing, Font, and Margins*.

(1) General Rules. Briefs, appendices, motions, petitions, and other papers may be printed or produced on screen by any process that yields a clear black image on a white background and, when printed, must be on 8-1/2 x 11 inch paper. Margins must be at least one inch on all four sides of each page.

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

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

(b) *Binding and Cover.* All briefs and appendices must be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The style of the case (with the name of the appellant stated first) and the record number of the case must be stated on the front cover of all briefs and appendices and, in addition,

the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address of counsel submitting the brief must be placed on the front cover of all briefs.

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

* * *

Rule 5:6A. Citation of Supplemental Authorities.

If pertinent and significant authorities come to a party's attention after the party's petition for appeal, brief in opposition, or brief has been filed, or after oral argument but before decision, a party may promptly advise the Court by letter, with a copy to all other parties, setting forth the citations. The letter must be filed with the clerk's office and not directly with any Justice. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and may not exceed 350 words. The Court, in its discretion, may refuse to consider the supplemental authorities if they unfairly expand the scope of the arguments on brief, raise matters that should have been previously briefed, appear to be untimely, or are otherwise inappropriate to consider.

* * *

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

(a) *Petition for Writ of Habeas Corpus*. — An application to this Court for a writ of habeas corpus under its original jurisdiction must be by petition filed in the office of the clerk of this Court.

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

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

(3) Service of Petitions; Service of Papers after Initial Process. Except as provided herein, service of process must be accomplished in accordance with Chapter 8 of Title 8.01. Service of all papers filed after the petition must be accomplished in accordance with Rule 1:12.

(i) Non-Public Officials. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent.

(ii) Public Officials. When habeas corpus is directed to a public official, service must be made on the respondent and must also be made on or accepted by the Attorney General or an Assistant Attorney General. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent.

(iii) Prisoners Pro Se. In cases brought by prisoners pro se, a copy of the petition must be forwarded to the respondent by first class mail, and the application must contain a certificate at the end stating as follows:

I hereby certify that on the ____ day of _____, 20____, I mailed a copy of the foregoing application to the respondent(s),_____, by first class mail.

_____

Petitioner

(4) When to Respond to a Petition; Reply. No responsive pleading to a petition filed by a prisoner acting pro se is required except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within forty days after service of the petition. The deadline for counsel for the petitioner to file a reply to a responsive pleading is 30 days from the date the responsive pleading is due.

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

(i) a single copy of the complete record of the proceedings that resulted in the detention the petition challenges, provided that such complete record has not previously been provided by counsel for petitioner. When criminal proceedings resulted in the challenged detention, the record of those proceedings must include:

* * *

(7) These records must be compiled as follows:

(a) with a table of contents listing each paper included in the record and the page on which it begins;

(b) each paper constituting a part of the record in chronological order;

(c) each page of the record must be numbered at the bottom; and

(d) transcripts and exhibits may be included in separate volumes or envelopes identified by the table of contents, except that any exhibit that cannot be conveniently placed in a volume or envelope must be identified by a tag. Each such volume or envelope must include, on its cover or inside, a descriptive list of exhibits contained therein.

(ii) copies of any other document on which the respondent relies to assert that the taking of evidence is not necessary.

(6) Leave to respond without providing a complete record. In any case in which the respondent states an opinion that the complete record of the proceedings that resulted in the detention the petition challenges is not necessary for the proper disposition of the petition, the respondent may move for leave to provide less than all of the record. Such leave must be sought

no later than 14 days prior to the filing of a responsive pleading. In any case where leave is granted, the Court may direct the respondent to provide any additional portion of the record at any time.

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

(8) Number of Copies. Four copies of the petition, responsive pleading, memoranda of law, reply of the petitioner, and motions must be filed in the office of the clerk of this Court. Prisoners filing pro se are only required to file three copies.

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

(b) *Petitions for Writs of Mandamus and Prohibition.* — An application for a writ of mandamus or a writ of prohibition under the original jurisdiction of this Court must be by petition filed in the office of the clerk of this Court.

(1) What the Petition Must Contain. The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition.

(2) Service of Petitions; Service of Papers after Initial Process.

(i) Generally. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent. Except in cases brought by prisoners acting pro se, service of process must be accomplished in accordance with Chapter 8 of Title 8.01. Service of all papers filed after the petition must be served in accordance with Rule 1:12.

(ii) Prisoners Pro Se. In cases brought by prisoners pro se, a copy of the petition must be forwarded to the respondent by first class mail, and the application must contain a certificate at the end stating as follows:

I hereby certify that on the ____ day of _____, 20____, I mailed a copy of the foregoing application to the respondent(s),_____, by first class mail.

_____

Petitioner

(3) Limitations for Petitions for Mandamus. A petition for writ of mandamus filed by or on behalf of a person confined in a state correctional facility must be brought within one year after the cause of action accrues.

(4) Petitions for Mandamus or Prohibition Against a Judge. A petition for writ of mandamus or writ of prohibition against a judge must not bear the name of the judge but must be entitled, "In re, Petitioner." When the Attorney General determines, with the concurrence of the

judge, that it is impracticable or unnecessary for the Attorney General to represent the judge, the judge may be represented pro forma by counsel for the party opposing the relief, who must appear in the name of the party and not that of the judge. Or, in the alternative, the Attorney General may provide for the appointment of special counsel to represent the judge, in accordance with the provisions of Code §§ 2.2-507 or 2.2-510.

(5) When to Respond to a Petition; Reply. No responsive pleading is required for a petition filed by a prisoner acting pro se except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within 21 days after service of the petition or the filing thereof, whichever date is later. The deadline for counsel for the petitioner or a pro se petitioner to file a reply to a responsive pleading is 14 days from the date the responsive pleading is due.

(6) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth an answer as in an action at law. The answer must state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities should accompany each responsive pleading.

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

(8) Number of Copies. Four copies of the petition, responsive pleading, memoranda of law, reply of the petitioner, and motions must be filed in the office of the clerk of this Court. Prisoners filing pro se are only required to file three copies.

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

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

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

* * *

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

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

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

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

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

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

(e) *Copies to be Filed.* Ten copies of the petition, the Attorney General's responsive pleading, and the petitioner's reply must be filed in the office of the clerk of this Court.

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

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

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

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

* * *

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

* * *

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

(c) *Contents of the Petition.* Each petition for a writ of actual innocence must be filed on a form provided by this Court and must be verified under oath. The petition must state categorically and with specificity: (i) the offense or offenses for which petitioner was convicted or adjudicated delinquent, including all previous records, applications, petitions, and appeals relating to these convictions or adjudications of delinquency, and their dispositions; (ii) that the petitioner is actually innocent of the crime or crimes for which he was convicted or adjudicated delinquent; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence, attaching a copy of the test results; (iv) that the human biological evidence was not known or available to the petitioner or his attorney at trial, or if it was known, why it was not subject to scientific testing; (v) the earliest date the test results described in the petition became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney has filed the petition within 60 days of obtaining the test results; (vii) an explanation of the reason or reasons the evidence will prove that no rational trier of fact would have found the petitioner guilty or delinquent beyond a reasonable doubt of the offense or offenses for which the petitioner was convicted or adjudicated delinquent; and (viii) if the conviction or adjudication of delinquency became final in the circuit court after June 30, 1996, that the evidence was not available for testing under Code § 9.1- 1104.

(d) *Service of the Petition and Return of Service*. Prior to filing a petition, the petitioner must serve the petition, along with all attachments, on the Attorney General and on the Commonwealth's Attorney for the jurisdiction where the conviction or adjudication of delinquency occurred. The petitioner must file with the petition either (i) a duly executed return of service in the form of a verification that a copy of the petition and all attachments have been served, or (ii) an acceptance of service signed by either or both of the parties to be served, or (iii) a combination of the two.

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

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

(1) Within 30 days after service of the petition, the Attorney General must file with the clerk of this Court a pleading in the form of a declaration stating, in the opinion of the Attorney General, with an explanation of the reasons therefor, whether the record of any trial or appellate proceedings involving the conviction or convictions, or adjudication or adjudications of delinquency, or of any proceedings under Code § 19.2-327.1, is necessary for preparation of a response to the petition. If the Attorney General asserts that the record, or any part thereof, of any trial or appellate court proceedings is necessary, the Attorney General should request the production of such record by this Court, and must describe with specificity, including the court, docket number and date of judgment, each and every record or part thereof which is requested.

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

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

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

(h) *Copies to be Filed.* Ten copies of the petition, and the Attorney General's responsive pleading, and the petitioner's reply, if any, must be filed in the office of the clerk of this Court.

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

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

(k) *Duty of Counsel*. Any attorney(s) appointed to represent a petitioner pursuant to Code § 19.2-327.1 is deemed to be counsel of record for petitioner for all purposes and proceedings

under this Rule until a final order of this Court is issued pursuant to Code § 19.2-327.5, or until counsel is relieved or replaced by other counsel by leave of this Court.

* * *

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 a copy of such notice to all opposing counsel. 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 5:10. Record on Appeal: Contents.

(a) *Contents.* The following constitute the record on appeal from the trial court:

(1) the documents and exhibits filed or lodged in the office of the clerk of the trial court, including any report of a commissioner in chancery and the accompanying depositions and other papers;

(2) each instruction marked "given" or "refused" and initialed by the judge;

(3) each exhibit offered in evidence, whether admitted or not, and initialed by the trial judge (or any photograph thereof as authorized by § 19.2-270.4 (A) and (C)). (All non-documentary exhibits must be tagged or labeled in the trial court and the tag or label initialed by the judge.);

(4) the original draft or a copy of each order entered by the trial court;

(5) any opinion or memorandum decision rendered by the judge of the trial court;

(6) any deposition and any discovery material encompassed within Part Four offered in evidence (whether admitted or rejected) at any proceeding; and

(7) the transcript of any proceeding or a written statement of facts, testimony, and other incidents of the case when made a part of the record as provided in Rule 5:11, or the official videotape recording of any proceeding in those circuit courts authorized by this Court to use videotape recordings. This Court may require that any videotape proceedings be transcribed, in whole or in part, and made a part of the record as provided in Rule 5:11, except that the transcript must be filed within 60 days after the entry of the order requiring such transcript; and

(8) the notice of appeal.

(b) Disagreement on Contents. If disagreement arises as to the contents of any part of the record, the matter must, in the first instance, be submitted to and decided by the trial court.

* * *

Rule 5:11. Record on Appeal: Transcript or Written Statement.

(a) *Effect of Non-compliance.*

(1) Obligation of the Petitioner/Appellant. It is the obligation of the petitioner/appellant to ensure that the record is sufficient to enable the Court to evaluate and resolve the assignments of error. When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues related to the assignments of error, any assignments of error affected by the omission will not be considered.

(2) Obligation of the Respondent/Appellee. It is the obligation of the respondent/appellee to ensure that the record is sufficient to enable the Court to evaluate and resolve any assignments of cross-error. When the respondent/appellee who assigns cross-error fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues related to the assignments of cross-error, any assignments of cross-error affected by the omission will not be considered.

(b) *Transcript.* The transcript of any proceeding in the case that is necessary for the appeal must be filed in the office of the clerk of the trial court no later than 60 days after entry of judgment.

(c) *Notice of Filing Transcript.*

(1) 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 written notice to 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 all other counsel or an acceptance of service of such notice by all other counsel.

(2) When multiple transcripts are filed, the 10 day period for filing the notice required by this Rule will be 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. 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 of transcripts is required and the notice of appeal will serve as the notice of filing transcripts for purposes of this Rule.

(3) 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 bears 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 the time fixed by these Rules for the filing of a brief in opposition.

* * *

(e) *Written Statement in Lieu of Transcript.* A written statement of facts, testimony, and other incidents of the case, which may include or consist of a portion of the transcript, becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; 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 (g) of this Rule.

(f) The term "other incidents of the case" in subsection (e) 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.

(g) *Objections.* Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted must be filed with the clerk of the trial court within 15 days after the date the notice of filing the transcript (paragraph (c) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (e) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. Counsel for the objecting party must give the trial judge prompt notice of the filing of such objections. Within 10 days after the notice of objection is filed with the clerk of the trial court, the trial judge must:

(1) overrule the objections; 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.

* * *

Rule 5:12. Judge Authorized to Act.

The judge authorized to act in all matters relating to the record on appeal is any judge having authority to enter orders in the case or in the court in which the case was heard or, in a case heard by three judges, any one of them.

* * *

Rule 5:13. Record on Appeal: Preparation and Transmission.

(a) *Preparation.* The clerk of the trial court, disciplinary board, or commission in which the proceeding originated must prepare the record as soon as possible after notice of appeal is filed. In the event of multiple appeals in the same case, or in cases tried together, only one record need be prepared and transmitted.

(b) *Form of the Record.*

(1) The record must be compiled in the following order:

(i) a front cover setting forth the name of the court and the short style of the case;

(ii) a table of contents listing each paper included in the record and the page on which it begins;

(iii) each paper constituting a part of the record in chronological order; and

(iv) the certificate of the clerk of the trial court that the foregoing constitutes the true and complete record, except omitted exhibits as hereinafter provided.

(2) Each page of the record must be numbered at the bottom.

(3) Transcripts, depositions, and reports of commissioners may be included in separate volumes identified by the clerk of the trial court if referred to in the table of contents and at the appropriate place in the record.

(4) Exhibits, other than those filed with pleadings, may be included in a separate volume or envelope certified by the clerk of the trial court, except that any exhibit that cannot be conveniently placed in a volume or envelope must be identified by a tag. Each such volume or envelope must include, on its cover or inside, a descriptive list of exhibits contained therein. Reference must be made to exhibits in the table of contents and at the appropriate place in the record referred to in paragraph (b)(1) of this Rule. The clerk of the trial court must not transmit the following types of exhibits, unless requested to do so by the clerk of this Court: drugs, guns and other weapons, ammunition, blood vials and other bio-hazard type materials, money, jewelry, articles of clothing, and bulky items such as large graphs and maps. The omission of any such exhibit must be noted on the descriptive list of exhibits. Upon motion by counsel, this Court may order the trial court to transmit any of these prohibited exhibits.

