

# GEORGE MASON AMERICAN INN OF COURT



## Expansion of the Virginia Court of Appeals

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## INTRODUCTION

In the 2021 Special Session II, the General Assembly passed Senate Bill 1261, which expanded both the size and the jurisdiction of the Court of Appeals of Virginia. The bill also made many other changes to appellate and trial practice in Virginia.

## GENERAL PROVISIONS

### **Senate Bill 1261**

- Signed into law by Gov. Ralph Northam on March 31, 2021.
- Most provisions become effective January 1, 2022. Expansion of judges effective immediately.

### **Expands Jurisdiction of Court of Appeals of Virginia**

- **NEW:** Appeal as of right in every civil case beginning January 1, 2022.
  - Supreme Court of Virginia has discretion in granting further appeal.
  - Must appeal within 30 days of circuit court's decree or order, extensions may be granted at the discretion of the court. § 8.01-675.3.
- **NEW:** Appeal as of right for every criminal defendant beginning January 1, 2022.
  - Unchanged: Commonwealth must still petition for grant of appeal in criminal cases.
  - Any criminal appeal still pending before the Court of Appeals of Virginia as of January 1 is deemed granted on that date.
- Provides jurisdiction to Court of Appeals over interlocutory appeals and petitions for review of injunctions.
- Expansion of appeals of right are projected to grow Virginia precedent as each published opinion becomes binding, unless overruled by an en banc review or the Supreme Court of Virginia.
- See below for specific changes in code enabling the appeals of right.

### **2. Expands Judges on Court of Appeals**

- Increases number of judges from 11 to 17
- No delayed effectiveness date for this provision.
- **UNCHANGED:** Court will continue to hear appeals in randomized three-judge panels.
- Effects of Expansion
  - Office of the Executive Secretary of the Supreme Court of Virginia shall report to the House Committee for Courts of Justice and the Senate Committee on the Judiciary detailing Court of Appeals expanded workload annually for the first three years of enactment by January 1. The first such report shall be made by January 1, 2023.
  - The Bill's score anticipated an increase of 800 civil appeals annually.
  - The Bill's score anticipated an increase of 300 criminal appeals annually.

- General Assembly appropriated funding for 27 new full-time appellate attorneys in the AG’s Criminal Appeals Section; and 7 additional attorneys with the Virginia Indigent Defense Commission.

### 3. Timing Considerations as January 1, 2022 Approaches

- Cases where a notice of appeal has been filed with the Supreme Court of Virginia prior to Jan. 1, 2022 will be unaffected.
- Practitioners filing notice of appeal in late 2021 should pay attention to deadlines in Rule 5:9.
- All changes become effective January 1, 2022, with the exception of the expanded bench on the Court of Appeals which became effective with the legislation date.

## SUMMARY OF ALL STATUTORY CHANGES

§ 1. The proceeding Code of Virginia sections are amended, reenacted, and newly enacted:

### Administration of Government

#### § 2.2-511: Criminal Cases

- **A:** ...In all other criminal cases the AG begins or prosecutes, unless otherwise noted, the AG’s authority to appear or participate in proceedings only attaches when:
  - **OLD:** A petition for appeal/writ of error granted by the CoA/ S Ct
  - **NEW:** A notice of appeal filed with the Circuit Court noting an appeal to the CoA
- In all criminal cases before the CoA or S Ct where Va. is a party/directly interested, the AG shall appear and represent it.
  - **OLD:** The AG shall continue to represent VA in any further appeal of a case from the CoA to the S Ct when an appeal is granted.
  - **NEW:** The AG shall appear and represent Va. *unless* he consents to the Commonwealth prosecutor filing a notice of appearance to represent Va. in such appeal.

### Civil Remedies & Procedure

#### **§ 8.01-36: Joinder of action of tort to infant with action for recovery of expenses thereby and claim for recovery of expenses by infant.**

- **A: ... If joint cases with requisite jurisdictional amounts being carried to:**
  - **OLD:** The Supreme Court shall clearly specify the decision in each case, separating them in the decision to the extent necessary to do justice among the parties.
  - **NEW:** The Court of Appeals must clearly specify the decisions and separate them to the extent necessary to do justice among the parties. **If** said appeal is appealed to the S Ct. from the CoA, the S Ct, assumes the specification and separation responsibilities.

**§ 8.01-267.8 Interlocutory appeal. (Sections A, B, C)**

- **OLD:** The Supreme Court or Court of Appeals may permit non-final and/or combined action appeals to be taken from a circuit court order. Appeal applications must be made within ten days after the circuit court orders is entered and shall not stay circuit court proceedings unless the circuit or appellate court indicates otherwise
- **NEW:** The Court of Appeals now has sole discretion over above responsibilities.

**§ 8.01-383.1. Appeal when verdict reduced and accepted under protest; new trial for inadequate damages.**

- **OLD:** The Supreme Court may review such appeals, regardless of amount.
- **NEW:** The Court of Appeals now reviews such discretionary appeals, regardless of amount. If appealed from the CoA, the Supreme Court may review the judgment, regardless of amount, if it grants the petition for appeal.

