

# Beginning Your Appeal in the Court of Appeals

If you're the appellant, it may seem like the first step in your appeal is filing your Opening Brief of Appellant, but there are several critical steps to follow before you get there. Find out what they are and how to avoid traps.

**1**

## Notice of Appeal

- File within 30 days of entry of judgment.
- File in trial court and Court of Appeals with filing fees.
- **Traps for the Unwary**
  - The Notice of Appeal requires very specific content, so use Supreme Court Forms.
  - Some trial courts require a filing fee, others do not. Ensure you determine and submit the fee with your filing.
  - You cannot rely on representations by a clerk's office, so file as soon as possible. There is no penalty for filing before a final order is entered, so long as the court has already announced its decision.
  - Courts may not "permit an extension of the appellate deadline based upon a verbal representation by a court clerk." Hill v. Hill, No. 1606-19-1, at \*5-6 (Va. App. Nov. 16, 2021).
- Authority: Rule 5A:6.

**2**

## Appeal Bond

- File with Notice of Appeal.
  - \$500 or a different amount as ordered by the Court.
  - **Traps for the Unwary**
    - "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." In other words, use Supreme Court Forms.
- Authority: Code § 8.01-676.1; Code § 1-205; Rule 5A:6; Rule 5A:16; Rule 5A:17.

**3**

## Transcripts/Written Statements

- Transcript:
  - File transcripts within 60 days of entry of judgment.
  - File notice of filing transcripts within 10 days after transcripts are filed or, if transcripts filed before Notice of Appeal, within 10 days after Notice of Appeal is filed.
  - **Traps for the Unwary**
    - Sometimes the trial reporter will not transcribe de bene esse depositions since a transcript of the deposition already exists. Proof the transcript to ensure the trial transcript is complete and resolve any relevant errata.
- Written Statement:
  - File written statement in lieu of transcript within 60 days of entry of judgment.
  - At the same time, file notice of filing written statement that presents statement to trial court no earlier than 15 days nor later than 20 days after filing.
  - **Traps for the Unwary**
    - Statement must be signed by trial judge. Granado v. Commonwealth, 292 Va. 402, 408 (2016).
    - In appeals to the Supreme Court, a written statement must be filed within 55 days of entry of judgment. Rule 5:11(e)(1).
- Objections to transcripts/statement due within 15 days of Notice of Filing/ Hearing or, if transcripts/statement filed before Notice of Appeal, within 10 days after Notice of Appeal is filed.
- Authority: Rule 5A:8.

## 4

### Record

- Transmitted to Court of Appeals no earlier than 21 days after Notice of Appeal is filed; or 21 days after transcript/statement filed; or 5 days after trial court resolves any objections; but no later than three months after entry of judgment.
- Includes:
  - Documents filed with the trial clerk.
  - Instructions, marked given or refused, initialized by the judge.
  - Exhibits, admitted or not, initialed by the judge.
    - Non-documentary exhibits are tagged, labeled, and initialed by judge.
  - Trial court orders, opinions, and memoranda.
  - Depositions and discovery, admitted or not, offered into evidence at any proceeding.
  - Transcripts or written statement of facts entered through Rule 5A:8.
    - Videotaped recordings may be used under certain circumstances.
  - Notice of Appeal.
- Request electronic record from: cavrecordrequests@vacourts.gov.
- **Traps for the Unwary**
  - Documents that should be in the record may not be. Always review the Table of Contents before the Record is transmitted.
  - Disagreements over contents decided by trial court.
- Authority: Rule 5A:7; Rule 5A:10.

## 5

### Appendix & Assignments of Error

- Appendix
  - Not required in electronically filed cases.
    - Contact clerk to determine whether record will be transmitted electronically.
    - Court may still enter order dispensing with appendix.
  - Required Contents:
    - Initial pleading, as finally amended.
    - Judgment appealed from, and related memos, opinions, and orders.
    - Testimony relevant to the assignments of error.
      - \* Witness names must be printed at the beginning of excerpts and at the top of each page thereafter.
    - Exhibits “necessary for an understanding of the case that can be reasonably reproduced.”
    - Table of contents.
  - Designation deadline:
    - If contents are agreed to, file within 15 days after the filing of the record with the signature of all parties.
    - If contents are not agreed to, file within 15 days with assignments of error.
      - \* Opposing party must file designation of additional contents and statement of additional assignments of error.
        - Appellant must include these contents in appendix.
    - Filing deadline: Filed with the Opening Brief of Appellant.
    - **Traps for the Unwary**
      - \* Rules regarding format of appendix and table of contents are subject to stringent rules, so use a printer!
  - Authority: Rule 5A:25.
- Assignments of Error
  - In the opening brief, under a heading entitled “Assignments of Error,” the appellant 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.” Rule 5A:20(c).
    - Include an “exact reference to the page(s) of the transcript, written statement of facts, record, or appendix where the alleged error has been preserved in the trial court,” or if the error is a failure to rule, where the alleged error has been preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).”
  - **Traps for the Unwary**
    - Failure to assign error or an insufficient assignment of error will result in the appeal being dismissed.
    - Failure to use a separate heading or include preservation reference will result in a rule to show cause pursuant to Rule 5A:1A.
  - Authority: 5A:20(c).