

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 33

*An Act to amend and reenact §§ 19.2-402 and 19.2-405 of the Code of Virginia, relating to pretrial appeals; transcript or written statement of facts.*

[H 656]

Approved February 27, 2014

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-402 and 19.2-405 of the Code of Virginia are amended and reenacted as follows:**

**§ 19.2-402. Petition for appeal; brief in opposition; time for filing.**

A. When a notice of appeal has been filed pursuant to § 19.2-400, the Commonwealth may petition the Court of Appeals for an appeal pursuant to § 19.2-398. The Commonwealth shall be represented by the attorney for the Commonwealth prosecuting the case.

B. The provisions of this subsection apply only to pretrial appeals. The petition for a pretrial appeal shall be filed with the clerk of the Court of Appeals not more than 14 days after the ~~date that the notice~~ *of transcript or written statement of facts required by § 19.2-405 is filed*; or, if there are objections thereto, within 14 days after the judge signs the transcript or written statement *of facts*. The accused may file a brief in opposition with the clerk of the Court of Appeals within 14 days after the filing of the petition for pretrial appeal. If the accused has filed a notice of cross appeal, he shall file a petition for cross appeal to be consolidated with, and filed within the same time period as, his brief in opposition. The Commonwealth may file a brief in opposition to any petition for cross appeal within 10 days after the petition for cross appeal is filed. Except as specifically provided in this section, all other requirements for the petition for pretrial appeal and brief in opposition shall conform as nearly as practicable to Part Five A of the Rules of the Supreme Court of Virginia.

**§ 19.2-405. Pretrial appeals; record on appeal; transcript; written statement of facts; time for filing.**

This section applies only to pretrial appeals. The record on appeal shall conform, as nearly as practicable, to the requirements of Part Five A of the Rules of the Supreme Court for the record on appeal, except as hereinafter provided. The transcript or written statement of facts shall be filed ~~by the Commonwealth~~ with the clerk of the circuit court from which the appeal is being taken, ~~within no later than 25 days following entry of the order of the circuit court~~. Upon motion of the Commonwealth, the Court of Appeals may grant an extension of up to 45 days for filing the transcript or written statement *of facts* for good cause shown. If ~~the Commonwealth files~~ a transcript or written statement, ~~it shall also~~ *of facts is filed, the Commonwealth shall file with the clerk of the circuit court a notice, signed by the attorney for the Commonwealth, who is counsel for the appellant, identifying the transcript or written statement of facts and reciting its delivery to filing with the clerk*. There shall be appended to the notice a certificate by the attorney for the Commonwealth that a copy of the notice has been mailed or delivered to opposing counsel. *The notice of filing of the transcript or written statement of facts shall be filed within three days of the filing of the transcript or written statement of facts or within 14 days of the order of the circuit court, whichever is later.*

Any party may object to the transcript or written statement *of facts* on the ground that it is erroneous or incomplete. Notice of the objection specifying the errors alleged or deficiencies asserted shall be tendered to the trial judge within 10 days after the *notice of filing of the transcript or written statement of facts* is filed in the office of the clerk. The trial judge shall, within three days after the filing of such objection, either overrule the objection, or take steps deemed necessary to make the record complete or certify the respect in which the record is incomplete, and sign the transcript or written statement *of facts* to verify its accuracy. The clerk of the trial court shall forthwith transmit the record to the clerk of the Court of Appeals.