

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
E. PERFECTING THE APPEAL

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.

(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~~ a Portable Document Format (PDF) document attached to an e-mail addressed to sevpfr@courts.state.va.us 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 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 sevpfr@courts.state.va.us scvpfr@vacourts.gov. 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) Two 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.

Last amended by Order dated January 31, 2017; effective April 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
H. DECISION, COSTS, AND MANDATE

Rule 5:37. Petition for Rehearing After Consideration by the Full Court.

(a) *Scope.* This Rule does not apply to the refusal or dismissal of a petition for appeal, or the refusal or dismissal of an original jurisdiction petition. See Rules 5:20 and 5:20A.

(b) *Notice of Intent.* A party intending to apply for a rehearing shall 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 shall 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 shall 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 shall be filed as ~~an Adobe Acrobat~~ a Portable Document Format (PDF) document attached to an e-mail addressed to scvpfr@courts.state.va.us ~~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 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~~ scvpfr@vacourts.gov. 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. 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 this 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 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 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 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 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 sent to counsel seeking the rehearing.

(e) *Grounds for Granting.* No petition for rehearing shall 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 shall 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 shall 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.

Last amended by Order dated January 31, 2017; effective April 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
E. PROCEDURE ON PETITION FOR APPEAL IN CRIMINAL CASES AND
TRAFFIC INFRACTIONS

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 shall 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) shall 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 shall be filed as a single ~~Adobe Acrobat~~ Portable Document Format (PDF) document attached to an e-mail addressed to eavpfr@courts.state.va.us 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 shall 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 shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall 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 eavpfr@courts.state.va.us cavpfr@vacourts.gov. If the demand does not meet the requirements of this rule as to format, the clerk of this Court shall 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 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 Court of Appeals result in a failure to timely receive the electronically filed demand for three-judge review, counsel shall 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 shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-

mail message shall 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 shall 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 shall 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 shall 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 shall 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) shall 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 shall be filed as a single PDF document attached to an email addressed to cavpfr@courts.state.va.us 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 shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall 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@courts.state.va.us cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of this Court shall 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 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 Court of Appeals 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.

(4) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall 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 shall 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 shall 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 shall be referred to the panel of this Court that considered the petition for appeal. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall 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.

Last amended by Order dated January 31, 2017; effective April 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
H. REHEARING

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 shall 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 shall 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 shall, within 14 days following such decision, file a petition for rehearing with the clerk of the Court of Appeals.

(1) The petition shall be filed as a single ~~Adobe Acrobat~~ Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@courts.state.va.us 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 shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall 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@courts.state.va.us cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall 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 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 Court of Appeals result in ~~a~~ failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of ~~this~~the Court on the next business day all documentation which exists demonstrating the attempt to file ~~e-mail~~ the petition by e-mail, any delivery failure notice received in response to the attempt, and ~~a~~ copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall 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 shall 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 shall 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 shall 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.

**Promulgated by Order dated Friday, April 30, 2010.
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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
H. REHEARING

Rule 5A:34. Rehearing En Banc After Final Disposition of a Case.

(a) *Who May File.* Any party wishing to raise any issue decided by a panel of this Court must file a petition for rehearing en banc pursuant to this Rule.

(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 shall be filed with the clerk of the Court of Appeals. The petition for rehearing en banc shall 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 shall be filed as a single ~~Adobe Acrobat~~ Portable Document Format (PDF) document attached to an e-mail addressed to ~~eavpfr@courts.state.va.us~~ 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 shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall 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 ~~eavpfr@courts.state.va.us~~ cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall 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 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 Court of Appeals result in ~~a~~ failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of ~~this~~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 ~~a~~ copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-

mail message shall 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 shall 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 shall 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 shall 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 shall 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.

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