**§ 8.01-555. When appeal bond given property to be delivered to owner.**

- **OLD:** The officer having custody shall deliver the appeal bond from a circuit court to the *Supreme Court* and an appeal bond is given pursuant to § 8.01-676.1
- **NEW:** The officer having custody shall deliver the appeal bond from a circuit court to the *Court of Appeals* and an appeal bond is given pursuant to § 8.01-676.1

**§ 8.01-626. Review of injunction by Court of Appeals.**

When a circuit court (i) grants an injunction; (ii) refuses an injunction; or (iii) dissolves or refuses to enlarge a granted injunction, an aggrieved party, within 15 days of the order, may file a petition for review with:

- **OLD:** A Supreme Court justice
- **NEW:** With the Court of Appeals clerk.

**§ 8.01-670. In what cases awarded. (A-C)**

- **OLD:** Except as provided by § 17.1-405, any person may present an appeal petition to the Supreme Court if he believes himself aggrieved by any judgment concerning: property, probate, trusts, taxation, a civil authority's refusal to demonstrate authority, or of a final judgment of any civil case. Any party may present a petition for appeal to the Supreme Court from equity or final judgment, **except** where appeal from final judgment lies in the Court of Appeals or as provided by § 17.1-405
- **NEW:** A party aggrieved by a CoA's final decision may petition the Supreme Court for an appeal [**not subject-matter limited**] in accordance with § 17.1-411

**§ 8.01-671. Time within which petition must be presented.**

- In cases where an appeal is permitted from the trial court to the Supreme Court, no petition shall be presented for an appeal to the Supreme Court from any final

judgment...that was rendered more than 90 days before the petition is presented, provided that:

- **OLD:** Thirty-day extensions could be granted or (ii) if an appeal from a final decree refusing a bill of a review to a decree rendered more than 120 days prior thereto, unless the petition is presented within 90 days from the date of such decree.
  - **B:** When an appeal from an interlocutory decree/order is allowed, the petition for appeal shall be presented within (a)'s time limitations.
  - **C:** An appeal from the CoA to the S Ct may *only* be granted if a petition for appeal is filed within 30 days after the date of the decision appealed from.
- **NEW:** An extension of any length may be granted by the Supreme Court
  - **C:** An appeal from the CoA to the S Ct may *only* be granted if a petition for appeal is filed within 30 days after the date of the decision appealed from. However, the court may grant an extension of any length.

§ 8.01-675.3. Time within which appeal must be taken; notice.

- **NEW:** The Court of Appeals may now grant extensions to preexisting deadlines.

§ 8.01-675.5. Appeal of interlocutory orders and decrees by permission; immunity.

- **NEW:** Parties may file a motion before the trial starts requesting the circuit certifies an order or decree already entered for interlocutory appeals and grants of sovereign, absolute, or qualified immunity for the Court of Appeals. Includes substantive requirements, time to file requirements, and that the Rules of the Supreme Court of Virginia apply.

§ 8.01-675.6. Jurisdictional amount.

- **NEW:** Establishes a \$500 jurisdictional amount

§ 8.01-676.1. Security for appeal.

- **OLD:** Requires a simultaneous files an appeal bond or irrevocable letter of credit in a \$500 penalty for "cases."
- **NEW:** Clarifies this requirement is exclusive to civil cases.

Commonwealth Public Safety

§ 9.1-909. Relief from registration, reregistration, or verification.

- **OLD:** Appeals from denials of relief from tri-monthly registration as a Tier III offender or murderer shall lie to the Supreme Court
- **NEW:** Appeals from such denials now go to the Court of Appeals.

## Counties, Cities, and Towns

### § 15.2-1627. Duties of attorneys for the Commonwealth and their assistants.

- **NEW:** Under Section B, attorneys and assistant attorneys to the Commonwealth may file notice of appeals with the circuit court for criminal appeals they prosecuted for. With the Attorney General's permission, they may also represent Virginia in any criminal case on appeal before the Court of Appeals or Supreme Court. They also must represent Virginia in civil appeals related to criminal enforcement or criminal cases they prosecuted, including petitions for criminal record expungements, forfeiture, or other matters they may enforce.

### § 15.2-1643. Circuit courts to order court facilities to be repaired.

- **OLD:** Under Section D, hearings regarding court facility repairs from courts of equity may be appealed to the Supreme Court of Virginia.
- **NEW:** Appeals now proceed to the Court of Appeals.

### § 15.2-2139. Special court; costs.

- **OLD:** In the event of an appeal, the Supreme Court of Virginia shall determine by whom the appellate costs shall be paid.
- **NEW:** In the event of an appeal, the Court of Appeals determines who pays the appellate costs, The Supreme Court of Virginia determines who pays the appellate costs if appealed from the Court of Appeals.