(5) Any transcript or statement of facts that the clerk of the trial court deems not a part of the record because of untimely filing must be certified as such and transmitted with the record.

(c) *Transmission.* The clerk of the trial court must retain the record for 21 days after the notice of appeal has been filed with him pursuant to Rule 5:9. If the notice of appeal states that a transcript or statement will thereafter be filed, the clerk of the trial court must retain the record for 21 days after the filing in his office of such transcript or statement or, if objection is made to the transcript or statement pursuant to Rule 5:11(g) the trial court must retain the record for 5 days after the objection is acted upon by the trial judge. The clerk of the trial court must then forthwith transmit the record to the clerk of this Court; provided, however, that, notwithstanding that the foregoing periods of retention may not have expired, the clerk of the trial court must transmit the record sooner if requested in writing by counsel for all parties to the appeal and must, whether or not so requested, transmit the record in time for delivery to the clerk of this Court within 90 days after entry of the judgment appealed from. The failure of the clerk of the trial court to transmit the record as herein provided will not be a ground for dismissal of the appeal by this Court.

(d) *Record Returned to Trial Court*. When the mandate is issued by this Court, the clerk of this Court must return the record to the clerk of the trial court, disciplinary board, or commission

in which the proceeding originated. The record must be returned by that clerk upon the request of the clerk of this Court.

* * *

Rule 5:13A. Digital Appellate Record: Preparation and Transmission.

(a) *Preparation.* A Digital Appellate Record may be created instead of a paper record, with substantially the same content as its paper counterpart. The clerk of the tribunal in which the proceeding originated is responsible for preparing the digital record, if the clerk chooses to transmit a digital record in place of the paper version.

(b) *Form of Record*. The digital record must comply with the Digital Appellate Record Standards posted on the Supreme Court of Virginia website.

(c) *Exhibits.* Original exhibits should be imaged and retained by the clerk of the tribunal. The omission of any exhibit that cannot be scanned or imaged must be noted in a descriptive list of exhibits. On motion or sua sponte, this Court may order the tribunal to transmit any retained exhibit.

(d) *Transmission.* The clerk of the tribunal must transmit the record to the clerk of this Court, in a manner prescribed by the Digital Appellate Record Standards, using the Digital Records System created for this purpose. The same timing and dismissal rules apply to transmissions of digital records as apply to their paper counterparts in Rule 5:13.

(e) *Disposition of Record.* When the mandate is issued by this Court, the clerk of this Court must return all tangible items, if any, to the clerk of the tribunal in which the proceeding originated. The digital record will not be returned. If necessary, the record must be re-sent by that clerk upon the request of the clerk of this Court.

(f) *Public Record.* The publicly available digital record is the digital document prepared by the tribunal clerk with all information that is sealed or protected from public disclosure by law redacted or excluded.

* * *

Rule 5:14. Notice of Appeal; Certification.

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

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

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

* * *

Rule 5:15. Record on Appeal From Court of Appeals or Certification for Review.

(a) *Generally.* In cases on appeal from the Court of Appeals and those certified for review, the record in this Court consists of the record as filed in the office of the clerk of the Court of Appeals and, in addition, all other documents relating to the case which have been filed in the office of the clerk of the Court of Appeals, including any opinion or memorandum decision in cases decided by the Court of Appeals. Pursuant to Rule 5:13 or Rule 5:13A, the clerk of the Court of Appeals must transmit all such documents to the clerk of this Court within 10 days after the filing of the notice of appeal to this Court or the issuance of the certification for review. The clerk of the Court of Appeals must certify that the documents so transmitted constitute the record in the Court of Appeals.

(b) *Bail Pending Appeal in Criminal Cases*. In criminal cases on appeal from a Court of Appeals' order affirming a trial court's order setting or denying bail pending appeal, the record consists of: (1) the sentencing order entered by the trial court; (2) a pre- sentence report when available; (3) the trial court's order denying or setting bail; (4) the transcript of the bail hearing or a stipulation of facts between the parties regarding what evidence was introduced at the hearing and the reason(s) the trial judge gave for the bail decision; (5) appellant's motion for review in the Court of Appeals; and (6) the order of the Court of Appeals on the motion for review.

* * *

Rule 5:16. Disposition of Record.

When there can be no further proceedings in this Court, the clerk of this Court will return the record to the clerk of the trial court or commission in which the case originated. The record must be returned by that clerk upon the request of the clerk of this Court.

* * *

Rule 5:17. Petition for Appeal.

* * *

(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.

(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 count 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) Required Statements When the Appeal is from the Court of Appeals. When appeal is taken from a judgment of the Court of Appeals in a case in which judgment is made final under Code § 17.1-410, the petition for appeal must contain a statement setting forth in what respect the decision of the Court of Appeals involves the following:

(i) a substantial constitutional question as a determinative issue, or

(ii) matters of significant precedential value.

If the petition for appeal does not contain such a statement, the appeal will be dismissed.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

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

(d) *Filing Fee Required With the Petition*. When it is filed, the petition for appeal must be accompanied by a check or money order payable to the "Clerk of the Supreme Court of Virginia" for the amount 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.

(e) *Number of Copies to File*. Seven copies of the petition must be filed with the clerk of this Court.

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

* * *

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

* * *

(j) *Oral Argument.*

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

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

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

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

* * *

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

* * *

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

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

(i) Except by permission of a Justice of this Court, a petition for review may not exceed the longer of 15 pages or 2,625 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5:17(c).

(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 injunction (hereafter "the record"). The copy of the record constitutes part of the petition for the purpose of paragraph (b), but does not count against the petition size limit.

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

* * *

(d) *Number of Copies to File*. — Four copies of the petition, including the record of the lower tribunal(s), must be filed. Only one copy of the record of the lower tribunal(s) need be filed if, upon filing the petition, counsel for the petitioner also files an electronic copy of the said record as an Adobe Acrobat Portable Document Format (PDF) document on a CD-ROM.

(e) *Filing Fee*. — The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount required by statute. The clerk of this Court may file a petition for review that is not accompanied by such fee if the fee is received by the clerk within 5 days of the date the petition for review is filed. If the fee is not received within such time, the petition for review will be dismissed.

(f) *Scope and Review*. —

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

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

(g) *Responsive Pleading*. — A respondent may file a response to a petition for review within seven days of the date of service of same, unless the Court specifies a shorter time frame. The response may not exceed the greater of 12 pages or 2,100 words. For the purpose of this rule, a petition for review is considered served 3 days from the date on which it was mailed, or 1 day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, the Court may act on a petition for review without awaiting a response; however, absent exceptional circumstances, the Court will not grant a petition for review without affording the respondent an opportunity to file a responsive pleading.

(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 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 mail or deliver a copy to counsel for appellant. Seven copies must 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. The brief in opposition must be signed by at least one counsel of record.

(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 5:19. Reply Brief.

(a) When a brief in opposition to the petition for appeal has been filed, the appellant may, within 7 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to exceed the longer of 15 pages or 2,625 words in length. Seven copies must be filed.

(b) When cross-error is assigned in a brief in opposition, the appellant may, without waiving oral argument, file with the clerk of this Court within 14 days after filing of the brief in opposition a reply brief not in excess of 10 pages or 1,750 words which addresses only the cross-error. Seven copies must be filed.

* * *

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.

* * *

(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 mail 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.

(1) Requirements for Electronic Filing. – (i) The petition for rehearing must be filed as a Portable Document Format (PDF) document attached to an e-mail addressed to scvpfr@vacourts.gov and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due.

(ii) 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. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by scvpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk will so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed.

(iii) A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed petition for rehearing, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(iv) The e-mail message to which the petition for rehearing is attached must recite in the subject line the style of the case and the Supreme Court record number. The e-mail message must contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel. The message must also state whether a copy of the petition for rehearing has been served by e-mail or another means on opposing counsel and the date of such service. If opposing counsel has an e-mail address, that address must also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be forwarded to counsel seeking the rehearing.

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

(ii) Two copies must be filed.

(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*. – Attempts to incorporate facts or arguments from the petition for appeal or original jurisdiction petition are prohibited.

(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 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's Fees.* – Upon denial of a petition for appeal and any petition for rehearing, any appellee who has received attorney's 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. 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 must file a petition for appeal, accompanied by the prescribed filing fee, in the office of the clerk of this Court within 120 days after entry of the final order, judgment or finding by the Commission

and, prior to the filing of the petition must mail or deliver a copy to every other party to the Commission proceeding. 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). 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 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 ruling, except for good cause shown or to enable this Court to attain the ends of justice. An assignment of error which merely states that the judgment is contrary to the law and the evidence is not sufficient.

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

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

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

(10) Further Proceedings. Further proceedings in this Court must conform to Rules 5:23 through 5:38 provided that (i) the time within which the appellee may file with the clerk of this Court a designation of the additional parts of the record that the appellee wishes included in the

appendix (Rule 5:32(b)) is extended to 30 days after the date of the certificate of the clerk of this Court, pursuant to Rule 5:23, has been awarded; and (ii) the time within which the opening brief of the appellant(s) must be filed in the office of the clerk of this Court is extended to 50 days after such date.

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

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

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

(2) Perfecting the Appeal.

(i) Provisions for Appeals from the Virginia State Bar Disciplinary Board. No appeal will be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the Disciplinary System within 30 days after the Memorandum Order is served on the attorney by certified mail, return receipt requested, at the attorney's last address on record for membership purposes with the Virginia State Bar. At the same time the Respondent files a notice of appeal and assignments of error, a copy of the notice of appeal and assignments of error must be sent to the counsel for the Bar and the Attorney General of Virginia. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the Memorandum Order is the date from which the time limits contained in Rule 5:11 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, mails a copy of the notice of appeal and assignments of error to 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 judgment is the date from which the time limits contained in Rule 5:11 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 automatically stayed prior to or during the pendency of an appeal of the order.

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

* * *

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

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

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

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

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

(e) *Requirements for Briefs.*

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

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

(3) Reply Brief of the Appellant. The appellant must file the reply brief, which may not exceed the longer of 50 pages or 8,750 words, in the office of the clerk of this Court within 140 days after the Filing Date. The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

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

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

* * *

Rule 5:23. Perfection of Appeal; Docketing.

(a) *Grant of Petition for Appeal.* Promptly after a petition for appeal has been granted, the clerk of this Court must certify this action to counsel for the appellant, counsel for the appellee, and the tribunal from which the appeal is taken. The case is considered mature for purposes of further proceedings from the date of such certificate.

(b) *Docketing.* Cases are placed on the docket when they mature. Precedence is given to the following cases:

(1) review of sentences of death;

(2) criminal cases;

(3) cases from the State Corporation Commission;

(4) cases of original jurisdiction;

(5) cases to be reheard; and

(6) any other cases required by statute to be given precedence.

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

* * *

Rule 5:24. Security for Appeal.

(a) *Compliance With Forms*. — 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.

(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 will 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 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 in the required form.

* * *

Rule 5:26. General Requirements for All Briefs.

* * *

(b) *Length*. Except by permission of a Justice of this Court, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae may exceed the longer of 50 pages or 8,750 words. No reply brief may exceed the longer of 15 pages or 2,625 words. Briefs of amici curiae must comply with the page limits that apply to briefs of the party being supported. The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

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

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

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

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

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

(e) *Copies for Filing*. An electronic version, in Portable Document Format (PDF), must be filed with the clerk of this Court and served on opposing counsel, unless excused by this Court for good cause shown. An electronic version of a brief amicus curiae must be filed with the clerk of this Court and served on counsel for all parties and on any other counsel amicus curiae. The electronic version must be filed in the manner prescribed by the VACES Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at http://www.vacourts.gov/online/vaces/resources/guidelines.pdf. In addition, 3 printed copies of each brief (including a brief amicus curiae) must be filed in the office of the clerk of this Court. All briefs must contain a certificate evidencing the date and method of electronic transmission of the brief to opposing counsel.

* * *

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

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

(j) *Technical problems with electronic filing of brief or appendix*. -- A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed brief or appendix, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to electronically file the brief or appendix, any error message received in response to the attempt, documentation that the brief or appendix was later successfully resubmitted, and a motion requesting that the Court accept the resubmitted brief or appendix.

* * *

Rule 5:27. Requirements for Opening Brief of Appellant.

The opening brief of the appellant must comply with the requirements of Rules 5:6 and 5:26, and must contain the following:

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

(b) A statement of the case containing the material proceedings below and the facts, with references to the appendix.

(c) The assignments of error, with a clear and exact reference to the pages of the appendix where the alleged error has been preserved.

(d) The standard of review, the argument, and the authorities relating to each assignment of error. 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.

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

* * *

Rule 5:28. Requirements for Brief of Appellee.

The brief of appellee must comply with Rules 5:6 and 5:26, and must contain the following:

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

* * *

(d) The standard of review, the argument, and the authorities relating to each assignment of error. 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.

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

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

(2) The standard of review, the argument, and the authorities relating to each assignment of cross-error. With respect to each such assignment of cross-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.

(3) A statement of the precise relief sought.

* * *

Rule 5:29. Requirements for Reply Brief.

The reply brief, if any, must comply with the requirements of Rules 5:6 and 5:26 and must contain only argument in reply to contentions made in the brief of appellee. No reply brief is necessary if the contentions have been adequately answered in the opening brief of appellant.

* * *

Rule 5:30. Briefs Amicus Curiae.

* * *

(c) *Who Needs Leave of Court to File a Brief Amicus Curiae.* — Except as provided in paragraph (b) of this Rule, any person or entity seeking to file a brief amicus curiae must obtain leave of Court by motion. Such motion must:

(i) state whether the brief would be in support of the appellant(s) or appellee(s), or in support of none of the parties; and

(ii) certify that the applicant has sought to obtain consent of all parties to the appeal; and

(iii) state which, if any, of the parties has consented to the motion.

