

## VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 30th 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 January 1, 2016.

Amend Rule 5:35 to read as follows:

### **Rule 5:35. Attorney's Fees, Costs, and Notarized Bill of Costs.**

(a) *To Whom Allowed.* – Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by this Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs shall be allowed as ordered by this Court.

(b) *Attorney's Fees.* – (1) *Refusal or Dismissal of Petition for Appeal.* Upon refusal or dismissal 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.

(2). *Attorney Fees in Domestic Relations and Other Family-Law Proceedings Where Authorized by Statute.*

(A) *Attorney Fees in Domestic Relations and Family-Law Proceedings Where Authorized by Statute.* – (1) In any case in which attorney fees are recoverable under Title 16.1, Title 20, or Title 63.2, a party may request an award of fees incurred in the appeal of the case by including a prayer for such recovery in the Opening Brief or the Reply Brief of Appellant, or in the Brief of Appellee.

(B) Upon the making of a request for attorney fees as set forth in (b) (1) above, and unless otherwise provided by the terms of a contract or stipulation between the parties, the

Supreme Court may award to a party who has made such request, all of their attorney fees, or any part thereof, or remand the issue as directed in the mandate order for a determination thereof. Such fees may include the fees incurred by such party in pursuing fees as awarded in the circuit court.

(C) In determining whether to make such an award, the Supreme Court shall not be limited to a consideration of whether a party's position on an issue was frivolous or lacked substantial merit but shall consider all the equities of the case.

(D) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court shall consider all relevant factors, including but not limited to, the extent to which the party was a prevailing party on the issues, the nature of the issues involved, the time and labor involved, the financial resources of the parties, and the fee customarily charged in the locality for similar legal services.

(c) *Taxable Costs.* – Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, shall be taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. See, Code § 17.1-128.

(d) *Notarized Bill of Costs.* – Counsel for a party who desires costs to be taxed shall itemize them in a notarized bill of costs, which shall be filed with the clerk of this Court within 14 days after the date of the decision in the case. Objections to the bill of costs must be filed with the clerk of this Court within 10 days after the date of filing the bill of costs.

(e) *Award.* – The clerk of this Court shall prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate on request by the clerk of this Court to the clerk of the tribunal in which the case originated.

Amend Rule 5A:30 to read as follows:

**Rule 5A:30. Attorney Fees, Costs and Notarized Bill of Costs.**

(a) *To Whom Allowed.* – Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court of Appeals; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs shall be allowed as ordered by the Court of Appeals.

(b) *Attorney Fees.* – (1) In any case where attorney fees are recoverable under Title 16.1 or Title 20 relating to affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2, a party may request an award of attorney fees incurred in the appeal of the case by making said request in the Opening Brief of Appellant, the Reply Brief of the Appellant, or in the Brief of Appellee.

(2) Upon the making of a request for attorney fees as set forth in (b) (1) above, and unless otherwise provided by the terms of a contract or stipulation between the parties, the Court of Appeals may award to a party who has made such request, all of their attorney fees, or any part thereof, or remand the issue to the circuit court as directed in the mandate order for a determination thereof. Such fees may include the fees incurred by such party in pursuing fees as awarded in the circuit court.

(3) In determining whether to make such an award, the Court of Appeals shall not be limited to a consideration of whether a party's position on an issue was frivolous or lacked substantial merit but shall consider all the equities of the case.

(4) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court shall consider all relevant factors, including but not limited to, the extent to which the party was

a prevailing party on the issues, the nature of the issues involved, the time and labor involved, the financial resources of the parties, and the fee customarily charged in the locality for similar legal services.

(c) *Taxable Costs.* – Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, shall be taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. See, Code § 17.1-128.

(d) *Notarized Bill of Costs.* – Counsel for a party who desires costs to be taxed shall itemize them in a notarized bill of costs, which shall be filed with the clerk of this Court within 14 days after the date of the decision in the case. Objections to the bill of costs must be filed with the clerk of this Court within 10 days after the date of filing the bill of costs.

(e) *Award.* – The clerk of this Court shall prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate on request by the clerk of this Court to the clerk of the trial court or the clerk of the Virginia Workers' Compensation Commission.

A Copy,

Teste:



Clerk