### § 15.2-2140. Dispute between jurisdictions; appeals.

- **OLD:** The Supreme Court of Virginia may grant appeals by any party from a special court, being heard and determined regardless of demurrers. The special court shall certify the facts. If the special court's judgment is reversed or modified, the Supreme Court shall enter such order as the special court should have, and the order shall be final.
- **NEW:** The Court of Appeals now may grant appeals from special courts, certifying facts in the same way. If an appeal is taken from the Court of Appeals, proceed as consistent with the procedures in subsection A and enter such as the special court should have entered.

### § 15.2-2656. Appeals.

- **OLD:** Bond validation proceeding appeals may be taken to the Supreme Court.
- **NEW:** Bond validation proceeding appeals may be taken to the Court of Appeals

### § 15.2-3104. Procedure when commissioners fail to agree.

- **OLD:** An appeal may be granted by the Supreme Court, or any justice thereof, to either.
- **NEW:** Either party may appeal from the judgment of the court to the Court of Appeals. If an appeal is taken from the Court of Appeals, the Supreme Court shall render a decision

and award appeal costs to the prevailing parties in matters in which it grants the petition for appeal.

**§ 15.2-3217 Court granting annexation to exist for 10 years.**

- **OLD:** Special courts shall remain in existence for ten years from the annexation order entrance date, or from the date of any Supreme Court decision affirming such an order. Any action relating to enforcing annexation terms and conditions performance shall be subject to Supreme Court review.
- **NEW:** Special courts may now remain in existence from the date of any Court of Appeals decisions affirming annexation order entrances. Any action relation to enforcing annexation terms and conditions performance shall be subject to Court of Appeals review.

**§ 15.2-3221. Appeals; how heard.**

- **OLD:** Appeals may be granted by the Supreme Court or any justice thereof. The special court shall certify the facts in the case to the Supreme Court.
- **NEW:** Appeals may be made to the Court of Appeals. The special court certifies facts from the CoA, and if the Supreme Court takes a judgment from the Court of Appeals, it shall consider the appeal consistent with procedures in this statute and enter such order as the special court should have.

**§ 15.2-3222. What order to be entered by the Supreme Court or the Court of Appeals.**

- **OLD:** If a special court's judgment is reversed or modified, the Supreme Court enters orders as the special court should have, and a copy shall be certified to the Secretary of the Commonwealth.
- **NEW:** If a special court's judgment is reversed or modified, the Court of Appeals shall enter the order as it should have been entered. If the appeal is taken from the CoA, the Supreme Court shall consider the appeal as the Court of Appeals does, including entering the new order for the Secretary of the Commonwealth.

**§ 15.2-3227. Annexation proceedings final for 10 years.**

- **OLD:** The Supreme Court has sole discretion over appeals from final orders denying annexation.
- **NEW:** The Supreme Court *and* Court of Appeals' date of the final order being entered may serve as the start date of the ten-year annexation prohibition.

**§ 15.2-3244. Appeal from such order.**

- **OLD:** Aggrieved parties involved in an order declaring territory to be abandoned may appeal to the Supreme Court for a writ of error within 60 days of the date of the order.
- **NEW:** The Court of Appeals now may hear appeals from orders declaring territory abandoned. Appeals from the Court of Appeals on such decisions have 30 days to be appealed.

**§ 15.2-3308. Partial immunity proceedings final for five years; exceptions.**

- **OLD:** Prohibitions on immunity proceedings for part(s) of the county may begin with the date of the Supreme Court’s final order.
- **NEW:** Prohibitions on immunity proceedings for part(s) of the county may begin with the date of the Court of Appeals’ final order, or if appealed to the Supreme Court, the date of the Supreme Court’s final order entered.

**§ 15.2-3528. Appeals.**

- **OLD:** Appeals may be granted by the Supreme Court, applying *mutatis mutandis*.
- **NEW:** Appeals may be made to the Court of Appeals, applying *mutatis mutandis*. If appealed to the Supreme Court, they shall hear the appeal as provided in §§ 15.2-3221 and 15.2-3222, applying *mutatis mutandis*.

**§ 15.2-3605. How appeals granted and heard.**

- **OLD:** Appeals may be granted by the Supreme Court, who determines court costs to be awarded to the substantially prevailing party.
- **NEW:** Appeals may be made to the Court of Appeals, who now determine court costs to be awarded to substantially prevailing parties. If appealed to the Supreme Court, the Supreme Court renders the decision and awards the cost of appeal to the substantially prevailing party

**§ 15.2-3809. Appeals.**

- **OLD:** Appeals may be granted by the Supreme Court, applying *mutatis mutandis*.
- **NEW:** Appeals may be made to the Court of Appeals, applying *mutatis mutandis*. If appealed to the Supreme Court, they shall hear the appeal as provided in §§ 15.2-3221 and 15.2-3222, applying *mutatis mutandis*.

**§ 15.2-3909. Appeals.**

- **OLD:** Appeals may be granted by the Supreme Court, applying *mutatis mutandis*.
- **NEW:** Appeals may be made to the Court of Appeals, applying *mutatis mutandis*. If appealed to the Supreme Court, they shall hear the appeal as provided in §§ 15.2-3221 and 15.2-3222, applying *mutatis mutandis*.