* * *

(e) *What a Brief Amicus Curiae Must Contain*. — A brief amicus curiae must comply with the rules applicable to the brief of the party supported. If a person or entity is filing an amicus brief that is not in support of either party, its brief amicus curiae must comply with the rules applicable to the appellant.

(f) *This Court's Authority to Request a Brief Amicus Curiae*. — Notwithstanding the provisions of this Rule, this Court may request that a brief amicus curiae be filed at any time.

* * *

Rule 5:31. Covers of Documents.

(a) *What Covers Must Be Used on Papers Filed with this Court.* To facilitate identification, documents must bear covers colored as follows:

* * *

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

* * *

Rule 5:32. Appendix.

(a) *Responsibility of the Appellant.*

(1) Contents of the Appendix. The appellant must prepare and file an appendix. The appendix must contain:

* * *

(3) Time to File; Number of Copies.

(i) Generally. The appellant must file 3 printed copies and an electronic copy of the appendix with the appellant's brief, and must serve an electronic copy on counsel for each party separately represented. This Court may by order require the filing or service of a different number. The appendix must be filed in the manner prescribed by the Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at http://www.vacourts.gov/online/vaces/resources/guidelines.pdf .

(b) *Responsibility of All Parties.*

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

* * *

(3) Costs of Appendix. Unless the parties agree otherwise, the appellant must initially pay the cost of the appendix, but if the appellant in good faith considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the assignments of error, the appellant initially preparing the appendix may so advise the clerk of this Court and the appellee, and the appellee who designated the challenged material must advance the cost of including such parts. The cost of producing the appendix may be taxed as costs in the case, but if any party causes unnecessary material to be included in the appendix this Court sua sponte or upon motion may impose the cost of including such parts upon that party.

* * *

Rule 5:33. Oral Argument.

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

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

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

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

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

(f) *Demonstrative Exhibits*. No demonstrative exhibit may be used by or on behalf of a party during oral argument without the prior consent of the Court. A party or counsel intending to use a demonstrative exhibit during oral argument must notify the clerk of this Court by letter, with a copy to all other parties, at least five (5) business days prior to the scheduled date of the oral argument. The letter must describe the proposed demonstrative exhibit and the manner in which it will be used. The Court, in its discretion, may refuse to allow the use of the demonstrative exhibit. No demonstrative exhibit may be brought into the courtroom unless the Court has consented to its use during oral argument.

* * *

Rule 5:34. Notice of Decision.

Promptly after this Court has decided a case, the clerk of this Court will send a copy of the decision to all counsel of record and to the court or commission from which the appeal proceeded.

* * *

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

(a) *To Whom Allowed.* Except as otherwise provided by law, if an appeal is dismissed, costs will be taxed against the appellant unless otherwise agreed by the parties or ordered by this Court; if a judgment is affirmed, costs will be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs will be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs may be allowed as ordered by this Court.

(b) *Attorney's Fees.* (1) Refusal or Dismissal of Petition for Appeal. Upon refusal or dismissal of a petition for appeal and any petition for rehearing, any appellee who has received attorney's 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.

(2) Attorney Fees in Domestic Relations and Other Family-Law Proceedings Where Authorized by Statute.

(A) Attorney Fees in Domestic Relations and Family-Law Proceedings Where Authorized by Statute. – (1) In any case in which attorney fees are recoverable under Title 16.1, Title 20, or Title 63.2, a party may request an award of fees incurred in the appeal of the case by including a prayer for such recovery in the Opening Brief or the Reply Brief of Appellant, or in the Brief of Appellee.

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

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

(D) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court may consider all relevant factors, including but not limited to, the extent to which the party was a prevailing party on the issues, the nature of the issues involved, the time and labor involved, the financial resources of the parties, and the fee customarily charged in the locality for similar legal services.

(c) *Taxable Costs.* Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, are taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. See, Code § 17.1-128.

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

(e) *Award.* The clerk of this Court must prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate will not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, will be added to the mandate on request by the clerk of this Court to the clerk of the tribunal in which the case originated.

* * *

Rule 5:36. Mandate.

(a) *Time.* When there can be no further proceedings in this Court, the clerk of this Court must forward its mandate promptly to the clerk of the circuit court or commission in which the case originated and to the clerk of the Court of Appeals if the case has been heard by that court.

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

* * *

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

* * *

(b) *Notice of Intent*. – A party intending to apply for a rehearing must file written notice with the clerk of this Court 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, 20 copies of a petition for rehearing not to exceed the longer of 10 pages or 1,750 words in length must be thereafter filed in the office of the clerk of this Court and 3 copies delivered or mailed to opposing counsel within 30 days after the date of the order of this Court deciding the case.

(d) *Requirements for All Others.* – (1) Except for petitions filed by pro se prisoners, or with leave of this Court, the petition for rehearing must be filed as a Portable Document Format (PDF) document attached to an e-mail addressed to scvpfr@vacourts.gov and will be timely filed if received by the clerk's office on or before 11:59 p.m. 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, must be in 14-point font 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. The petition will be considered filed on the date and time that it is received by scvpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk must so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at this Court result in a failure to timely receive the electronically filed petition for rehearing, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to email the petition, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(2) The e-mail message to which the petition is attached must recite in the subject line the style of the case and the Supreme Court record number. The e-mail message must contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel. The message must also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel must also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be sent to counsel seeking the rehearing.

(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 5:38. Settlement or Withdrawal of Pending Appeal.

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

* * *

Rule 5:39. Delay in Issuing Mandate Upon Appeal or Petition to Supreme Court of the United States.

If a party intends to file an appeal with the Supreme Court of the United States or seek a writ of certiorari from that court, this Court may, upon motion filed within 15 days after the date of the order of this Court deciding the case, and upon compliance with such conditions as this Court may impose, defer the issuance of its mandate until proceedings in the Supreme Court of the United States have been terminated. Thereupon, the mandate will issue forthwith.

* * *

Rule 5:40. Certification Procedures.

* * *

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

* * *

(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.

* * *

(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 5:41. Appeal of Orders Relating to Quarantine or Isolation of Persons.

A. *Quarantine Related Code Provisions.* In proceedings involving circuit court orders of quarantine of a person or persons pursuant to Article 3.02 of Chapter 2 of Title 32.1 of the Code of Virginia, the provisions of Code § 32.1-48.010 apply with respect to appealability of such orders, the effect of an appeal upon any order of quarantine, availability of expedited review, stay of quarantine orders, and representation by counsel.

B. *Isolation Order Code Provisions.* In proceedings involving circuit court orders of isolation of a person or persons pursuant to Article 3.02 of Chapter 2 of Title 32.1 of the Code of Virginia, the provisions of Code § 32.1-48.013 apply with respect to appealability of such orders, the effect of an appeal upon any order of isolation, availability of expedited review, stay of isolation orders, and representation by counsel.

C. *Transmission of Record*. In all appeals under this rule, the clerk of the court from which an appeal is taken must transmit the record to the Clerk of the Supreme Court immediately upon the filing of the notice of appeal.

D. *Expedited Procedures*. Unless otherwise ordered by the Supreme Court, after the filing of the petition for appeal under this Rule, 48 hours should be allowed for the filing of the brief in opposition. However, the Supreme Court may employ the expedited review provision in Rule 5:18(c). The Supreme Court will act upon the petition within 72 hours of its filing. Should the Supreme Court grant a writ, the Supreme Court may, in its discretion, permit oral argument within 48 hours of granting the writ. The Supreme Court will issue an order within 24 hours of the argument or of its review of the case without oral argument. The Supreme Court has the authority to alter these time frames in any case.

E. *Oral Argument*. The Court must hold any oral argument in appeals under this rule in a manner so as to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, and the general public. To this end, the Court may take measures including, but not limited to, ordering any oral argument to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment. If necessary, the Court may dispense with oral argument.

* * *

APPENDIX OF FORMS.

Notes:

1. Each of the Part Five Forms 1 through 8 should be used in conjunction with the Form for Execution and Acknowledgment of All Bonds, set forth as Form 9.

2. As provided in Code §§ 1-205 and 8.01-676.1(S), if the party required to post an appeal or suspending bond tenders such bond together with cash in the full amount required, no surety is required.

* * *

Form 10. Irrevocable Letters of Credit.

* * *

In the event that (Name of Bank) elects not to renew this letter of credit as required above, the full amount of this letter of credit is payable to the Clerk of the Circuit Court of upon presentation of your verified statement that:

1. A final order of the Supreme Court of Virginia has not been entered in the case of (or, where there has been suspension of judgment, a final order has not been entered by the Supreme Court or trial court assessing actual damages in consequence of the suspension).

2. Thirty (30) days have elapsed since notice of non-renewal was given and appellant(s) (has)(have) not filed acceptable substitute security.

In the event of non-renewal, within fifteen (15) days after payment to the clerk under the previous paragraph, the appellant(s) or someone for (him)(her)(them)(it) must file with said clerk an appeal bond in substantial conformance with the appropriate form in the Appendix to Part

Five A of the Rules of the Supreme Court of Virginia. The bond must be in the penalty of the amount paid to said clerk under this letter of credit, and said funds will be in lieu of surety.

* * *

Form 11. Petition for a Writ of Actual Innocence

* * *

9. I understand that this petition must contain all relevant allegations of fact that are known to me at this time. I understand that it must include all previous records, applications, petitions, appeals, and their dispositions related to this conviction, as well as a copy of any test results of the scientific evidence described above. I understand that if this petition is not complete, this Court may dismiss the petition or return the petition to me pending the completion of such form. I understand that I am responsible for all statements contained in this petition. I understand that any knowingly or willfully made false statement will be a ground for prosecution and conviction of perjury as provided in Virginia Code § 18.2-434. I understand that this Court will not accept this petition unless it is accompanied by a duly executed return of service verifying that a copy of this petition and all attachments have been served on the attorney for the Commonwealth of the jurisdiction where the conviction occurred and on the Attorney General of Virginia.

* * *

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

* * *

(c) *Definitions.*

(1) "clerk of the trial court" means clerk of the trial court from which an appeal is taken to the Court of Appeals, and includes a deputy clerk and the clerk of the Virginia Workers' Compensation Commission when the context requires;

* * *

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

* * *

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

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

* * *

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

* * *

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

(a) *Motions and Responses.*

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

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

(3) Number of Copies. An original and three copies of all motions or responses must be filed.

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

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

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

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

* * *

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

(a) *Filing Deadlines and Extensions*. The times prescribed for filing the notice of appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), and a petition for rehearing (Rule 5A:33) and a request for rehearing en banc (Rule 5A:34) are mandatory. Except for the petition for appeal which is addressed in Rule 5A:12(a) and Code § 17.1-408, a single extension not to exceed thirty days may be granted if at least three judges of the Court of Appeals concur in a finding that an extension for papers to be filed is warranted upon a showing of good cause

sufficient to excuse the delay. The time period for filing the notice of appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended by the trial court pursuant to Rule 1:1, in which case the time for filing is computed from the date of the final judgment entered following such modification, vacation, or suspension.

* * *

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

* * *

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

(a) *Paper Size, Line Spacing, Font, and Margins.* — Briefs, appendices, motions, petitions, and other documents may be printed or produced on screen by any process that yields a clear black image on a white background and, when printed, must be on pages 8-1/2 x 11 inch paper. All briefs, appendices, motions, petitions, and other documents must be in at least 12-point font. Text may not be reduced, and must be double-spaced except for headings, assignments of error, quotations, and footnotes. Margins must be at least one inch on all four sides of each page. The use of condensed or multi-page transcripts is prohibited.

(b) *Binding and Cover.* — All briefs, appendices, petitions for rehearing, and petitions for rehearing en banc must be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The front cover of all petitions for appeal, briefs, appendices, petitions for rehearing, and petitions for rehearing en banc must contain the style of the case (with the name of the petitioner/appellant stated first) and the record number of the case and the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and email address of counsel submitting the document.

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

* * *

Rule 5A:4A. Citation of Supplemental Authorities.

If pertinent and significant authorities come to a party's attention after the party's petition for appeal, brief in opposition, or brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made within 14 days and may not exceed 350 words. The Court, in its

discretion, may refuse to consider the supplemental authorities if they unfairly expand the scope of the arguments on brief, raise matters that should have been previously briefed, appear to be untimely, or are otherwise inappropriate to consider.

* * *

Rule 5A:5. Original Proceedings.

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

(b) *Petition for a Writ of Actual Innocence*. --

(1) Scope. -- Any person convicted of a felony upon a plea of not guilty or any person who was adjudicated delinquent, upon a plea of not guilty, by a circuit court of an offense that would be a felony if committed by an adult, may file in the Court of Appeals a petition under Code § 19.2-327.10 et seq. seeking a writ of actual innocence based on nonbiological evidence.

(2) Form and Contents of Petition. -- The petition must be filed using Form 10 in the Appendix of Forms following Part 5A and must include all allegations and documents required by subsections A and B of Code § 19.2-327.11. Under Code § 19.2-327.11(B) "relevant documents" include, but are not limited to, any orders of conviction, adjudication of delinquency, and sentencing orders being challenged, any appellate dispositions on direct review or any habeas corpus orders (issued by any federal or state court), and any prior petitions filed under Code § 19.2-327.10 et seq. in the Court of Appeals or under Code § 19.2-327.2 et seq. in the Supreme Court.

(3) Parties. -- All pleadings must name as the petitioner the person convicted of a felony or adjudicated delinquent who is seeking relief. The pleadings must identify the Commonwealth, represented by the Attorney General, as respondent.

(4) Filing Fee. -- The petition must be accompanied by either (i) a $25.00 check or money order for the filing fee, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee. An affidavit seeking in forma pauperis status must list all assets and liabilities of petitioner, including the current balance of any inmate account maintained by correctional facility.

