

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 7th day of October, 2015.

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

Amend Rule 5:20 to read as follows:

Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal, the Denial of the Appeal, Refusal of Assignments of Cross-Error, or Disposition of an Original Jurisdiction Petition.

(a) *Scope.* -- This Rule governs requests for rehearing of the refusal or dismissal of a petition for appeal filed pursuant to Rule 5:17, the refusal of one or more assignments of cross-error, or the disposition of an original jurisdiction petition filed pursuant to Rule 5:7, Rule 5:7A, or Rule 5:7B.

(b) *Time to File.* --

(1) *Petition for Rehearing After Refusal or Dismissal of Petition for Appeal.* -- When a petition for appeal is either refused or dismissed, in whole or in part, the clerk of this Court shall 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 shall 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 shall be filed electronically.

(1) Requirements for Electronic Filing.

- (i) The petition for rehearing shall be filed as an Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to scvpfr@courts.state.va.us 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 counsel for the appellee and the certificate shall 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@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk shall 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 shall have 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 shall 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 shall recite in the subject line the style of the case and the Supreme Court record number. The e-mail message shall 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 shall 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 shall 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 shall 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 shall state that a copy has been mailed or delivered to counsel for the appellee.

(ii) Ten copies shall be filed.

(d) *Oral Argument and Responsive Brief.* -- Oral argument on the petition for rehearing will not be allowed. No responsive brief shall 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 shall 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.

A Copy,

Teste:

Dante L. Hamista

Clerk