**Additional Reading**

<http://digitaleditions.walworth.com/publication/index.php?m=53176&i=715507&p=22&ver=html5>

<https://xlppllc.com/wp-content/uploads/2021/07/Civil-appeals-white-paper.pdf>

**§ 15.2-4108. Appeals.**

- **OLD:** “Appeals may be granted by the Supreme Court of Virginia as provided in § 15.2-3221 and 15.2-3222, which shall apply *mutatis mutandis*...”

- **NEW:** “Appeals **may be made to the Court of Appeals** as provided in § 15.2-3221 and 15.2-3222, which shall apply mutatis mutandis...”

§ **15.2-4120. Court granting transition to town status to exist for 10 years.**

- **OLD:** “The special court created pursuant to § 15.2-4101 shall not be dissolved after rendering a decision granting any motion or petition for transition to town status, but shall remain in existence for a period of 10 years from the effective date of any transition order entered, or from the date of any decision of the Supreme Court affirming such order...”
- **NEW:** “The special court created pursuant to § 15.2-4101 shall not be dissolved after rendering a decision granting any motion or petition for transition to town status, but shall remain in existence for a period of 10 years from the effective date of any transition order entered, or from the date of any decision of the Supreme Court...**or the Court of Appeals...**affirming such order...”
- **OLD:** “Any such action of the court shall be subject to review by the Supreme Court in the same manner as is provided with respect to the original decision of the court.”
- **NEW:** “Any such action of the court shall be subject to review by the Supreme Court...and the Court of Appeals...in the same manner as is provided with respect to the original decision of the court.”

§ **15.2-5218. Appeal from order; supersedeas.**

- **OLD:** Any party aggrieved by such order may apply for an appeal to the Supreme Court of Virginia and a supersedeas may be granted in the same manner as is now or hereafter shall be provided by law and the rules of court applicable to civil cases.
- **NEW:** Any party aggrieved by such order may appeal to the Court of Appeals and a supersedeas may be granted in the same manner as is now or hereafter shall be provided by law and the rules of court applicable to civil cases. Any party aggrieved by a judgment of the Court of Appeals rendered pursuant to this section may appeal to the Supreme Court, and a supersedeas may be granted in the same manner as is now or hereafter shall be provided by law and the rules of court applicable to civil cases.

§ **15.2-5367. Appeal.**

- **OLD:** An appeal was to be granted by the Supreme Court of Virginia, or any Judge on the Supreme Court of Virginia, and the appeal was to be heard and determined without reference to the principles of demurrer to evidence. The Trial Court was to certify the facts in the case to the Supreme Court.
- **NEW:** The authority or the city may take an appeal from the judgement of the court to the Court of Appeals. The trial court now certifies the facts of the case to the Court of Appeals, instead of the Supreme Court. Additionally, the authority or the city may appeal any judgement of the Court of Appeals to the Supreme Court.

§ 15.2-6606. Powers.

- **OLD:** In the event that it appears to the Authority or a simple majority of participating political subdivisions that the need for the Authority no longer exists, they may petition the circuit court of a participating political subdivision for the dissolution of the Authority. In the event that the Authority is dissolved, the court shall order any real or tangible personal property contributed to the Authority by a participating political subdivision returned to such participating subdivisions. The remaining assets shall be distributed to the participating subdivisions in proportion to their respective contributions made to the Authority. From a final judgement, an appeal shall lie to the Supreme Court of Virginia.
- **NEW:** Now, from a final judgement, an appeal shall lie to the Court of Appeals. (Instead of the Supreme Court of Virginia)

§ 15.2-6632. Powers.

- **OLD:** In the event that it appears to the Authority or a simple majority of participating political subdivisions that the need for the Authority no longer exists, they may petition the circuit court of a participating political subdivision for the dissolution of the Authority. In the event that the Authority is dissolved, the court shall order any real or tangible personal property contributed to the Authority by a participating political subdivision returned to such participating subdivisions. The remaining assets shall be distributed to the participating subdivisions in proportion to their respective contributions made to the Authority. From a final judgement, an appeal shall lie to the Supreme Court of Virginia.
- **NEW:** Now, from a final judgement, an appeal shall lie to the Court of Appeals. (Instead of the Supreme Court of Virginia)

§ 15.2-7406. Powers.

- **OLD:** In the event that it appears to the Authority that the need for the Authority no longer exists, the Authority, or in the proper case, any such subdivision may petition the circuit court of a participating political subdivision for the dissolution of the Authority. In the event that the Authority is dissolved, the court shall order any real or tangible personal property contributed to the Authority by a participating political subdivision, returned to such participating political subdivision. The remaining assets shall be distributed to the participating subdivisions in proportion to their respective contributions made to the Authority. From a final judgement, an appeal shall lie to the Supreme Court of Virginia.
- **NEW:** Now, from a final judgement, an appeal shall lie to the Court of Appeals. (Instead of the Supreme Court).