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

(6) Service of Petition and Return of Service. -- Prior to filing a petition, the petitioner must serve the petition, along with all attachments, on the Attorney General and on the Commonwealth's Attorney for the jurisdiction where the conviction or adjudication of delinquency occurred. When represented by counsel, the petitioner must file with the petition either (i) a duly executed return of service in the form of a verification that a copy of the petition and all attachments have been served, or (ii) an acceptance of service signed by either or both of the parties to be served, or (iii) a combination of the two. When unrepresented by counsel, the petitioner must file with the petition a certificate that a copy of the petition and all attachments

have been sent, by certified mail, to the Attorney General and the Commonwealth's Attorney for the jurisdiction where the conviction or adjudication of delinquency occurred.

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

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

(9) Copies. -- An original and four copies of the petition, the Commonwealth's response, and the petitioner's reply, if any, must be filed with the Court of Appeals. Attachments must be included with the original petition, response, or reply, but not with any copies of the same.

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

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

(12) Appeal. -- The petitioner or the Commonwealth may petition for appeal to the Supreme Court from any adverse final decision issued by the Court of Appeals under Code § 19.2-327.13 to issue or deny a writ of actual innocence. Such an appeal is initiated by the filing of a notice of appeal pursuant to Rule 5:14.

* * *

Rule 5A:6. Notice of Appeal.

(a) *Filing Deadline; Where to File*. – No appeal will be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court under Rule 5A:3(a), counsel files with the clerk of the trial court a notice of appeal, and at the same time mails or delivers a copy of such notice to all opposing counsel. 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. A party filing a notice of an appeal of right to the Court of Appeals must simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

Appeals from the Circuit Court. – Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order is moot and of no effect. A new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.

(b) *Content.* The notice of appeal must contain a statement whether any transcript or statement of facts, testimony, and other incidents of the case will be filed.

(c) *Filing Fee.* A copy of the notice of appeal must be filed in the office of the clerk of the Court of Appeals and, except as otherwise provided by law, must be accompanied by a check or money order in the amount of $50 payable to the "Clerk of the Court of Appeals" for the filing fee required by statute. The fee is due at the time the notice of appeal is presented. The clerk of the Court of Appeals 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.

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

* * *

(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.

* * *

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

* * *

Rule 5A:7. Record on Appeal: Contents.

(a) *Contents.* The following constitute the record on appeal from the trial court:

* * *

(3) each exhibit offered in evidence, whether admitted or not, and initialed by the trial judge (or any photograph thereof as authorized by § 19.2-270.4 (A) and (C)). (All non-documentary exhibits must be tagged or labeled in the trial court and the tag or label initialed by the judge.);

* * *

(7) the transcript of any proceeding or a written statement of facts, testimony, and other incidents of the case when made a part of the record as provided in Rule 5A:8, or the official videotape recording of any proceeding in those circuit courts authorized by the Supreme Court to use videotape recordings. This Court may require that any videotape proceedings be transcribed,

in whole or in part, and made a part of the record as provided in Rule 5A:8, except that the transcript must be filed within 60 days after the entry of the order requiring such transcript; and

(8) the notice of appeal.

(b) *Disagreement on Contents.* If disagreement arises as to the contents of any part of the record, the matter must, in the first instance, be submitted to and decided by the trial court.

* * *

Rule 5A:8. Record on Appeal: Transcript or Written Statement.

* * *

(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 written notice to 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 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 twenty-one 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 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; 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. Notice of such objection specifying the errors alleged or deficiencies asserted must be filed with the clerk of the trial court within 15 days after the date the notice of filing the transcript (paragraph (b) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (c) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. The clerk must give prompt notice of the filing of such objections to the trial judge. Within 10 days after the notice of objection is filed with the clerk of the trial court, 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.

* * *

Rule 5A:9. Judge Authorized to Act.

The judge authorized to act in all matters relating to the record on appeal is any judge having authority to enter orders in the case or in the court in which the case was heard or, in a case heard by three judges, any one of them.

* * *

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

(a) *Preparation.* The clerk of the trial court must prepare the record as soon as possible after notice of appeal is filed. In the event of multiple appeals in the same case, or in cases tried together, only one record need be prepared and transmitted.

(b) *Form of the Record.*

(1) The record must be compiled in the following order:

(i) a front cover setting forth the name of the court and the short style of the case;

(ii) a table of contents listing each paper included in the record and the page on which it begins;

(iii) each document constituting a part of the record in chronological order; and

(iv) the certificate of the clerk of the trial court that the foregoing constitutes the true and complete record, except omitted exhibits as hereinafter provided.

(2) Each page of the record must be numbered at the bottom.

(3) Transcripts, depositions, and reports of commissioners may be included in separate volumes identified by the clerk of the trial court if referred to in the table of contents and at the appropriate place in the record.

(4) Exhibits, other than those filed with pleadings, may be included in a separate volume or envelope certified by the clerk of the trial court, except that any exhibit that cannot be conveniently placed in a volume or envelope must be identified by a tag. Each such volume or envelope must include, on its cover or inside, a descriptive list of exhibits contained therein. Reference must be made to exhibits in the table of contents and at the appropriate place in the record referred to in paragraph (b)(1) of this Rule. The clerk of the trial court may not transmit the following types of exhibits, unless requested to do so by the clerk of this Court: drugs, guns and other weapons, ammunition, blood vials and other bio-hazard type materials, money, jewelry, articles of clothing, and bulky items such as large graphs and maps. The omission of any such exhibit must be noted on the descriptive list of exhibits. Upon motion by counsel, this Court may order the trial court to transmit any of these prohibited exhibits.

(5) Any transcript or statement of facts that the clerk of the trial court deems not a part of the record because of untimely filing must be certified as such and transmitted with the record.

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

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

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

(f) *Disposition of Record*. When the mandate is issued by this Court, the clerk of this Court must return the record to the clerk of the trial court. The record must be returned by that clerk upon the request of the clerk of this Court.

* * *

Rule 5A:10A. Digital Appellate Record: Preparation and Transmission.

(a) *Preparation.* A Digital Appellate Record may be created instead of a paper record, with substantially the same content as its paper counterpart. The clerk of the tribunal in which the proceeding originated is responsible for preparing the digital record, if the clerk chooses to transmit a digital record in place of the paper version.

(b) *Form of Record.* The digital record must comply with the Digital Appellate Record Standards posted on the Supreme Court of Virginia website.

(c) *Exhibits*. Original exhibits should be scanned or imaged and retained by the clerk of the tribunal. The omission of any exhibit that cannot be scanned or imaged must be noted in a descriptive list of exhibits. On motion or sua sponte, this Court may order the tribunal to transmit any retained exhibit.

(d) *Transmission.* The clerk of the tribunal must transmit the record to the clerk of this Court in the manner prescribed by the Digital Appellate Record Standards, using the Digital Records System created for this purpose. The same timing and dismissal rules apply to transmissions of digital records as apply to their paper counterparts in Rule 5A:10 and 5A:11.

(e) *Disposition of Record*. When the mandate is issued by this Court, the clerk of this Court must return all tangible items, if any, to the clerk of the tribunal in which the proceeding originated. The digital record will not be returned. If necessary, the record must be re-sent by that clerk upon the request of the clerk of this Court.

(f) *Public Record*. The publicly available digital record is the digital document prepared by the tribunal clerk with all information that is sealed or protected from public disclosure by law redacted or excluded.

* * *

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

* * *

(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, or within 30 days after receipt of notice by priority mail with delivery confirmation or equivalent mailing option of the order appealed from, counsel files with the clerk of the Virginia Workers' Compensation Commission a notice of appeal which must state the names and addresses of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e- mail address (if any) of counsel for each party, and the mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel, and whether the appellant challenges the sufficiency of the evidence to support the findings of the Commission. A copy of the notice of appeal also must be filed in the office of the clerk of this Court, and except as otherwise provided by law, must be accompanied by a check or money order in the amount of $50 payable to the “Clerk of the Court of Appeals,” for the 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 him 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.

* * *

(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.

* * *

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

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

(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 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 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) 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 for appeal will be dismissed.

(iii) 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 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 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 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.

* * *

(d) *Number of Copies to File.* Four copies of the petition must be filed with the clerk of this Court.

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

* * *

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

* * *

Rule 5A:13. Brief in Opposition.

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

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

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

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

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

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

* * *

Rule 5A:14. Reply Brief.

When a brief in opposition to the petition for appeal has been filed, the appellant may, within 14 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to exceed 5,300 words in length. Four copies must be filed. Motions for an extension to this briefing deadline must be filed no later than 10 days after the expiration of the deadline.

* * *

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

(a) *Denial by a Single Judge.* When a petition for appeal is denied by a Judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court must send a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). The demand must be filed in writing. Four copies must be filed with the clerk of this Court within fourteen days after the date of the order by which the petition was denied. The demand, which must include a statement identifying how the one-judge order is in error, must not exceed 350 words. Oral argument is not permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). A petitioner who has previously requested oral argument may waive oral argument by so stating in the demand for review. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(a) when filing a demand for three- judge review pursuant to Code § 17.1-407(D).

(b) *Denial by a Three-Judge Panel.* When a petition for appeal is denied by a three- judge panel, the clerk of this Court must send a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule may, within 14 days after the date of this notice, file a petition for rehearing in writing in the office of the clerk of this Court unless the denial was by a three-Judge panel after its consideration of a petition denied by a Judge of this Court

pursuant to Code § 17.1-407. The petition for rehearing may not exceed 5,300 words in length. The petition must state that a copy has been mailed or delivered to counsel for the appellee. Four copies must be filed. Oral argument on the petition for rehearing will not be allowed. The petition for rehearing will be referred to the panel of this Court that considered the petition for appeal. No responsive brief may be filed unless requested by this Court. The clerk of this Court will notify counsel for the appellant and counsel for the appellee of the action taken by this Court on the petition for rehearing. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(b) when filing a petition for a rehearing of an order of a three-judge panel denying a petition for appeal.

* * *

Rule 5A:15A. Denial of Petition for Appeal; Petition for Rehearing Filed by Electronic Means.

(a) *Proceedings After Denial of Petition by Single Judge.* – (1) When a petition for appeal is denied by a Judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court must send a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. The appellant may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). Demands for three-judge review filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(a) must be filed in accordance with the provisions of Rule 5A:15(a).

(2) Except for demands for three-judge review filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(a), the demand must be filed as a single Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

(3) The demand, which must include a statement identifying how the one-judge order is in error, must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 350 words. The demand must include a certificate of service to opposing counsel and the certificate must specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel must be by electronic means and such address must be included in the certificate of service. The demand must also include a certificate of compliance with the word count limit. The demand will be considered filed on the date and time that it is received by cavpfr@vacourts.gov. If the demand does not meet the requirements of this rule as to format, the clerk of this Court must so notify counsel and provide a specific amount of time for a corrected copy of the demand to be filed. A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed demand for three-judge review, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the demand by e-mail, any delivery failure notice received in response to the attempt, and a copy of the demand for three-judge review.

(4) The e-mail message to which the demand is attached must recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message must contain a paragraph stating that a demand for three-judge review is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the demand, as well as the law firm name, mailing address, telephone number, facsimile

number (if any), and e-mail address (if any) of counsel filing the demand. The message must also state whether a copy of the demand has been served by e-mail or another means on opposing counsel and the date of such service. If the demand has been served on opposing counsel by e-mail, the e-mail address for opposing counsel must also be included. Upon receipt of the demand for three-judge review in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e- mail to counsel seeking the rehearing.

(5) Oral argument will not be permitted on consideration of a petition by a three- judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). An appellant who has previously requested oral argument may waive oral argument by so stating in the demand for review.

(b) *Proceedings After Denial of Petition by Three-Judge Panel*. – (1) When a petition for appeal is denied by a three-judge panel, the clerk of this Court must send a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may file a petition for rehearing in the office of the clerk of this Court unless the denial was by a three-judge panel after its consideration of a petition denied by a Judge of this Court pursuant to Code § 17.1-407. Petitions for rehearing filed by pro se prisoners or by those with leave of court to proceed under Rule 5A:15(b) will be in accordance with the provisions of Rule 5A:15(b).

(2) Except for petitions for rehearing filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(b), the petition must be filed as a single PDF document attached to an email addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

(3) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 12- point font or larger, must be double-spaced, and must not exceed 5,300 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. If opposing counsel has an e-mail address, service on opposing counsel must be by electronic means and such address must be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. Petitions filed by e-mail will be considered filed on the date and time that it is received by cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of this Court must so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(4) The e-mail message to which the petition is attached must recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message must contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message must also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-

mail address for opposing counsel must also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

(5) Oral argument on the petition for rehearing will not be allowed. The petition for rehearing will be referred to the panel of this Court that considered the petition for appeal. No responsive brief may be filed unless requested by this Court. The clerk of this Court must notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

* * *

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

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

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

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

* * *

Rule 5A:17. Security for Appeal.

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

(b) *Security for Appeal; Defects.* — Whenever an appellant files an appeal bond or irrevocable letter of credit, he must contemporaneously give notice in writing of said filing to counsel for appellee. The time for initially filing the appeal bond or letter of credit prescribed by Code § 8.01-676.1(A) and (B) is not jurisdictional under Code § 8.01-676.1(P). No appeal will be dismissed because of defect in any appeal bond or irrevocable letter of credit unless an appellee, within 21 days after the giving of such notice, files with the clerk of 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 will 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.

