

COURT OF APPEALS OF VIRGINIA

CRIMINAL APPEALS PROCEDURE

The Court of Appeals is the intermediate appellate court with limited jurisdiction.

Rules of Court: **Part Five A** Jurisdiction of Court of Appeals: **§17.1-406**

To appeal a criminal case to the Court of Appeals, the appealing party or attorney must:

1. File a Notice of Appeal with the trial court. Rule 5A:6
 - Due 30 days after entry of final judgment or other appealable order or decree.
 - Original Notice of Appeal is filed in the clerk's office of the trial court. §17.1-407
 - Copy of Notice of Appeal is mailed or delivered to all opposing counsel and the Clerk of the Court of Appeals.
 - The copy of the Notice of Appeal mailed to the Clerk of the Court of Appeals must be accompanied by a \$50.00 filing fee. (§17.1-418 & Rule 5A:6(c)), payable in cash or by check or money order made payable to the Court of Appeals of Virginia. One who has been determined by the trial court to be indigent or who is represented by appointed counsel is excused from paying the fees.
 - The forms for a notice of appeal and for the required certificate are at Rule 5A:6 or can be accessed at the following website:

<http://www.courts.state.va.us/forms/circuit/cc1345-0402inst.pdf>

<http://www.courts.state.va.us/forms/circuit/cc1345-0402.pdf>
2. File Transcript or Written Statement of Facts. Rule 5A:8
 - **Transcript** due 60 days after entry of judgment appealed.
 - Extension of time to file a transcript – (Extensions only by the Court of Appeals of Virginia. Rule 5A-3(b), 5A:8(a); also refer to Jordan vs. Price, 3 VA. App.672, 353 S.E.2d 168 (1987)
 - Transcripts are filed in the clerk's office of the trial court.
 - Within 10 days of filing the transcript with the trial court written notice must be sent to all counsel or parties of the date on which the transcript was filed, and file a copy of the said notice with the trial court.
 - **Written Statement of Facts:** (in lieu of transcript) must be filed in the office of the clerk of the trial court within 55 days after entry of judgment appealed. See Rule 5A:8(c) for additional requirements.
3. Preparation and Transmission of Record. Rule 5A:10
 - Clerk of the **trial** court sends trial court record to the Court of Appeals.
 - Clerk of the Court of Appeals notifies the parties of the date on which the record was filed.
 - The clerk of the trial court is not required to transmit exhibits of unusual bulk, weight or character with the record unless directed to do so by a party or by the clerk of the appellate court. Rule 5A:10(d)(4). The party desiring to make such exhibits part of the record must arrange for their transportation and receipt.

4. File Petition for Appeal. Rule 5A:12

- Due 40 days after the trial court record filed.
- Filed in the Clerk's Office of the Court of Appeals.
- Original plus three copies required.
- Appellant must indicate whether oral argument before a panel of judges is requested.

After the petition for appeal is filed, the Commonwealth's Attorney may file a brief in opposition. If oral argument before a panel of three judges is requested, the appellant will be notified of the time and place for argument. (The appellee is not entitled to be heard.) Otherwise, appellant will likely not hear anything from the Court of Appeals until the petition has been decided. Notification of the disposition of the case is always in writing. If the appeal is granted, further steps must be taken to pursue the appeal:

5. File appendix and opening brief. Rules 5A:19, 20 & 25

- Due 40 days after the certificate of appeal from the Court of Appeals.
- Filed in the Court of Appeals clerk's office.
- Seven (7) copies must be filed; three (3) copies must be sent to opposing counsel.
- **Contact Court of Appeals for cover and binding requirements.**

6. Appellee's brief is due 25 days after the opening brief is filed.

7. Oral argument is automatically scheduled on appeals unless counsel sends written notification that counsel waives the hearing, Rule 5A:28, or the Court summarily affirms the trial court, Rule 5A:27.

Copies of all documents filed must be sent to opposing counsel. Rule 5A:1(b)(10).

**These are minimum requirements. Your case may have other requirements.
Please read all of the applicable rules and statutes.**

Rules of the Supreme Court of Virginia, published in Volume 11, Code of Virginia Annotated.

**Court of Appeals of Virginia
109 North Eighth Street
Richmond, Virginia 23109-2305
Telephone (804) 371-8428**

NOTICE OF APPEAL FROM TRIAL COURT

USING THIS REVISABLE PDF FORM

1. Copies
 - a. Original – to trial court
 - b. First copy - to Court of Appeals
 - c. Subsequent copies – to all opposing counsel
2. Prepared by party who wishes to appeal to the Court of Appeals.
3. Attachments - none.
4. Preparation details –
 - a. This form complies with the requirements of Rule 5A:6 of the Rules of the Supreme Court of Virginia.
 - b. The box in Data Element number 7 should be checked when the case is a termination of parental rights case to ensure preferential docketing of the case.