§ 16.1-279.1. Protective order in cases of family abuse.

- **OLD:** Prior to the amendment there was no section signaling that an appeal of a protective order – meaning an initial, modified or extended protective order --- issued pursuant to this section would be given expedited review by the Court of Appeals.
- **NEW:** There is now a section signaling that an appeal of protective order issued pursuant to this section shall be given expedited review by the Court of Appeals.

§ 17.1-309. Jurisdiction of writs of mandamus and prohibition.

- **OLD:** Prior to the amendment the Supreme Court of Virginia had jurisdiction to issue writs of mandamus and prohibition to the circuit and district courts and the State Corporation Commission...but there was no indication that a writ of mandamus and prohibition could be issued to the Court of Appeals.
- **NEW:** Now the Supreme Court of Virginia has jurisdiction to issue a writ of mandamus and prohibition to the Court of Appeals (in addition to all of the aforementioned bodies).

§ 17.1-400. Creation and organization; election and terms of judges; oath; vacancies; qualifications; incompatible activities prohibited; chief judge.

- **OLD:** The Court of Appeals of Virginia will consist of 11 Judges who shall be elected for terms of eight years by the majority of members elected to each house of the General Assembly.
- **NEW:** The Court of Appeals of Virginia will consist of **17 Judges** who shall be elected for terms of eight years by the majority of members elected to each house of the General Assembly.
- **OLD:** The General Assembly did not have to consider regional diversity in making its elections.
- **NEW:** The General Assembly **must consider** regional diversity in making its elections.
- **OLD:** Whenever a vacancy occurs or exists in the office of a judge of the Court of Appeals while the General Assembly is in session, or when the term of office of a judge of the Court of Appeals will expire or the office will be vacated at a date certain between the adjournment of the General Assembly...”
- **NEW:** Whenever a vacancy occurs or exists in the office of a judge of the Court of Appeals while the General Assembly is in session, or when the term of office of a judge of the Court of Appeals will expire or the office will be **vacant or vacated** at a date certain between the adjournment of the General Assembly...”

§ 17.1-401. Senior judge.

- **OLD:** Only five retired judges shall serve as senior judges at any one time.
- **NEW:** Only **seven** retired judges shall serve as senior judges at any one time.

§ 17.1-402. Sessions; panels; quorum; presiding judges; hearings *en banc*.

- **OLD:** Each panel shall hear and determine, independently of the others, the petitions for appeal and appeals granted in criminal cases and the other cases assigned to that panel.
- **NEW:** Each panel shall hear and determine, independently of the others, the petitions for appeal **pursuant to § 17.1-406 or 19.2-398** and appeals in criminal **and civil** cases assigned to that panel.
- **OLD:** The Court of Appeals will sit *en banc* if there is a dissent in the panel to which the case was originally assigned and if an aggrieved party requests an *en banc* hearing and at least four judges of the court vote in favor of such a hearing...
- **NEW:** Now, instead of at least four judges, **at least six judges** of the court must vote in favor of such a hearing.
- **OLD:** The Court of Appeals will sit *en banc* if any judge of any panel shall certify that in their opinion a decision of such panel of the court is in conflict with a prior decision of the court or of any panel thereof and three other Judges of the court concur in that view.
- **NEW:** Now **at least five** other Judges must concur in that view.
- **OLD:** The Court of Appeals may sit *en banc* upon its own motion at any time (no mention of sitting *en banc* upon the petition of any party).
- **NEW:** Now, the Court of Appeals may sit ***en banc* upon the petition of any party.**
- **OLD:** The Court may sit *en banc* with no fewer than 8 judges.
- **NEW:** The Court may sit *en banc* with no fewer than **13 judges.**

§ 17.1-403. Rules of practice, procedure, and internal processes; promulgation by Supreme Court; amendments; summary disposition of appeals.

- **OLD:** Before amending the rules governing practice, procedure, and internal processes for the Court of Appeals the Supreme Court shall receive and consider recommendations from the Court of Appeals. The rules shall prescribe procedures governing the summary disposition of appeals which are determined to be without merit.
- **NEW:** The rules shall prescribe procedures (i) authorizing the Court of Appeals to prescribe truncated record or appendix preparation and (ii) permitting the Court of Appeals to dispense with oral argument if the panel has examined the briefs and record and unanimously agrees that oral argument is unnecessary because (a) the appeal is wholly without merit or (b) the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed.

§ 17.1-405. Appellate jurisdiction -- Administrative agency, Virginia Workers' Compensation Commission, and civil matter appeals.

- **OLD:** Any aggrieved party may appeal to the Court of Appeals under the specifications of this section.