* * *

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

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

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

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

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

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

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

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

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

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

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

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

* * *

(f) *Copies.* An electronic version, in Portable Document Format (PDF), must be filed with the clerk of this Court and served on opposing counsel at the time of filing the brief with the Court, unless excused by this Court for good cause shown. An electronic version of a brief amicus curiae must be filed with the clerk of this Court and served on counsel for all parties and on any other counsel amicus curiae. For purposes of this Rule, service by email is governed by Rule 1:17, which allows electronic transmission without the need of consent by opposing counsel. The electronic version must be filed in the manner prescribed by the VACES Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at http://www.vacourts.gov/online/vaces/resources/guidelines/pdf . In addition, 3 printed copies of each brief (including a brief amicus curiae) must be filed in the office of the clerk of this Court. All briefs must contain a certificate evidencing the date and method of electronic transmission of the brief to opposing counsel.

(g) *Technical problems with electronic filing of brief or appendix.* A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed brief

or appendix, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to electronically file the brief or appendix, any error message received in response to the attempt, documentation that the brief or appendix was later successfully resubmitted, and a motion requesting that the Court accept the resubmitted brief or appendix.

* * *

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) A statement of the assignments of error with a clear and exact reference to the page(s) of the transcript, written statement, record, or appendix where each assignment of error was preserved in the trial court.

(d) A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the transcript, written statement, 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.

* * *

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:

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

* * *

(d) The standard of review and the argument (including principles of law and authorities) relating to each assignment of error. For any additional assignment of error by appellee which 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.

* * *

Rule 5A:22. Requirements for Reply Brief.

The reply brief, if any, must contain argument in reply to contentions made in the brief of appellee. No reply brief is necessary if the contentions have been adequately answered in the opening brief of appellant. The reply brief must contain a certificate (which need not be signed in handwriting) that Rule 5A:19(f) has been complied with.

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).

* * *

Rule 5A:23. Briefs Amicus Curiae.

* * *

(c) A brief amicus curiae must comply with the rules applicable to the brief of the party supported.

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

* * *

Rule 5A:24. Covers of Documents.

(a) To facilitate identification, documents must bear covers colored as follows:

* * *

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

* * *

Rule 5A:25. Appendix.

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

(b) *Filing.* If the combined lengths of the appendix and the opening brief of the appellant do not exceed the limitation prescribed in Rule 5A:19, the appendix may be filed as an addendum to the opening brief and within the same cover. If the combined lengths of the appendix and the opening brief exceed the limitation prescribed in Rule 5A:19, the appellant must file the appendix as a separate volume. The appellant must file 3 printed copies and an electronic version in Portable Document Format (PDF) of the appendix and must serve an electronic copy on counsel for each party separately represented at the time of filing the appendix with the Court. For purposes of this Rule, service by email is governed by Rule 1:17, which allows electronic transmission without the need of consent by opposing counsel. This Court may by order require the filing or service of a different number and may, sua sponte or on motion, enter an order dispensing with the appendix and permitting an appeal to proceed on the original record with any copies of the record, or relevant parts, that the Court may order the parties to file. The appendix must be filed in the manner prescribed by the VACES Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The

Guidelines are located on the Court's website at
http://www.vacourts.gov/online/vaces/resources/guidelines.pdf.

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

* * *

(d) *Determination of Contents.* Within ten days after the filing of the record with the Court of Appeals or, in a case in which a petition for appeal has been granted, within ten days after the date of the certificate of appeal issued by the clerk of the Court of Appeals, counsel for appellant must file in the office of the clerk of the Court of Appeals a written statement signed by all counsel setting forth an agreed designation of the parts of the record to be included in the appendix. In the absence of such an agreement, counsel for appellant must file with the clerk of the Court of Appeals a statement of the assignments of error and a designation of the contents to be included in the appendix within fifteen days after the filing of the record or, in a case in which a petition for appeal has been granted, within fifteen days after the date of the certificate of appeal; not more than ten days after this designation is filed, counsel for appellee must file with the clerk of the Court of Appeals a designation of any additional contents to be included in the appendix and, in appeals of right, a statement of any additional assignments of error the appellee wishes to present. The appellant must include in the appendix the parts thus designated, together with any additional parts the appellant considers germane.

(e) *Table of Contents; Form of Presentation.* At the beginning of the appendix there must be a table of contents, which must include the name of each witness whose testimony is included in the appendix and the page number of the appendix at which each portion of the testimony of the witness begins. Thereafter, the parts of the record to be reproduced must be set out in chronological order. When matter contained in the transcript of proceedings is set out in the appendix, the page of the transcript or of the record at which such matter may be found must be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial matters (such as captions, subscriptions and acknowledgements) should be omitted. A question and its answer may be contained in a single paragraph.

(f) *Costs.* Unless counsel otherwise agree, the cost of producing the appendix must initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issue presented, he may so advise the appellee, and the appellee must advance the cost of including such parts. The cost of producing the appendix will be taxed as costs in the case.

(g) *Penalty.* Nothing should be included in the appendix that is not germane to an assignment of error. As examples, no pleadings (other than the basic initial pleading as finally amended) should be included unless an assignment of error is presented relating to it, and then only the portion thereof to which the assignment relates; and testimony relating solely to the amount of damages should not be included unless error is assigned relating to the amount of damages. If parts of the record are included in the appendix unnecessarily at the direction of a party, this Court may impose the cost of producing such parts on that party.

* * *

Rule 5A:27. Summary Disposition.

In cases in which appeal lies as a matter of right, if all the Judges of the panel of the Court of Appeals to which a pending appeal has been referred conclude from a review of the record and

the briefs of the parties that the appeal is without merit, the panel may forthwith affirm the judgment of the trial court or commission.

* * *

Rule 5A:28. Oral Argument.

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

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

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

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

(e) *Waiver*. During oral argument, it is not necessary for any party to expressly reserve any argument made on brief, and the failure to raise any such argument does not constitute a waiver. Any party may, without waiving the arguments made on brief, waive oral argument. See Rules 5A:20(h) and 5A:21(g).

* * *

Rule 5A:29. Notice of Decision.

Promptly after the Court of Appeals has decided a case, the clerk of the Court of Appeals must send a copy of the decision to all counsel of record and to the court or commission from which the appeal proceeded.

* * *

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

(a) *To Whom Allowed.* Except as otherwise provided by law, if an appeal is dismissed, costs will be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court of Appeals; if a judgment is affirmed, costs will be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs will be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs will be allowed as ordered by the Court of Appeals.

(b) *Attorney Fees.* (1) In any case where attorney fees are recoverable under Title 16.1 or Title 20 relating to affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising

under Title 16.1 or Title 20, or involving adoption under Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2, a party may request an award of attorney fees incurred in the appeal of the case by making said request in the Opening Brief of Appellant, the Reply Brief of the Appellant, or in the Brief of Appellee.

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

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

(4) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court should consider all relevant factors, including but not limited to, the extent to which the party was a prevailing party on the issues, the nature of the issues involved, the time and labor involved, the financial resources of the parties, and the fee customarily charged in the locality for similar legal services.

(c) *Taxable Costs.* Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, are taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. See, Code § 17.1-128.

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

(e) *Award.* The clerk of this Court must prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate will not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, must be added to the mandate on request by the clerk of this Court to the clerk of the trial court or the clerk of the Virginia Workers' Compensation Commission.

* * *

Rule 5A:31. Mandate.

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

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

* * *

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

(a) *Requirements for Pro Se Prisoners and By Leave of Court*. – Pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case must within 14 days following such decision or order, file seven copies of a petition for rehearing with the clerk of the Court of Appeals. The petition for rehearing may not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (b) of this Rule when filing a petition for rehearing.

(b) *Requirements for All Others.* – Any party, other than pro se prisoners or those with leave of Court to proceed under paragraph (a) of this Rule, desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case must, within 14 days following such decision, file a petition for rehearing with the clerk of the Court of Appeals.

(1) The petition must be filed as a single Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.

(2) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 12- point font or larger, must be double-spaced, and must not exceed 5,300 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. If opposing counsel has an e-mail address, service on opposing counsel must be by electronic means and such address must be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals will so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in failure to timely receive the electronically filed petition for rehearing, counsel must provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached must recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message must contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message must also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel must also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition for rehearing.

(c) *Response*. – No response to a petition for rehearing will be received unless requested by the Court of Appeals.

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

(e) *Grounds.* – No petition for rehearing will be granted unless one of the Judges who decided the case adversely to the petitioner determines that there is good cause for such rehearing. The clerk of the Court of Appeals must notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

* * *

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

* * *

(b) *Requirements for Pro Se Prisoners and By Leave of Court.* – A pro se prisoner or a party who has leave of Court to proceed under this paragraph of the Rule aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc within 14 days after the date of the order sought to be reheard. Twelve copies of any such petition must be filed with the clerk of the Court of Appeals. The petition for rehearing en banc may not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (c) of this Rule when filing a petition for rehearing en banc.

(c) *Requirements for All Others.* – (1) Except for petitions for rehearing en banc filed by pro se prisoners or by those with leave of Court to proceed under paragraph (b) of this Rule, the petition must be filed as a single Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.

(2) The petition must be formatted to print on a page 8 1/2 x 12 inches, must be in 12- point font or larger, must be double-spaced, and must not exceed 5,300 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. If opposing counsel has an e-mail address, service on opposing counsel must be by electronic means and such address must be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals must so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel must provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached must recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message must contain a paragraph stating that a petition for rehearing en banc is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message must also state whether a copy of the petition has been served by e-mail or another means on opposing

counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel must also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition.

(d) *Proceedings After Petition for Rehearing.* – No answer to a petition for a rehearing en banc will be received unless requested by the Court of Appeals. A rehearing en banc on motion of the Court of Appeals must be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of the Court of Appeals must promptly notify counsel for both parties of the action taken by this Court on the petition for rehearing en banc via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

* * *

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

(b) *Rehearing En Banc*. When all or part of a petition for rehearing en banc is granted, the clerk of this Court must notify all counsel promptly. The mandate entered is stayed as to all issues decided by the panel pending the decision of the Court en banc. The appeal is reinstated on the docket of the 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. The Court of Appeals may require any party to whom rehearing en banc has been granted to file 20 copies of an appendix, prepared in conformity with the provisions of Rule 5A:25, with the clerk of the Court within such time as the Court of Appeals specifies.

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

(2) Appellant's Opening Brief Upon Rehearing En Banc. The party who was the appellant before the panel of this Court must file in the office of the clerk 20 copies of a brief, which may not exceed 12,300 words in length. Such brief must be filed within 21 days following the date of the order of this Court granting rehearing en banc, and must be accompanied by a certificate that three copies were mailed or delivered to opposing counsel on or before the date of filing. The brief must bear a white cover.

(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 20 copies of an answering brief not to exceed 12,300 words in length, within 14 days after the opening brief has been filed. Three copies of appellee's answering brief must be mailed or delivered to opposing counsel on or

before the date the answering brief is filed. The brief must bear a blue cover. Appellee may be heard orally whether or not the answering brief is filed.

(4) Appellant's Reply Brief Upon Rehearing En Banc. The party who was the appellant before the panel may file in the office of the clerk a reply brief, not to exceed 3,500 words, within 14 days after the answering brief has been filed. Twenty copies of the reply brief must be filed. Three copies of such brief must be mailed or delivered to opposing counsel on or before the date the answering brief is filed. The brief must bear a green cover.

* * *

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

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

* * *

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

(a) *Settlement Conference.* Upon motion or sua sponte, this Court may order counsel, and clients in appropriate cases, to participate in a settlement conference. An informal motion requesting a settlement conference may be filed at any time while the matter is on appeal and should state briefly why a settlement conference would be useful. The motion must state whether all parties concur. If a party objects, that party must file within 7 days a short response explaining the grounds for the objection. All motions and responses may be in letter format addressed to the clerk of this Court. If this Court orders a settlement conference, it will ordinarily be held by telephone conference call and, in the discretion of the settlement judge, may be held in person at a convenient location.

(b) *Settlement Judge.* A senior or retired appellate judge will conduct all settlement conferences at no cost to the litigants.

(c) *Excluded Cases.* No settlement conference will be conducted in appeals of criminal judgments or orders terminating parental rights or in any other case arising under this Court's original jurisdiction.

(d) *Conferences.* Prior to participating in a settlement conference, all counsel must consult with their respective clients about settlement options and ask for express authority to settle within any parameters acceptable to the client. The settlement judge may conduct more than one conference if, in his discretion, he deems it advisable. During a conference, the settlement judge may consult ex parte with counsel, or with counsel and that counsel's client, but must not consult ex parte with any represented client without counsel's agreement.

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

(f) *Confidentiality.* The provisions of the settlement agreement will not be considered confidential except to the extent the agreement specifically requires it. No confidentiality provision, however, will prejudice any party's ability to seek judicial enforcement of a settlement agreement. In any case in which a settlement conference does not result in a settlement agreement, no statement made during a settlement conference or in motions requesting a settlement conference or responses to such motions may be disclosed by the settlement judge, the parties, or counsel to any (i) appellate judge who may be called upon to decide the merits of the appeal or any related appeal, or lower court judge who may be called upon to decide the merits of the case if remanded or the merits of any related case.

(g) *Cross-Appeals and Related Appeals.* Appeals and cross-appeals will ordinarily be addressed in a single settlement conference. At the discretion of the settlement judge, related appeals may be consolidated for settlement conference purposes.

* * *

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

* * *

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

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

(i) Except by permission of a Judge of this Court, a petition for review may not exceed the longer of 15 pages or 2,625 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5A:12(c).

(ii) The petition must be accompanied by a copy of the pertinent portions of the record of the circuit court, including the relevant portions of any transcripts filed in the circuit court and the order(s) entered by the court respecting the injunction (hereafter "the record"). The copy of the record constitutes part of the petition for the purpose of paragraph (b), but does not count against the petition 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, facsimile number (if any), and e-mail address of counsel for each party; and the mailing address, telephone number, facsimile number (if any), and e-mail address of any party not represented by counsel;

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

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

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

(d) *Number of Copies to File.* Four copies of the petition, including the record of the circuit court, must be filed. Only one copy of the record need be filed if, upon filing the petition,

counsel for the petitioner also files an electronic copy of the said record as an Adobe Acrobat Portable Document Format (PDF) document on a CD-ROM.

