

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 26th day of September, 2024.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect are hereby amended, effective November 25, 2024.

Amend Rules 1:1A and 5A:35 as follows:

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

(a) Notwithstanding any provision of Rule 1:1, in any civil action appealed to an appellate court that results in a final appellate judgment favorable to an appellee, a prevailing appellee who has recovered attorney 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 attorney fees, costs or both incurred on appeal. The prevailing appellee must file the application and a copy of the final appellate judgment with the circuit court clerk within 30 days after the entry of the final appellate judgment. The application 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. The phrase "final appellate judgment" as used in this rule means the issuance of the mandate by the appellate court or, in cases in which no mandate issues, the final judgment or order of the appellate court disposing of the matter. For a petition for appeal under Rule 5:17, the "final appellate judgment" is the later of the order denying the petition for appeal or the order denying a petition for rehearing, if any, under Rule 5:20.

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Rule 5A:35. Procedure for Rehearing.

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(b) *Rehearing En Banc.* — When all or part of a petition for rehearing en banc is granted the clerk of this Court must notify all counsel. The mandate is stayed as to all issues decided by the panel pending the decision of this Court en banc. The appeal is reinstated on the docket of this Court for oral argument only as to issues granted. Briefing and oral argument will proceed in the same order as before the three-judge panel.

(1) *Issues Considered Upon Rehearing En Banc.* This Court may grant a petition for rehearing en banc in whole or in part. Any issue decided by a panel of this Court not subject to a petition for rehearing en banc remains undisturbed by an en banc decision. Review by the en banc Court is limited to those matters raised in the petition for rehearing en banc for which the Court granted rehearing and those matters included in the grant by this Court on its own motion.

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

(3) *Appellee’s Answering Brief Upon Rehearing En Banc.* The party who was the appellee before the panel of this Court may file in the office of the clerk the answering brief within 14 days after the en banc opening brief has been filed. The appellee’s answering brief is subject to the requirements of Rule 5A:19(a), (d), (e), and (f), and of Rule 5A:21, except that Rule 5A:21(e) applies to any assignment of cross-error only if the Court has granted en banc review of such cross-error. The appellee’s answering brief must omit assignments of cross-error for which the Court did not grant en banc review. Appellee may be heard orally whether or not the answering brief is filed.

(4) *Reply Briefs Upon Rehearing En Banc.* The party who was the appellant before the panel may file in the office of the clerk a reply brief within 14 days after the answering brief has been filed. If the Court has granted en banc review of any cross-error, the party who was the

appellee before the panel may file in the office of the clerk a reply brief in support of such assignment of cross-error within 14 days after the appellant's reply brief has been filed. A reply brief under this rule is subject to the requirements of Rule 5A:19(a), (e), and (f) and of Rule 5A:22.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:

A handwritten signature in blue ink, appearing to read 'M. Pitney', written over a horizontal line.

Deputy Clerk