- **NEW: Unless otherwise provided by law**, any aggrieved party may appeal to the Court of Appeals from this section.
- **OLD:** Any final judgement, order or decree of a circuit court involving the listed reasons is appealable to the Court of Appeals by an aggrieved party.
- **NEW: Except as provided in subsection B of § 17.1-406**, any final judgement, order or decree of a circuit court involving the listed reasons is appealable to the Court of Appeals by an aggrieved party.
- **OLD:** Affirmance or annulment of a marriage, divorce, custody, spousal/child support, the control or disposition of a child, any other domestic relations matter arising under Title 16.1 or Title 20, Adoption under Ch. 12 of Title 63.2, or a final grievance hearing decision issued pursuant to subsection B are appealable by an aggrieved party.
- **NEW:** All of those categories have been struck through amendment.
- **OLD:** Any interlocutory decree or order entered in any of the cases listed in this section, granting, dissolving, or denying an injunction or adjudicating the principles of a cause were appealable.
- **NEW:** Any interlocutory decree or order pursuant to § 8.01-267.8, 8.01-626, or 8.01-675.5 or any final judgement, order, or decree of a circuit court (i) involving an application for a concealed weapons permit pursuant to Article 6.1 of Ch. 7 of Title 18.2 (ii) involving involuntary treatment of prisoners pursuant to § 53.1-40.1 or 53.1-133.04, or (iii) for declaratory or injunctive relief under § 57-2.02.

**§ 17.1-406. Appeals in criminal matters; cases over which Court of Appeals does not have jurisdiction.**

- **OLD:** Any aggrieved party may present a petition for appeal to the Court of Appeals from any final conviction in a circuit court or a traffic infraction or a crime, except where a sentence of death has been imposed, any final decision of a circuit court on an application for a concealed weapons permit pursuant to Article 6.1 of Ch. 7 of Title 18.2, any final order of a circuit court involving involuntary treatment of prisoners pursuant to s. 53.1-40.1 or 53.1-133.04, or any final order for declaratory or injunctive relief under s. 57-2.02.
- **NEW:** Any aggrieved party **may appeal** to the Court of Appeals from any final conviction in a circuit court of a traffic infraction or a crime, except where a sentence of death has been imposed. **(The rest of the sections were stricken)**

**§ 17.1-407. Procedures on appeal.**

- **OLD:** A copy of the notice of appeal in all cases within the jurisdiction of the court shall be mailed or delivered to all opposing counsel and parties not represented by counsel, and to the clerk of the Court of Appeals.
- **NEW:** That copy shall now also be mailed/delivered to the Attorney General in criminal cases.

- **OLD:** Appeals pursuant to § 17.1-405 are appeals of right.
- **NEW:** Appeals pursuant to subsection A of § 17.1-406, other than petitions for appeal by the Commonwealth in criminal cases, are also now appeals of right.
- **OLD:** The clerk of the Court of Appeals shall refer each case for which a notice of appeal has been filed, other than appeals in criminal cases, to a panel of the court as the court may direct.
- **NEW:** Now, appeals in criminal cases will also be referred.
- **OLD:** Each petition for appeal in a criminal case shall be referred to one or more judges of the Court of Appeals as the court shall direct.
- **NEW:** Each petition **for appeal by the Commonwealth** in a criminal case shall be referred instead.
- **OLD:** If the judge to whom a petition is initially referred does not grant the appeal, counsel for the petitioner shall be entitled to state orally before a panel of the court the reason why his appeal should be granted.
  - **NEW:** Before a petition for appeal by the Commonwealth is denied, counsel for the Commonwealth shall be entitled to state orally before a panel of the court the reasons why its appeal should be granted.

**§ 17.1-408. Time for filing; notice; opening brief; petition.**

- **OLD:** The petition for appeal in a criminal case shall be filed not more than 40 days after the filing of the record with the Court of Appeals.
- **NEW:** The **opening brief** in a criminal case shall be filed not more than 40 days after the filing of the record with the Court of Appeals.
- **OLD:** A 30 day extension may be granted in the discretion of the court in order to attain ends of justice.
- **NEW:** An extension (**no length specification**) may be granted in the discretion of the **Court of Appeals** in order to attain the ends of justice.
- **OLD:** When an appeal from an interlocutory decree or order is permitted in a criminal case, the petition for appeal shall be presented within the 40 day time limitation provided in this section.
- **NEW:** In an appeal pursuant to subsection B or C of § 19.2-398, the petition for appeal shall be presented within the 40 day time limitation provided in this section.
- **OLD:** No mention of clerk duties following the entry of final judgement after receiving a notice of appeal in a criminal case prior to the entry of final judgement.
- **NEW:** The clerk shall prepare a transcript of the trial and any other circuit court proceedings as requested by the appellant in the notice of appeal or by order of the circuit court at the expense of the Commonwealth.

**§ 17.1-410. Disposition of appeals; finality of decisions.**

- **OLD:** When the Court of Appeals has rejected a petition for appeal...its decision shall be final, without appeal to the Supreme Court, in specified circumstances.
- **NEW:** Rejection of a petition for appeal has been stricken from the section.
  