(e) *Filing Fee.* The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount required by statute. The clerk of this Court may file a petition for review that is not accompanied by such fee if the fee is received by the clerk within 5 days of the date the petition for review is filed. If the fee is not received within such time, the petition for review will be dismissed.

(f) *Scope and Review.*

(i) a petition for review may be considered by this Court whether the circuit court's order, or that part of the order dealing with the injunction, is temporary or permanent. If review is sought from a final order that deals with injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses injunctive relief. All other issues are governed by the normal rules and timetables that apply to appeals. If both a petition for review under Code § 8.01-626 and an appeal under § 8.01-675.3 are filed to challenge the same final order, the clerk of this Court will assign separate record numbers to the two proceedings.

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

(g) *Responsive Pleading.* A respondent may file a response to a petition for review within seven days of the date of service of same, unless the Court specifies a shorter time frame.

For the purpose of this rule, a petition for review is considered served 3 days from the date on which it was mailed, or 1 day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, the Court may act on a petition for review without awaiting a response; however, absent exceptional circumstances, the Court will not grant a petition for review without affording the respondent an opportunity to file a responsive pleading.

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

* * *

APPENDIX OF FORMS.

Notes:

1. Each of the Part Five A Forms 1 through 7 should be used in conjunction with the Form for Execution and Acknowledgment of All Bonds, set forth as Form 8.

2. As provided in Code §§ 1-205 and 8.01-676.1(S), if the party required to post an appeal or suspending bond tenders such bond together with cash in the full amount required, no surety is required.

* * *

Form 9. Irrevocable Letters of Credit.

* * *

In the event of non-renewal, within fifteen (15) days after payment to the clerk under the previous paragraph, the appellant(s) or someone for (him)(her)(them)(it) must file with said clerk an appeal bond in substantial conformance with the appropriate form in the Appendix to Part

Five A of the Rules of the Supreme Court of Virginia. The bond must be in the penalty of the amount paid to said clerk under this letter of credit, and said funds are in lieu of surety.

* * *

Rule 7A:1. Scope.

Part Seven-A of the Rules applies to all proceedings in the General District Courts.

* * *

Rule 7A:2. Computation of Time.

Whenever a party is required or permitted under these Rules to do an act within a prescribed time after receipt or delivery of a paper and the paper is sent by mail, three days will be added to the prescribed period.

* * *

Rule 7A:3. Counsel.

When used in these Rules, the word "counsel" or "attorney" includes a partnership, a professional corporation or an association of members of the Virginia State Bar practicing under a firm name.

"Counsel of record" in any case includes an attorney who has signed a pleading in the case or who has notified the clerk or judge that the attorney appears in the case and also includes a party who appears in court pro se. Except as provided in § 16.1- 69.32:1, counsel of record may not withdraw from a case except by leave of court with such notice as the court may require to the client of the time and place of a motion for leave to withdraw.

* * *

Rule 7A:4. Reporters and Transcripts of Proceedings in Court.

Reporters, when present, must be first duly sworn to take down and transcribe the proceedings faithfully and accurately to the best of their ability and are subject to the control and discipline of the judge.

When a reporter is present and takes down any proceeding in a court, any person interested is entitled to obtain a transcript of the proceedings or any part thereof upon terms and conditions to be fixed in each case by the judge.

The proceedings may be taken down by means of any recording device approved by the judge.

* * *

Rule 7A:7. Filing Format and Procedure.

(a) Except as provided in subdivision (c) of this Rule and Rule 1:17 pertaining to Electronically Filed Cases,

(1) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or Statutes must be 8-1/2 by 11 inches in size. All typed material must be double spaced except for quotations.

(2) Subdivision (a)(1) of this Rule does not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(b) No paper will be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel must certify that the substituted paper is identical in content to the paper initially filed.

(c) *Electronic Filing.* In any general district court which has established an electronic filing system pursuant to Rule 1:17:

(1) Any proceeding may be designated as an Electronically Filed Case upon consent of all parties in the case.

(2) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other instruments in an Electronically Filed Case must be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party must notify the clerk of court that the original document must be retained.

* * *

Rule 7A:8. General Provisions as to Pleadings.

* * *

(c) Counsel of Record who files a pleading must sign it and state counsel's address and phone number.

(d) The mention in a pleading of an accompanying exhibit, of itself and without more, makes such exhibit a part of the pleading.

* * *

Rule 7A:9. Amendments.

No amendment may be made to any pleading after it is filed with the clerk, except by leave of court. Leave to amend should be liberally granted in furtherance of the ends of justice.

In granting leave to amend, the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper.

* * *

Rule 7A:10. Copies of Pleadings and Requests for Subpoenas Duces Tecum to be Furnished.

All pleadings not otherwise required to be served and requests for subpoenas duces tecum must be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing.

At the foot of such pleadings and requests must be appended either acceptance of service or a certificate of counsel that copies were served as this rule requires, showing the date of delivery, dispatching, transmitting or mailing.

* * *

Rule 7A:11. Endorsements.

Drafts of orders 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 by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing to all counsel of record who have not endorsed them. Compliance with this rule and with Rule 7A:10 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 is accomplished as provided in Rule 1:17.

* * *

Rule 7A:13. What Constitutes Noting an Appeal.

All appeals must be noted in writing. An appeal is noted only upon timely receipt in the clerk's office of the writing. An appeal may be noted by a party or by the attorney for such party. In addition, in civil cases, an appeal may be noted by a party's regular and bona fide employee or by a person entitled to ask for judgment under any statute.

* * *

Rule 7A:14. Continuances.

* * *

(b) *All Parties Agree to Continuance.* If all parties to a proceeding agree to seek a continuance, the request may be made orally by one party as long as that party certifies to the judge that all other parties know of the request and concur. Such a request should be made as far in advance of the scheduled hearing or trial as is practicable. If granted, the moving party is responsible for assuring that notice of the continuance is given to all subpoenaed witnesses and that they are provided with the new court date. This obligation may be met by (i) an agreement between the parties that each side will notify its own witnesses; or (ii) any other arrangement that is reasonably calculated to get prompt notice to all witnesses.

(c) *All Parties Do Not Agree to Continuance.* If a request for continuance is not agreed to by all parties, such request should be made to the court prior to the time originally scheduled for the hearing or trial. If the court determines that a hearing on the request should be conducted prior to the time originally scheduled for the trial, all parties must be given notice of such hearing by the requesting party.

(d) *Continuances Requested At the Time of Hearing.* Where a request for a continuance has not been made prior to the hearing or trial and other parties or witnesses are present and prepared for trial, a continuance should be granted only upon a showing that to proceed with the trial would not be in the best interest of justice.

(e) *Parties.* For purposes of this Rule, the term "parties" means all plaintiffs, defendants and third party defendants in a civil case and the prosecution and the defendant in a criminal or traffic infraction case.

* * *

Rule 7A:15. General Information Relating to Each Court.

The chief judges of the general district courts must, on or before December 31 of each year, furnish the Executive Secretary of the Supreme Court current general information relating to the management of the courts within each district. This information will be assembled and published electronically by the Executive Secretary.

* * *

Rule 7A:16. Isolation Proceedings under Article 3.01 of Title 32.1 of the Code of Virginia; Communicable Diseases of Public Health Significance.

A. Upon any petition by the State Health Commissioner, or that official's designee, for an order that a person or persons appear before the court to determine whether isolation is necessary to protect the public health from the risk of infection with a communicable disease of public health significance, the provisions of §§ 32.1-48.03, 32.1-48.04, and related sections of Article 3.01 of Title 32.1 of the Code of Virginia must be followed.

B. The court should hold hearings under this rule in a manner to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, witnesses, and the general public. To this end, the court may take measures including, but not limited to, ordering the hearing to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment.

* * *

Rule 7B:3. General Provisions as to Pleadings.

* * *

(b) The warrant, summons or complaint or an attachment thereto must contain a statement, approved by the Committee on District Courts, explaining how any party may object to venue.

(c) The warrant, summons or complaint, or an attachment thereto must contain a statement, approved by the Committee on District Courts, explaining that if the case is contested, how a trial date will be set.

(d) All civil warrants and complaints must contain on their face language in substantially the following form: "The defendant is not required to appear pursuant to this document, but if the defendant does not appear, judgment may be granted in favor of the plaintiff."

* * *

Rule 7B:5. Production of Written Agreement.

When a suit is brought on a written contract, note or other instrument, the original document must be tendered to the court for entry of judgment thereon unless the production of the original is excused by the court for good cause or by statute.

* * *

Rule 7B:6. Verification.

If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike;

otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed. In an Electronically Filed Case, verification is subject to the provisions of Rule 1:17.

* * *

Rule 7B:7. Appearance by Plaintiff.

Except as may be permitted by statute, no judgment for plaintiff may be granted in any case except on request made in person in court by the plaintiff, plaintiff's attorney, or plaintiff's regular and bona fide employee.

* * *

Rule 7B:8. Failure of Plaintiff to Appear.

(a) If neither the plaintiff nor the defendant appears, the Court must dismiss the action without prejudice to the right of the plaintiff to refile.

(b) If the defendant, but not the plaintiff, appears on the return date and the case is not before the Court for trial, the Court must dismiss the action without prejudice to the right of the plaintiff to refile.

(c) If the defendant, but not the plaintiff, appears on the trial date and:

(1) The defendant admits owing all or some portion of the claim, the Court must dismiss the action without prejudice to the right of the plaintiff to refile; but if

(2) The defendant denies under oath owing anything to the plaintiff, the Court must enter judgment for the defendant with prejudice to the right of the plaintiff to refile.

* * *

Rule 7B:9. Failure of Defendant to Appear.

Except as may be provided by statute, a defendant who fails to appear in person or by counsel is in default and;

(a) Waives all objections to the admissibility of evidence; and

(b) Is not entitled to notice of any further proceeding in the case, except that when service is by posting pursuant to § 8.01-296(2)(b), the ten day notice required by that section must be complied with; and

(c) On request made in person in court by the plaintiff, plaintiff's attorney, plaintiff's regular and bona fide employee, or any other person authorized by law, judgment must be entered for the amount appearing to the judge to be due. If the relief demanded is unliquidated damages, the court must hear evidence and fix the amount thereof.

* * *

Rule 7B:11. Motions to Transfer.

(a) When a written motion to transfer objecting to venue is filed by any party, the party objecting must mail a copy of such motion to all counsel of record. Failure to comply with this requirement is not a ground for denying the motion, but the court may grant a deferral of any hearing on the motion to transfer if it finds that the interest of justice would be served by such deferral.

(b) If any party who has filed a motion to transfer objecting to venue is not present when the court rules on such motion:

(1) If the motion is granted, the Clerk must transmit the files in accordance with such order and must send a copy of the letter of transmittal or order of transfer to all parties along with information as to any costs awarded under § 8.01-266; or

(2) If the motion is denied, the court must set a date for the trial of the case and the Clerk must notify the absent objecting party by first class mail of such date and of any costs awarded any other party under § 8.01-266.

* * *

Rule 7C:1. Scope.

These rules apply to all criminal and traffic cases [infractions and others] in the General District Courts.

* * *

Rule 7C:2. Venue.

Questions of venue must be raised before a finding of guilty or venue is deemed waived.

* * *

Rule 7C:3. The Complaint, Warrant, Summons and Capias.

(a) The complaint consists of sworn statements of a person or persons of facts relating to the commission of an alleged offense. The statements must be made upon oath before a judicial officer empowered to issue arrest warrants. The judicial officer may require the sworn statements to be reduced to writing if the complainant is not a law- enforcement officer.

(b) More than one warrant, summons or capias may issue on the same complaint. A warrant may be issued by a judicial officer if the accused fails to appear in response to a summons.

(c) A separate warrant, summons or capias must be issued for each charge, except as provided in §§ 33.2-503, 46.2-819.1, 46.2-819.3, and 46.2-819.3:1.

(d) A summons, whether issued by a judicial officer or a law-enforcement officer, must command the accused to appear at a stated time and place before a court of appropriate jurisdiction. It must (i) state the name of the accused or, if this name is unknown, set forth a description by which he can be identified with reasonable certainty, (ii) describe the offense charged and state whether the offense is a violation of state, county, city or town law, and (iii) be signed by the magistrate or the law-enforcement officer, as the case may be.

(e) If the warrant has been issued but the officer does not have the warrant in his possession at the time of the arrest, he must (i) inform the accused of the offense charged and that a warrant has been issued, and (ii) deliver a copy of the warrant to the accused as soon thereafter as practicable.

* * *

Rule 7C:4. Trial Together of More Than One Accused or More Than One Offense and Joint Preliminary Hearings.

* * *

(b) *More Than One Accused / Severance of Defendants.* If the court finds that a joint trial would constitute prejudice to a defendant, the court must order severance as to that defendant or provide such other relief as justice requires.

* * *

Rule 7C:5. Discovery.

(a) *Application of Rule*. This Rule applies only to the prosecution for a misdemeanor which may be punished by confinement in jail and to a preliminary hearing for a felony.

(b) *Definitions*. For purposes of discovery under this Rule 1) the prosecuting attorney is the attorney for the Commonwealth or the city attorney, county attorney, or town attorney, who is responsible for prosecuting the case; 2) if no prosecuting attorney prosecutes the case, the representative of the Commonwealth is the law enforcement officer, or, if none, such person who appears on behalf of the Commonwealth, county, city or town in the case.

(c) *Discovery by the Accused*. Upon motion of an accused, the court must order the prosecuting attorney or representative of the Commonwealth to permit the accused to hear, inspect and copy or photograph the following information or material when the existence of such is known or becomes known to the prosecuting attorney or representative of the Commonwealth and such material or information is to be offered in evidence against the accused in a General District Court:

(1) any relevant written or recorded statements or confessions made by the accused, or copies thereof and the substance of any oral statements and confessions made by the accused to any law enforcement officer; and

(2) any criminal record of the accused.

