

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 26th day of April, 2019.

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 July 1, 2019.

Amend Rule 5:7 as follows:

B. ORIGINAL JURISDICTION

Rule 5:7. Petitions for Writs of Habeas Corpus, Mandamus, and Prohibition.

(a) Petition for Writ of Habeas Corpus. —

* * *

(2) What the Petition Must Contain. The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition. All petitions must comply with the requirements of Code § 8.01-655. Where a petition for a writ of habeas corpus is filed by counsel, counsel shall attach as an exhibit a single copy of the complete record of the proceedings that resulted in the detention the petition challenges. The record shall comply with the form and content requirements of Rule 5:7(a)(5), and counsel may seek leave to provide less than the complete record as provided for in Rule 5:7(a)(6).

* * *

(5) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth grounds of defense as in an action at law. The answer shall state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities shall accompany each responsive pleading. In any case in which the respondent states an opinion that the taking of evidence is not necessary for the proper disposition of a petition for a writ of habeas corpus, the respondent shall attach as separate exhibits:

(i) a single copy of the complete record of the proceedings that resulted in the detention the petition challenges, provided that such complete record has not previously been provided by

counsel for petitioner. When criminal proceedings resulted in the challenged detention, the record of those proceedings shall include:

(1) a copy of the documents and exhibits filed or lodged in the office of the clerk of the trial court;

(2) a copy of each instruction marked “given” or “refused” and initialed by the judge;

(3) a copy of each exhibit offered in evidence, whether admitted or not, except for drugs, guns and other weapons, ammunition, blood vials and other bio-hazard type materials, money, jewelry, articles of clothing, and bulky items such as large graphs and maps;

(4) a copy of each order entered by the trial court;

(5) a copy of any opinion or memorandum decision rendered by the judge of the trial court;

(6) a copy of any transcript that was filed with the circuit court, or a copy of any videotape recording of any proceeding in those circuit courts authorized by this Court to use videotape recordings.

(7) These records shall be compiled as follows:

(a) with a table of contents listing each paper included in the record and the page on which it begins;

(b) each paper constituting a part of the record in chronological order;

(c) each page of the record shall be numbered at the bottom; and

(d) transcripts and exhibits may be included in separate volumes or envelopes identified by the table of contents, except that any exhibit that cannot be conveniently placed in a volume or envelope shall be identified by a tag. Each such volume or envelope shall include, on its cover or inside, a descriptive list of exhibits contained therein.

(ii) copies of any other document on which the respondent relies to assert that the taking of evidence is not necessary.

(6) Leave to respond without providing a complete record. In any case in which the respondent states an opinion that the complete record of the proceedings that resulted in the detention the petition challenges is not necessary for the proper disposition of the petition, the respondent may move for leave to provide less than all of the record. Such leave shall be sought no later than 14 days prior to the filing of a responsive pleading. In any case where leave is

granted, the Court may direct the respondent to provide any additional portion of the record at any time.

(7) Length.

* * *

(8) Number of Copies.

* * *

(9) Calling up the Record.

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(b) *Petitions for Writs of Mandamus and Prohibition.* —

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(c) *When this Court May Act on a Petition.* —

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(d) *Further Proceedings on Petitions.* — Further proceedings shall be in accordance with the orders of this Court or a Justice thereof to whom this Court may delegate authority to determine all procedural matters. If this Court or the designated Justice determines that evidence is desirable, (1) depositions may be taken according to a schedule agreed upon by counsel and filed in the office of the clerk of this Court or, in the absence of agreement, according to a schedule determined by this Court or the designated Justice, or (2) the Court may order the circuit court in which the judicial proceeding resulting in petitioner’s detention occurred to conduct an evidentiary hearing. Such hearings shall be limited in subject matter to the issues enumerated in the order. The circuit court shall conduct such a hearing within 90 days after the order has been received and shall report its findings of fact to this Court within 60 days after the conclusion of the hearing. Any objection to the report must be filed in this Court within 30 days after the report is filed.

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A Copy,

Teste:



Clerk