- **OLD:** The cases listed as ‘final’ decisions of the Court of Appeals in the circumstances articulated included traffic infractions, misdemeanor cases where no incarceration imposed, cases originating before any administrative agency or the Virginia Workers’ Compensation Commission, cases involving the 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 Ch. 12 of Title 63.2..
- **NEW:** Those types of cases have all been stricken from the section.
  
- **OLD:** Appeals involving denial of a concealed handgun permit pursuant to s. 18.2-308.8 was not listed prior to amendment as a case in which the Court of Appeals decision would be considered final.
- **NEW:** It is now listed as such a case.

**§ 17.1-503. Rules of practice and procedure; rules not to preclude judges from hearing certain cases.**

- **OLD:** In its rules of practice and procedure for the circuit courts, the Supreme Court shall include rules relating to court decisions...these rules shall provide for expedited reviews by the Supreme Court of decisions by any circuit court relating to appeals of any order of quarantine or isolation.
- **NEW:** those rules shall now provide for expedited reviews by the Court of Appeals (instead of the Supreme Court) of decisions by any circuit court and by the Supreme Court of decisions of the Court of Appeals relating to appeals of any order of quarantine or isolation.

**§ 17.1-513. Jurisdiction of circuit courts.**

- **OLD:** Appeals from Circuit Courts, in civil and criminal cases, may be had to the Supreme Court.
- **NEW:** Appeals are now had to the Court of Appeals.

**§ 18.2-308.08. Denial of a concealed handgun permit; appeal.**

- **OLD:** Any person denied a permit to carry a concealed handgun by the circuit court may present a petition for review to the Court of Appeals. That petition shall be filed within 60 days of the expiration of the time for requesting an ore tenus hearing, or if an ore tenus hearing is requested, within 60 days of the entry of the final order of the circuit court following the hearing.

- **NEW:** Now, instead of presenting a petition, they may just directly appeal. They must also file the notice of appeal with the clerk of the circuit court noting an appeal to the Court of Appeals and file their opening brief with the Court of Appeals in the time previously stated (which has not changed).
- **OLD:** The petition shall be accompanied by a copy of the original papers filed in the circuit court...
- **NEW:** The opening brief (instead of the petition) shall be accompanied by a copy of the original papers filed in the circuit court...
- **OLD:** Subject to the provisions of subsection B of s. 17.1-410, the decision of the court of Appeals or judge shall be final.
- **NEW:** The decision of the court of appeals or judge shall be final (provisions stricken).

**§ 18.2-384. Proceeding against book alleged to be obscene.**

- **OLD:** Any party to the proceeding, including the petitioner, may appeal from the judgement of the court to the Supreme Court of Virginia, as otherwise provided by law.
- **NEW:** Any party to the proceeding, including the petitioner, may appeal from the judgement of the court to the Court of Appeals,

**§ 19.2-386.1 Writs of Error and supersedeas.**

- May be appealed to the Court of Appeals
- Calculation and reporting of required local expenditures; procedure if locality fails to appropriate sufficient educational funds. ¶ 22.1-97.
  - Appeals shall be made to the Court of Appeals.

**§ 22.1-289.024 Appeal from refusal, denial of renewal, or revocation of license.**

- No stay may be granted upon appeal to the Supreme Court or the Court of Appeals.

**§ 24.2-237 Who represents the Commonwealth; trial by jury; appeal.**

- Commonwealth and defendant have the right to appeal to the Court of appeals who shall consider and determine such cases under this article.

**§ 24.2-422 Appeal of person denied registration.**

- May appeal to the Court of Appeals.

**§ 24.2-433 Appeal from decision of court.**

- May be appealed to the Court of Appeals and heard by the next available panel of the Court of Appeals.
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**§ 25.1-239 Finality of order confirming, altering or modifying report; appeal.**

- Parties may appeal to the Court of Appeals.
- Any party may appeal a judgment of the Court of Appeals under this section to the Supreme Court.

**§ 32.1-48.010 Appeal of any order of quarantine.**

- Order to vacate may be stayed by the Supreme Court or the Court of Appeals.
- Any party may appeal circuit court decisions to the Court of Appeals.
- Appeals of final order of any circuit courts regarding the State Health Commissioner's petition for review to the Court of Appeals.

**§ 32.1-48.013 Appeal of an order of isolation.**

- May be appealed to the Court of Appeals
- Appeals of final order of any circuit courts regarding the State Health Commissioner's petition for review to the Court of Appeals.

**§ 33.2-928 Procedure to secure abandonment of highways to be flooded in connection with municipal water supply projects.**

- Judgment of the circuit court appealable to the Court of Appeals.

**§ 33.2-2917 Miscellaneous.**

- May be appealed to the Court of Appeals.