(d) *Time of Motion.* A motion by the accused under this Rule must be made in writing and filed with the Court and a copy thereof mailed, faxed, or otherwise delivered to the prosecuting attorney and, if applicable, to the representative of the Commonwealth at least 10 days before the day fixed for trial or preliminary hearing. The motion must include the specific information or material sought under this Rule.

(e) *Time, Place and Manner of Discovery and Inspection.* An order granting relief under this Rule must specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(f) *Failure to Comply.* If at any time during the course of the proceedings, it is brought to the attention of the court that the prosecuting attorney or representative of the Commonwealth has failed to comply with this Rule or with an order issued pursuant to this Rule, the court must order the prosecuting attorney or representative of the Commonwealth to permit the discovery or inspection of the material not previously disclosed, and may grant such continuance to the accused as it deems appropriate.

* * *

Rule 7C:6. Pleas.

(a) A court must not accept a plea of guilty or nolo contendere to any misdemeanor charge punishable by confinement in jail without first determining that the plea is made voluntarily with

an understanding of the nature of the charge and the consequences of the plea. Before accepting a plea to such a charge, the court must inform the accused that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(b) Upon rejecting a plea agreement, a judge must immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

(c) A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

* * *

Rule 7C:7. Service and Filing of Papers.

(a) *Copies of Written Motions to be Furnished.* All written motions and notices not required to be served otherwise must be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile, or mailing, a copy to him on or before the day of filing.

Service pursuant to this Rule is effective upon such delivery, dispatch, transmission or mailing, except that papers served by facsimile transmission completed after 5:00 p.m. are deemed served on the next day that is not a Saturday, Sunday, or legal holiday.

At the foot of such pleadings and requests must be appended either acceptance of service or a certificate of counsel that copies were served as this Rule requires, showing the date of delivery and method of service, dispatching, transmitting, or mailing.

(b) *Filing*. Pleadings, motions, notices, and other materials required to be served must be filed with the clerk. In an Electronically Filed Case, the provisions of Rule 1:17 are applicable.

* * *

Rule 8:1. Scope.

Part Eight of the Rules applies to all proceedings in the Juvenile and Domestic Relations District Courts.

* * *

Rule 8:2. Definitions.

(a) *Statutory Definitions.* The definitions stated in § 16.1-228 are applicable to this Part.

(b) *Additional Definitions.* The following words and phrases used in this Part are defined as follows:

(1) "Counsel" or "attorney" includes a partnership, a professional corporation or an association of members of the Virginia State Bar practicing under a firm name or governmental agency name.

(2) "Counsel of Record" in any pending case includes an attorney who has signed a pleading in the case or who has notified the clerk or judge that the attorney appears in the case and also includes a guardian ad litem and a party who appears in court pro se. Except as provided by statute, counsel of record may not withdraw from a case except by leave of court with such notice as the court may require to the client of the time and place of a motion for leave to withdraw.

* * *

Rule 8:3. Contents of Petitions in Certain Proceedings.

(a) *Proceedings for the Ordering of Services.*

(1) Motion or Petition. When a party to a matter pending before the court, or a petition filed for the purpose, proposes that the court enter an order pursuant to § 16.1-278, directing that a governmental officer, employee, agency, or institution render information, assistance, services or cooperation, the petition or motion must contain:

a) The information, assistance, services, or cooperation sought;

b) The state or federal law or regulation or city, county, or town ordinance that provides for the rendering of such information, assistance, services, or cooperation sought; and

c) The officer, employee, agency, or institution to whom the order should be directed.

(2) Notice. The motion or petition prescribed in paragraph (a)(1) of this Rule must be served on the governmental officer, employee, agency, or institution in question pursuant to § 16.1-264.

(3) Hearing. The governmental officer, employee, agency, or institution against whom an order is sought is entitled to a hearing on the issues raised by the petition or motion. The hearing may be held at such time as the court deems appropriate.

(b) *Proceedings for Judicial Consent to Emergency Surgical or Medical Treatment for a Juvenile.* When a petition is filed for the purpose of seeking judicial consent for emergency surgical or medical treatment of a juvenile, the petition must contain:

* * *

(c) *Proceedings for Support.* Except for temporary child support orders issued pursuant to Va. Code § 16.1-279.1, when a petition is filed seeking a court order for support of a spouse or child, the petition must contain:

* * *

In the case of a petition for support, if a protective order has been issued or if a party asserts that the party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk must not be required on the petition; however, the information must be provided to the court and may not be disclosed except by order of the court.

* * *

Rule 8:4. Service of Process - Motion to Reduce Support Arrearages to Judgment.

Any motion to enter judgment for support arrearages pursuant to § 16.1-278.18 must be served upon the respondent in accordance with the provisions of §§ 8.01-296, 8.01-327, 8.01-329, or by (1) certified mail, return receipt requested, and (2) first class mail. Upon sufficient showing that a diligent effort was made to ascertain the location of a party, that party may be served with any required notice by delivery of the written notice to that party's residential or business address as filed with the court pursuant to Code § 20-60.3 or the Department of Social Services, or if changed, as shown in the records of the Department of Social Services.

* * *

Rule 8:5. Court-Ordered Reports.

Copies of all studies and reports pursuant to §§ 16.1-269.2, 16.1-273, 16.1-274, 16.1-275 and 63.2-1524, when received by the court must be furnished by the court to counsel of record, and upon request must be mailed to such counsel. Counsel of record must return such reports to

the clerk upon the conclusion of the hearing and may not make copies of such report or amended report or any portion of either.

* * *

Rule 8:6. The Roles of Counsel and of Guardians Ad Litem When Representing Children.

The role of counsel for a child is the representation of the child's legitimate interests.

When appointed for a child, the guardian ad litem must vigorously represent the child, fully protecting the child's interest and welfare. The guardian ad litem must advise the court of the wishes of the child in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child's interest and welfare.

* * *

Rule 8:7. Format for Filing.

(a) Except as provided in Rule 8:8(F) and Rule 8:8A, and Rule 1:17 pertaining to Electronically Filed Cases,

(1) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or statutes must be 8-1/2 by 11 inches in size. All typed material must be double spaced except for quotations.

(2) Subdivision (a)(1) of this Rule must not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(b) No paper will be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel must certify that the substituted paper is identical in content to the paper initially filed.

* * *

Rule 8:8. Pleadings.

(a) *General.* Counsel of record tendering a pleading gives assurances that it is filed in good faith and not for delay, and counsel of record who files a pleading must sign it and state counsel's address and telephone number. A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted. The mention in a pleading of an accompanying exhibit, of itself and without more, makes such an exhibit a part of the pleading.

* * *

(c) A*mendment of Written Pleading*. Except as hereinafter provided, or as provided pursuant to §§ 16.1-129.2, 16.1-93 and 16.1-259, no amendment may be made to any pleading after it is filed with the clerk, except by leave of court. Leave to amend a pleading should be liberally granted in furtherance of the ends of justice. In granting leave to amend, the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper. In delinquency, child in need of services, child in need of supervision, and status offense proceedings, the court may permit amendment of the written pleading at any time before adjudication, provided that the amendment does not change the nature or character of the matter alleged. If the amendment is made after the respondent pleads or is made after any evidence is heard, the amended pleading must be read to him and he must be allowed to change his plea. If the court finds that the amendment operates as a surprise to the respondent, it must upon request grant a continuance for a reasonable time.

(d) *Bill of Particulars.* The court may direct the filing of a bill of particulars at any time before trial.

(e) *Copies of Pleadings to be Furnished.* Except as provided in subdivision (f) of this Rule, all pleadings not otherwise required to be served must be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing. At the foot of such pleadings must be appended either acceptances of service or a certificate that copies were served as this Rule requires, showing the date of delivery, dispatching, transmitting or mailing.

(f) *Electronic Filing*. In any juvenile and domestic relations district court which has established an electronic filing system pursuant to Rule 1:17:

(1) Any proceeding may be designated as an Electronically Filed Case upon consent of all parties in the case.

(2) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other instruments in an Electronically Filed Case must be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party must notify the clerk of court that the original document must be retained.

* * *

Rule 8:8A. Filing Documents Electronically.

* * *

(b) The definitions set forth in Rule 1:17(b) apply, with the exception of the definition for "Electronically Filed Case."

(c) Where applicable, the system operational standards for any electronic system developed to enable a state agency to file documents electronically pursuant to this Rule must be in accordance with Rule 1:17(c).

(d) With respect to a person's signature on a document, or 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, the provisions of Rule 1:17(e)(5) and (6) apply.

* * *

Rule 8:10. Motions to Transfer Venue.

A motion to transfer venue must be made in writing or in court with the parties present. When a written motion is filed, it must be set for hearing, and the motion and notice of hearing must be served on all other parties or on counsel of record, if any. * * *

Rule 8:11. Reporters and Transcripts of Proceedings in Court.

Any party has the right to have a court reporter present to take down or record the proceedings. In all proceedings not open to the public it is within the sound discretion of the judge as to whether a court reporter may take down or record the proceedings on behalf of a

person not a party. In all other proceedings, any person not a party may bring a court reporter to take down the proceedings. Court reporters, when present, must be first duly sworn to take down and transcribe the proceedings faithfully and accurately to the best of their ability and are subject to the control and discipline of the judge.

In proceedings open to the public, when a court reporter is present and takes down or records the proceeding, any interested person is entitled to obtain a transcript, unless the court records remain confidential pursuant to § 16.1-305. In proceedings not open to the public, when a court reporter is present and takes down or records the proceeding, a party is entitled to obtain a transcript without prior court order, but the court may limit the circulation of the transcript by a party. In such proceedings not open to the public, other than (i) proceedings closed for good cause pursuant to subsection C of § 16.1-302 and which result in an adjudication of delinquency of a juvenile, who was fourteen years or older at the time of the offense, on the basis of an act which would be a felony if committed by an adult or (ii) proceedings resulting in a subsequent adjudication of delinquency as described in subsection B1 of § 16.1-305, all other interested persons are entitled to a transcript only by order of court stating for whom such transcript is prepared and what restrictions, if any, are imposed on the use and distribution of the transcript, its contents or any part. In delinquency proceedings which are closed for good cause pursuant to subsection C of § 16.1-302 and which result in an adjudication of delinquency of a juvenile, who was fourteen years or older at the time of the offense, on the basis of an act which would be a felony if committed by an adult, when a court reporter is present and takes down or records the proceeding, any interested person is entitled to a transcript, except for those transcripts or portions of transcripts which the judge has ordered to remain confidential pursuant to subsection B1 of § 16.1-305. In proceedings resulting in an adjudication of delinquency which is subsequent to a prior adjudication of delinquency of a juvenile who was fourteen years or older at the time of the prior offense and whose prior adjudication was on the basis of an act which would be a felony if committed by an adult, when a court reporter is present and takes down or records the proceeding, any interested person is entitled to obtain a transcript, except for those transcripts or portions of transcripts which the judge has ordered to remain confidential pursuant to subsection B1 of § 16.1-305.

The proceedings may be taken down by means of any recording device approved by the court.

* * *

Rule 8:13. Requests for Subpoenas for Witnesses and Records.

A court may authorize the use of electronic or photographic means for the preservation of the record or parts thereof.

* * *

(d) *Copies of Requests for Subpoenas Duces Tecum.* All requests for subpoenas duces tecum must be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing. At the foot of such requests must be appended either acceptance of service or a certificate that copies were served as this Rule requires, showing the date of delivery, dispatching, transmitting or mailing.

* * *

Rule 8:14. Continuances.

* * *

(b) *All Parties Agree to Continuance.* If all parties to a proceeding agree to seek a continuance, the request may be made orally by one party as long as that party certifies to the judge that all other parties know of the request and concur. Such a request should be made as far in advance of the scheduled hearing or trial as is practicable. If granted, the moving party is responsible for assuring that notice of the continuance is given to all subpoenaed witnesses and that they are provided with the new court date. This obligation may be met by (i) an agreement between the parties that each side will notify its own witnesses; or (ii) any other arrangement that is reasonably calculated to get prompt notice to all witnesses.

(c) *All Parties Do Not Agree to Continuance.* If a request for continuance is not agreed to by all parties to a proceeding, such request should be made to the court prior to the time originally scheduled for the hearing or trial. If the court determines that a hearing on the request should be conducted prior to the time originally scheduled for the trial, all parties must be given notice of such hearing by the requesting party.

(d) *Continuances Requested at the Time of Hearing.* Where a request for a continuance has not been made prior to the hearing or trial and other parties or witnesses are present and prepared for trial, a continuance should be granted only upon a showing that to proceed with the trial would not be in the best interest of justice.

(e) *Parties.* For purposes of this Rule, the term "parties" means all plaintiffs, petitioners, the prosecution, defendants, respondents and any person who is the subject of the proceeding.

* * *

Rule 8:15. Discovery.

(a) *Adult Criminal Case.* In any cases involving adults charged with crime, the provisions of Rule 7C:5 govern discovery.

(b) *Juvenile Delinquency Cases*. In juvenile delinquency cases, when the juvenile is charged with an act that would be a felony if committed by an adult, or in a transfer hearing or a preliminary hearing to certify charges pursuant to § 16.1-269.1, the court must, upon motion timely made by the juvenile or the Commonwealth's Attorney, and for good cause, enter such orders in aid of discovery and inspection of evidence as provided under Rule 3A:11.

In juvenile delinquency cases when the juvenile is charged with an act that would be a misdemeanor if committed by an adult, the court must, upon motion timely made and for good cause, enter such orders for discovery as provided under Rule 7C:5.

(c) *Other Cases*. In all other proceedings, the court may, upon motion timely made and for good cause, enter such orders in aid of discovery and inspection of evidence as permitted under Part Four of the Rules, except that no depositions may be taken.

