



SUPREME COURT OF VIRGINIA

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Supreme Court of Virginia Press Release

Media Contact: Patricia L. Harrington, Clerk

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THE SUPREME COURT OF VIRGINIA TO CONSIDER NEW RULES RELATED TO JURISDICTIONAL TRANSFER DURING APPEAL OF FINAL JUDGMENT AND AMENDMENTS TO RULES RELATED TO THE FILING OF A NOTICE OF APPEAL

RICHMOND - The Supreme Court of Virginia is considering proposed new Rules 1:1B and 1:1C regarding transfer of jurisdiction during the appeal of a final judgment. In addition, the Court is considering a proposal to add language to Rules 5:9 and 5A:6 regarding notices of appeal.

Comments on the proposed changes must be **received** by **October 25, 2018** and must be forwarded to:

Patricia L. Harrington, Clerk
Supreme Court of Virginia
100 North Ninth Street, 5th Floor
Richmond, VA 23219

OR via email with the subject line "comment on Rules 1:1B, 1:1C, 5:9 and 5A:6" to:

scvclerk@vacourts.gov

New Rule 1:1B — Jurisdictional Transfer During Appeal of Final Judgment

When a final judgment entered in a civil or criminal case is appealed from a circuit court directly to the Supreme Court or to the Court of Appeals, the following principles shall govern the transfer of jurisdiction between the trial and appellate court:

1. Immediately upon the filing of a notice of appeal the appellate court shall acquire appellate jurisdiction over the circuit court case. After the filing of the notice of appeal, however, the circuit court shall retain concurrent jurisdiction for the purposes specified in this Rule.
2. If a notice of appeal has been filed prior to the expiration of the 21-day period prescribed by Rule 1:1, the circuit court shall retain plenary, concurrent jurisdiction over the case until the expiration of that period.

If the circuit court vacates the final judgment during this 21-day period, a notice of appeal filed prior to the vacatur order shall be moot and of no effect. The clerk of the circuit court shall forward the vacatur order to the appropriate appellate court and, upon receipt, the appellate court shall issue an order dismissing the appeal as moot.

Following the vacatur order, a new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated. The dismissal of a prior notice of appeal rendered moot by a vacatur order shall have no effect upon a notice of appeal filed after the entry of a subsequent final judgment.

3. If a notice of appeal has been filed after the expiration of the 21-day period prescribed by Rule 1:1, the circuit court shall retain limited, concurrent jurisdiction solely for the purposes of:
 - a. addressing motions to grant post-conviction bail during the pendency of an appeal in criminal cases;
 - b. addressing motions to stay the judgment pending appeal;
 - c. addressing motions in civil cases relating to the amount or form of an appeal or suspending bond pursuant to Code § 8.01-676.1;
 - d. correcting clerical mistakes in a final judgment in accordance with Code § 8.01-428(B), but only with leave of the appellate court;

- e. exercising its authority under Code § 19.2-306 to revoke suspended criminal sentences and to pronounce judgment for violations of any terms of suspension, conditions of probation, either or both;
 - f. addressing motions to withdraw a guilty plea pursuant to Code § 19.2-296;
 - g. addressing motions to enforce a final judgment, including but not limited to the exercise of the court's contempt powers;
 - h. appointing appellate counsel for indigent criminal defendants; or
 - i. taking any other action authorized by statute or Rule of Court notwithstanding the expiration of the 21-day period prescribed by Rule 1:1, which actions include, but are not limited to those authorized by Code §§ 8.01-392 to -394, 8.01-428, 8.01-623, 8.01-654(A)(2), 8.01-677, 19.2-303, 20-107.3(K), 20-108, and 20-109 and Rules 1:1A, 5:10(b), 5:11, 5A:7(b), and 5A:8, so long as the party requesting the action complies with the applicable time limitation in the statute or Rule authorizing such action.
4. At any time after a notice of appeal has been filed and after the expiration of the 21-day period prescribed by Rule 1:1, any party to an appeal may file a motion to dismiss an appeal in the appellate court. The motion may assert that the appeal has become moot or cannot proceed for some other sufficient reason. The failure to file such a motion, however, shall not preclude a party from making the same argument in its appellate briefs. The appellate court may decide the motion based upon the existing record or may, in its discretion, issue a temporary remand of the matter to the circuit court for the purpose of making findings of fact regarding disputed factual issues relevant to the motion.
5. At any time after a notice of appeal has been filed and after the expiration of the 21-day period prescribed by Rule 1:1, a party legally entitled to appointed counsel may file a motion in the appropriate appellate court for the appointment of appellate counsel. The appellate court may act upon the motion or may, in its discretion, refer the motion to the circuit court for appointment.
6. This Rule applies to appeals of right, appeals by petition, and partial final judgments entered pursuant to Rule 1:2.

New Rule 1:1C — Jurisdictional Transfer
During Appeals of Interlocutory Orders

1. When a petition for review is filed pursuant to Code § 8.01-626, the appellate court shall have exclusive jurisdiction over the appealable interlocutory order and the circuit court shall retain jurisdiction over any part of the case that has not been appealed, unless the circuit court or the appellate court enters an order staying the proceedings in the circuit court.
2. In any other appeal of an interlocutory order, the circuit court shall retain concurrent jurisdiction over the case unless the circuit court or the appellate court enters an order staying all or part of the proceedings in the circuit court.

Additions to Rules 5:9(a) & 5A:6(a)

Rule 5:9(a): *Filing Deadline; Where to File.* No appeal shall be allowed unless, within 30 days after the entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court pursuant to Rule 5:5(a), counsel for the appellant files with the clerk of the trial court a notice of appeal and at the same time mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the court announces a decision or ruling – but before the entry of such judgment or order – is treated as filed on the date of and after the entry.

Appeals from the Circuit Court. Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order shall be moot and of no effect. A new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.

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Rule 5A:6(a): *Filing Deadline; Where to File.* No appeal shall be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court under Rule 5A:3(a), counsel files with the clerk

of the trial court a notice of appeal, and at the same time mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the court announces a decision or ruling -- but before the entry of such judgment or order -- is treated as filed on the date of and after the entry. A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

Appeals from the Circuit Court. Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order shall be moot and of no effect. A new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.