**§ 37.2-920 Appeal by Attorney General; emergency custody order.**

- May be appealed to the Court of Appeals

**§ 45.1-161.322 Restoration of property to owner or operator.**

- May be appealed to the Court of Appeals
- Lien for Assessments provisions may be appealed to the Court of Appeals.
  - § 55.1-1833 (I)(11) Lien for assessments on lots
  - § 55.1-1966 (I)(11) Lien for assessments on condominium units
  - § 55.1-2211 D(10) Time-share estate owners' association control liens

**§ 57-2.02 Challenges where a person alleges their religious exercise has been burdened by government in violation.**

- May appeal to the Court of Appeals.
- Tax grievances may be appealed to the Court of Appeals.
  - § 58.1-527 Relating to aggrieved debtors
  - § 58.1-1828 Commissioner or taxpayer final order
  - § 58.1-2282
  - § 58.1-3147 Any order entered which discharges or declines to discharge any treasurer
  - §58.1-3992. Any locality or taxpayer aggrieved

**§63.2-1710. Appeal from refusal, denial of renewal, or revocation of license for assisted living facility, adult day care center, or child welfare agency.**

- No stay may be granted upon appeal to the Court of Appeals.

**SUMMARY OF PROPOSED CHANGES to RULE 5A**  
**(Not yet enacted by the Court of Appeals)**

Full proposed rule changes can be found here-

<https://media.mcguirewoods.com/publications/2021/draft-rules-revisions-re-cav-jurisdictional-changes.pdf>

- Repealed requirement that jurisdictional amount be \$500 or more for appeal (formerly § 8.01-672).
- Repealed process for permission of interlocutory appeals (formerly § 8.01-670.1).
- Requires e-filing of all court documents Rule 5:1B. Rule 5.6 is updated to reflect the electronic nature of documents.
- Rule 5:5: Filing deadlines for a petition appeal are mandatory unless the Supreme Court grants an extension.
- Rule 5A:25(b) enables the Court to order dispensing with the appendix and for the appeal to commence on the basis of the original record.
- Allows oral arguments to be dispensed with if:
  - panel of judges unanimously decides the appeal is wholly without merit (Amends Code § 17.1403) or
  - dispositive issues have been authoritatively decided and appellant has not argued that the case law should be overturned, extended, or reversed
  - ALERT: This provision could allow the court to reduce oral hearings because the panel may find the issues petitioned are controlled by precedent (thus over time may be interpreted similarly to Federal Rules of Appellate Procedure 34(b)).
  - Upon petition by either party, the Court may grant *en banc* rehearings if a majority of judges agree. § 17.1-402(D).
- Former procedure required a panel dissent before a party could petition.

- Rule 5:7A regarding content, service requirements, and other limitations for Petitions for Writs of Habeas Corpus, Mandamus, and Prohibition is now embedded within Rule 5:7.
- Rule 5A:1(C)(4): Page limitations may be disclosed. Headings are now included in the page, while signature locks are excluded from the page or word limit.
- Rule 5A:1A(a): Rule 5A:20(c) is now an exception to the Court's authority to issue a show cause order to counsel or party representing oneself to cure a defect.
- Rule 5A:2(a): Motions to dismiss petitions in original jurisdiction proceedings may or may not indicate whether the other parties consent to the motion granted or intent to file responses in opposition.
- Rule 5A:3
  - (a): Formalizing broader authority for the Court to make more flexible filing deadlines.
  - (b): Filing a motion for extension does not toll applicable deadlines.
  - (c): Redefines timely filed motion for extensions of times by removing the specified extension period in Rules 5A:3(a) and 5A:12(a)
- Rule 5A:4(a): Changed font size from 12 to 14 point font on one side of the page.
- Rule 5A:6(a) Clarifies statutory exceptions to appeals being allowed after final judgment entry
  - (a)(2): Establishes procedure for appeals of certified questions and petitions for review.
  - (c): Makes the clerk of the Court's responsibility to file any notice appeal not accompanied by a filing fee mandatory rather than discretionary.
  - (d)(3): Certificates must now include a statement that notice of appeals have been sent via email, or if no email, mailed.
  - (g): The Attorney General or the prosecuting Commonwealth attorney, within 14 days of filing a notice of appeal in a criminal case. Describes the process for such.
- Rule 5A:8(c): Written statements of facts, testimony, and other case events become part of the record when it is filed in the office of the clerk of the trial court in 60 days, increased from 55.
- Rule 5A:12(a): Adds procedures and new time frames for filing application for appeals or other authorized pleadings seeking discretionary review (petitions)
  - (b): Petitions must be transmitted or mailed to all opposing counsel of record rather than only the Commonwealth attorneys.
  - (c)(1): Distinguishes transcript, written statement of facts, and record.
  - (c)(iii): Distinguishes between transcript, written statement facts, and record.
  - (c)(iii)(8): Certificate no longer needs appellant's want to orally state the reasons why the petition for appeal ought be granted.
  - (e): A \$50 filing fee is accompanied for the petition of appeal.
  - (g): *Anders* appeal section moved to Rule 5A: 20
- Rule 5A: 12A (a)--(g) Establishes procedures for Court of Appeals Petitions for Review
- Rule 5A:13 Brief in Opposition
  - (a): Classifies deadlines to respond depending on the area of law governed by the relevant statute.
- Rule 5A:14 [Reserved]
- Rule 5A:15: Removes requirements for the consideration demand