NOTICE OF APPEAL FROM TRIAL COURT**DATA ELEMENTS**

1. Name of circuit court.
2. Style of case.
3. Name of party(ies) filing the appeal.
4. Designation of the party(ies) filing the appeal in the trial court.
5. Title of order or decree that is being appealed.
6. Date of order or decree that is being appealed.
7. Check this box if this case is a termination of parental rights case.
8. Check the applicable box to indicate if a transcript or a statement will be filed.
9. Insert the name(s) and address(es) of the party(ies) appealing (appellant(s)).
10. Check this box if the party(ies) filing the appeal is not represented by counsel (an attorney). Insert the telephone number of the party(ies).
11. If applicable, insert the name(s), address(es) and telephone number(s) of the counsel(s) representing the party(ies) filing the appeal.
12. Insert the name(s) and address(es) of the opposing party(ies) (appellee(s)).
13. Check this box if the appellee(s) is not represented by counsel and insert the telephone number(s) of appellee(s).
14. If applicable, insert the name(s), address(es) and telephone number(s) of the counsel(s) representing the appellee(s).
15. If applicable, insert the name(s), address(es) and telephone number(s) of the guardian(s) ad litem for any child(ren) involved in the case.
16. Check if a transcript has been ordered to be filed with the Court of Appeals.
17. In criminal and termination of parental rights cases where the appellant is represented by counsel, indicate if the counsel was appointed or privately retained by checking the applicable box.
18. Insert the date on which this notice was mailed or delivered to opposing counsel and the Clerk of the Court of Appeals.
19. Signature of appellant's counsel or appellant if he or she is not represented by counsel.

NOTICE OF APPEAL FROM TRIAL COURT

Pursuant to Rule 5A:6, Rules of the Supreme Court of Virginia

VIRGINIA: IN THE CIRCUIT COURT OF 1 COUNTY/CITY
2
v 3 4
NAME(S) OF PARTY(IES) PLAINTIFF, RESPONDENT OR OTHER
DESIGNATION IN TRIAL COURT
hereby appeals to the Court of Appeals of Virginia from the 5
FINAL JUDGMENT / APPEALABLE ORDER OR DECREE
of this court entered on 6
DATE

Please check if:

- 7** ☐ this is a termination of parental rights case (Va. Code §16.1-283, §16.1-277.01, §16.1-277.02 or §16.1-278.3).
8 ☐ a transcript will be filed. ☐ a statement of facts, testimony, and other incidents of the case will be filed.

CERTIFICATE

The undersigned certifies as follows:

- (1) The name(s) and address(es) of appellant(s) are: 9

- 10** ☐ Appellant(s), is (are) not represented by counsel. His/her telephone number(s) is (are):

- (2) The name(s), address(es) and telephone number(s) of counsel for appellant(s) are:

11

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

12

- 13** ☐ Appellee(s), is (are) not represented by counsel. His/her telephone number(s) is (are):

- (4) The name(s), address(es) and telephone number(s) of counsel for appellee(s) are:

14

- (5) The name(s), address(es) and telephone number(s) of the guardian *ad litem* for the child(ren) are:

15

- 16** (6) ☐ Counsel for appellant, or appellant if not represented by counsel, has ordered from the court reporter who reported the case the transcript for filing as required by Rule 5A:8(a).

17

- (7) [In criminal and termination of parental rights cases:] Counsel for appellant has been ☐ appointed ☐ privately retained.

- (8) A copy of this Notice of Appeal has been mailed or delivered to all opposing counsel, and/or to unrepresented parties and the guardian *ad litem*, if applicable, and to the Clerk of the Court of Appeals this 18 day of _____, 20_____.

19

(Signature of counsel or unrepresented party)

NOTICE OF APPEAL FROM TRIAL COURT

Pursuant to Rule 5A:6, Rules of the Supreme Court of Virginia

VIRGINIA: IN THE CIRCUIT COURT OF _____
COUNTY/CITY

_____ v _____

NAME(S) OF PARTY(IES), PLAINTIFF, RESPONDENT OR OTHER
DESIGNATION IN TRIAL COURT

hereby appeals to the Court of Appeals of Virginia from the _____
FINAL JUDGMENT / APPEALABLE ORDER OR DECREE

of this court entered on _____
DATE

Please check if:

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

☐ a transcript will be filed. ☐ a statement of facts, testimony, and other incidents of the case will be filed.

CERTIFICATE

The undersigned certifies as follows:

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

☐ Appellant(s), is (are) not represented by counsel. His/her telephone number(s) is (are):

(2) The name(s), address(es) and telephone number(s) of counsel for appellant(s) are:

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

☐ Appellee(s), is (are) not represented by counsel. His/her telephone number(s) is (are):

(4) The name(s), address(es) and telephone number(s) of counsel for appellee(s) are:

(5) The name(s), address(es) and telephone number(s) of the guardian *ad litem* for the child(ren) are:

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

(7) [In criminal and termination of parental rights cases:] Counsel for appellant has been ☐ appointed ☐ privately retained.

(8) A copy of this Notice of Appeal has been mailed or delivered to all opposing counsel, and/or to unrepresented parties and the guardian *ad litem*, if applicable, and to the Clerk of the Court of Appeals this _____ day of _____, 20_____.

(Signature of counsel or unrepresented party)