

RULES OF THE SUPREME COURT OF VIRGINIA
PART ONE
RULES APPLICABLE TO ALL PROCEEDINGS

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 application must be filed~~ 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 a final appellate judgment. ~~and~~ 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.

(b) Nothing in this Rule restricts or prohibits the exercise of any other right or remedy for the recovery of attorney fees or costs, by separate suit or action, or otherwise.

Last amended by Order dated September 26, 2024; effective November 25, 2024.

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

Rule 5A:35. Procedure for Rehearing.

(a) *Rehearing by a Panel.* — When rehearing by a panel is granted on petition of a party, the clerk of this Court must notify all counsel. No brief in addition to the petition may be filed by petitioner. Respondent may file in the office of the clerk an answering brief, which may not exceed the longer of 25 pages or 5,300 words, within 21 days following the date of the order of this Court granting a rehearing. The respondent's answering brief must be transmitted, mailed, or delivered to opposing counsel on or before the date the answering brief is filed. Respondent may be heard orally whether or not an answering brief is filed. The case will be placed on the docket for oral argument. When practicable, such a rehearing will be heard by the same panel that rendered the final decision in the case.

(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. ~~Only issues raised in the petition for rehearing en banc and granted for rehearing or included in the grant by this Court on its own motion are available for briefing, argument, and review by the en banc Court.~~ 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 ~~must file in the office of the clerk a brief, which may not exceed the longer of 50 pages or 12,300 words. Such brief must be filed within 21 days following the date of the order of this Court granting rehearing en banc, and must be accompanied by a certificate indicating that the brief was transmitted, mailed, or delivered to opposing counsel on or before the date of filing.~~ 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 ~~not to exceed the longer of 50 pages or 12,300 words,~~ within 14 days after the en banc opening brief has been filed. The appellee's answering brief ~~must be transmitted, mailed, or delivered to opposing counsel on or before the date the answering brief is filed~~ 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) ~~Appellant's~~ 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, ~~not to exceed the longer of 20 pages or 3,500 words,~~ within 14 days after the answering brief has been filed. ~~The appellant must transmit, mail, or deliver a copy of the reply brief to opposing counsel on or before the date the answering brief is 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.

Last amended by Order dated September 26, 2024; effective November 25, 2024.