(d) In proceedings concerning civil support, the judge may require parties to file a statement of gross income together with documentation in support of the statement.

* * *

Rule 8:16. Arraignment in Juvenile Delinquency Cases.

Arraignment in a delinquency proceeding consists of reading to the juvenile the charge on which the juvenile will be tried and calling on the juvenile to plead thereto, and it must be conducted in court. Arraignment may be waived by the juvenile in court, or by counsel.

* * *

Rule 8:17. Notification and Waiver of Trial Rights of Parties.

Upon a juvenile's first appearance in court in a delinquency case, the juvenile must be advised by the judge of the following trial rights: the right to counsel, to a public hearing, to the privilege against self-incrimination, to confront and cross-examine witnesses, to present evidence, and the right to appeal a final decision of the court. In determining whether a waiver of the right to counsel, of the right to a public hearing, and of the privilege against self-incrimination, is knowingly, voluntarily, and intelligently made, the court must find after a thorough inquiry that the juvenile is capable of making an intelligent and understanding decision in light of the child's age, mental condition, education, and experience, considering the nature and complexity of the case. Such waiver of trial rights must be made orally in open court, and the waiver of the right to counsel must also be reduced to writing, signed by the juvenile and filed with the court records of the case.

* * *

Rule 8:18. Pleas.

* * *

(b) *Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by a Juvenile.* The court must not accept a plea of guilty or nolo contendere to a charge of delinquency by a child without first determining that the plea is made voluntarily with an understanding of the nature of the allegations in the petition or summons and the consequences of the plea, including that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self- incrimination.

(c) *Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by an Adult.* In any case involving an adult charged with a crime, the court must not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

(d) Upon rejecting a plea agreement in any criminal or delinquency matter, a judge must immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

* * *

Rule 8:19. Endorsements of Orders.

Drafts of orders prepared by counsel of record must be endorsed by all counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof must be served by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing to all counsel of record who have not endorsed them. Compliance with this Rule 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 are accomplished as provided in Rule 1:17.

* * *

Rule 8:20. Appeals.

All appeals must be noted in writing. An appeal is noted only upon timely receipt in the clerk's office of the writing. An appeal may be noted by a party or by the attorney for such party.

* * *

Rule 8:22. Judicial Consent.

In any instance where the court is called upon in an emergency situation to give judicial consent as provided for by statute, the request and court consent may be oral, but a written request must be filed in the clerk's office within five days of such consent, and the consent of the court must also be reduced to a written order as soon as reasonably possible.

* * *

Rule 9:1. Purpose and Operation.

As provided by § 17.1-100 of the Code of Virginia, the Supreme Court of Virginia hereby establishes a judicial performance evaluation program that will provide both a self- improvement mechanism for judges and a source of information for the reelection process. The Program is maintained by the Office of the Executive Secretary who may engage a third party contractor to conduct surveys and prepare evaluations.

* * *

Rule 9:2. Confidentiality.

All surveys, responses, evaluations, and other records created or maintained by or on behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge are confidential and may only be shared with the subject judge, or a facilitator judge assigned by the program to assist with the evaluation, and must not be disclosed to any third party; except that any report provided to the General Assembly pursuant to this section is a public record that is open to inspection as provided in § 17.1-100.

* * *

Rule 10. Provision of Legal Services Following Determination of Major Disaster.

(a) *Determination of existence of major disaster.* -- Solely for purposes of this Rule, the Chief Justice of this Court may determine when, as a result of a major disaster, an emergency affecting the justice system has occurred in:

(1) this jurisdiction and, if so, whether that emergency affects the entirety or only a part of this jurisdiction, or

(2) another jurisdiction, but only if such a determination and its geographical scope have previously been made by the highest court of that jurisdiction.

(b) *Temporary practice in this jurisdiction following major disaster.* -- Following a determination, pursuant to paragraph (a) of this Rule, of an emergency affecting the justice system in this jurisdiction that warrants the assistance of lawyers from outside this jurisdiction, or a determination by the Chief Justice that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of

lawyers from outside of this jurisdiction is warranted to help provide such assistance, a Foreign Lawyer may provide pro bono legal services in this jurisdiction on a temporary basis. Those legal services must be assigned and supervised through an established bar association pro bono program, not-for-profit bar association, an approved legal assistance organization, a public defender's office, or through any organization(s) specifically designated by the Chief Justice.

(c) *Temporary practice in this jurisdiction following major disaster in another jurisdiction.* -- Following the determination of a major disaster pursuant to (a)(2), a Foreign Lawyer who is authorized to practice law and who principally practices in the geographic area of the other jurisdiction determined to be affected may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or geographic area of that jurisdiction, where the major disaster occurred.

(d) *Duration of authority for temporary practice*. -- The authority to practice law in this jurisdiction granted by paragraphs (b) and (c) of this Rule will end when the Chief Justice determines that the conditions caused by the major disaster in this or another affected jurisdiction have ended, except that a lawyer then representing clients in this jurisdiction pursuant to paragraphs (b) or (c) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation. However, the lawyer may not accept new clients or new unrelated matters for an existing client after the Chief Justice has determined that the conditions caused by the major disaster have ended.

(e) *Court appearances.* -- The authority granted by this Rule does not include appearances in court except:

(1) pursuant to a court's pro hac vice admission rule; or

(2) if the Chief Justice, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b).

When authority to appear in any court is granted under either paragraph (e)(1) or (e)(2), any pro hac vice admission fees are waived.

(f) *Disciplinary authority and registration requirement.* -- Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) must, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement must be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule is not considered to be engaged in the unlawful practice of law in this jurisdiction.

(g) *Notification to clients.* -- Foreign Lawyers who provide legal services pursuant to this Rule must inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limitations of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They must not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

(h) *Definitions.* -- For purposes of this rule:

(1) "Foreign Lawyer" is a person with an active and unrestricted license to practice law issued by the bar or highest court of any State or Territory of the United States or the District of Columbia, but neither licensed by the Supreme Court of Virginia or authorized under its rules to

practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice.

(2) "Pro bono" means that legal services are provided without compensation, expectation of compensation, or other direct or indirect pecuniary gain to the lawyer.

Comment

* * *

[2]Under paragraph (a)(1), the Chief Justice may determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this Rule. The Chief Justice may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event.

* * *

****** APPENDIX OF FORMS**

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.

* * *

Rule 11:1. Scope.

* * *

(b) This Part applies to records of judicial officers and administrative records. This Part does not apply to case records, including the records maintained by the clerks of the courts of record, as defined in Virginia Code § 1-212, and courts not of record, as defined in Virginia Code § 16.1-69.5. Such records are open to inspection as provided for in Titles 16.1 and 17.1 of the Code of Virginia, subject to any prohibitions or restrictions of any applicable law or court order.

(c) The provisions of this Part Eleven apply regardless of where and in what format the record is created or maintained.

* * *

Rule 11:2. Definitions.

As used in this Part Eleven:

* * *

(f) Virginia Judiciary" includes all judicial officers, the Office of the Executive Secretary of the Supreme Court of Virginia, all district courts, all circuit courts, the Court of Appeals of Virginia, the Supreme Court of Virginia, the State Law Library, the Judicial Conference of Virginia, the Judicial Conference of Virginia for District Courts, the Judicial Council, the Committee on District Courts, and all work groups, advisory committees, commissions and any other committees or subcommittees of any of these entities. For purposes of these Rules, "Virginia Judiciary" does not include the clerks of the courts of record, as defined in Virginia Code § 1-212, and clerks of the courts not of record, as defined in Virginia Code § 16.1-69.5.

* * *

Rule 11:4. Records of the Office of the Executive Secretary.

(a) Except as otherwise provided by law or by this Part Eleven, administrative records maintained by the Office of the Executive Secretary of the Supreme Court of Virginia are publicly accessible. Copies of administrative records may be requested as provided in Rule 11:5, and may include: (i) financial records, including but not limited to travel expense vouchers, purchase orders, and records of payments to court-appointed attorneys, guardians ad litem, and experts; (ii) statistical information derived from the aggregation of a subset of individual case records; (iii) policies other than those determined to be confidential pursuant to subsection (b)(ii) of this Rule; and (iv) court forms. Such records are to be provided in a format approved by the Executive Secretary.

(b) In order to protect the administration of justice, the deliberative process, and the privacy and safety interests of judicial officers, court personnel, jurors, and the public, the following administrative records maintained by the Office of the Executive Secretary are not publicly accessible: (i) legal research, analysis and work product of any attorney, law clerk, or intern working for any person or entity within the Virginia Judiciary; (ii) records or information collected, notes, correspondence, memoranda, drafts, and work product generated in the process of developing policies or providing guidance relating to the operation of the Virginia Judiciary, and all policies determined to be confidential by the Executive Secretary in consultation with the Chief Justice of the Supreme Court of Virginia; (iii) preliminary and draft versions of reports, documents, records, evaluations, investigations, and audits or compliance reviews, including materials prepared by a consultant; (iv) written communications among court personnel, including those maintained either in the Office of the Executive Secretary, or in chambers or offices of judicial officers; (v) subject to applicable state and federal laws and policies, personnel information concerning identifiable individuals; (vi) telephone numbers, telephone records or email addresses for justices and judges; (vii) infrastructure records that expose vulnerability in security of critical systems, including building security, personnel, recordkeeping, information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems; (viii) training materials, test questions, scoring keys, examination data, and other materials used for employment or certification purposes; (ix) test scores of a person if the person is identified by name and has not consented to the release of his or her scores; (x) information created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § 17.1-100; (xi) records, documents, information, data, or other items that are sealed, confidential, privileged, or otherwise protected from disclosure by federal or state law, common law, court rule, or order.

* * *

Rule 11:5. Procedure for Public Access to Records of the Office of the Executive Secretary.

(a) All requests for publicly accessible records maintained by the Office of the Executive Secretary of the Supreme Court of Virginia must be in writing and must describe with reasonable specificity the record(s) requested. All requests must be addressed to: Office of the Executive Secretary, Attn. Director of Legislative and Public Relations, 100 N. 9th Street, Richmond, VA 23219. The Office of the Executive Secretary may require the requester to provide his or her name and legal address. The Office of the Executive Secretary must respond, pursuant to this Rule, within five working days of receiving a written request.

(b) The Office of the Executive Secretary must notify the requester if the requested records cannot be found or do not exist. If the Office of the Executive Secretary does not have custody or control of the record(s) requested, the requester will be notified and furnished the name and contact information of the person or entity having custody of the records, if known. The Office of the Executive Secretary is not required to compile information or create a record if one does not exist.

(c) The Office of the Executive Secretary may assess reasonable charges not to exceed its actual costs incurred in accessing, duplicating, supplying, reviewing or searching for the requested records. All charges for the supplying of requested records will be estimated in advance upon the request of the requester. Any charges will be assessed at the hourly rate of the person(s) engaged in any work necessary to respond to a request for records, even if no records are found. If the Office of the Executive Secretary determines in advance that charges for producing the requested records are likely to exceed $200, it may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. Such deposit will be credited toward the final cost of supplying the requested records. If the final charge exceeds the amount of the deposit, the difference will be charged to the requester, and if the final charge is less than the amount of the deposit, the difference will be refunded to the requester.

(d) A response denying, in whole or in part, production of the requested records, must be in writing and must include a statement of the specific reason for withholding of the records.

(e) If it is not practically possible to provide the requested records or to determine whether they are available within the five-working-day period, the response must specify the conditions that make a response impossible. The Office of the Executive Secretary will have an additional seven working days in which to provide a response.

* * *

Rule 11:6. Access to Records of Other Entities of the Virginia Judiciary.

(a) Except as otherwise provided by law or court order, records that have been submitted to or approved by the Committee on District Courts, the Judicial Conference of Virginia for District Courts, the Judicial Council, and the Judicial Conference of Virginia, are publicly accessible, with the exception of records related to matters discussed in closed sessions. All other records of these judicial policy-making bodies are governed by Rule 11:6(b).

(b) Except as otherwise provided under these Rules, records of all work groups, conferences, advisory committees, and commissions established or chaired by the Chief Justice or the Executive Secretary are not publicly accessible absent a contrary determination by the Chief Justice.

(c) The Chief Justice may authorize the public release of any final report or recommendations submitted to the Supreme Court by any work group, conference, advisory

committee, commission, or judicial policy-making body described in subsections (a) and (b) of this Rule 11:6.

* * *

Rule 11:7. Reconsideration of Denial of Public Access to Records of the Office of the Executive Secretary.

(a) A request for reconsideration of a decision denying public access to a record maintained by the Office of the Executive Secretary of the Supreme Court of Virginia may be made to the Executive Secretary of the Supreme Court of Virginia. Such request must be made in the form of a detailed letter, within 30 days from the date of the letter denying access. Failure to submit a request for reconsideration on or before the 30-day deadline will result in denial of the request for reconsideration.

(b) If the Executive Secretary sustains the decision denying public access, a request for reconsideration may be made to the Chief Justice for three Justices of the Supreme Court of Virginia to review the matter. The request must be made in the form of a letter to the Clerk of the Supreme Court of Virginia, within 10 days from the date of the Executive Secretary's letter denying access. Failure to submit a request for reconsideration on or before the 10-day deadline will result in denial of the request for reconsideration.

* * *

Rule 11:8. Reconsideration of Denial of Public Access to Records of Judicial Officers or Other Entities of the Virginia Judiciary.

A request for reconsideration of a decision denying public access to a record of a judicial officer or other entities of the Virginia Judiciary may be made to the Chief Justice for three Justices of the Supreme Court of Virginia to review the matter. Such request must be made in the form of a letter to the Clerk of the Supreme Court of Virginia, within 30 days from the date of the letter denying access. Failure to submit a request for reconsideration on or before the 30-day deadline will result in denial of the request for reconsideration.