Judicial Council of Virginia

Report to the

General Assembly

and Supreme Court of Virginia

2004

2004

Judicial Council of Virginia

Report to the General Assembly and Supreme Court of Virginia

General Information for Individuals With Disabilities

The Court System has adopted a policy of non-discrimination in both employment and in access to its facilities, services, programs and activities. Individuals with disabilities who need accommodation in order to have access to court facilities or to participate in court system functions are invited to request assistance from court system staff. Individuals (not employed by the court system) with disabilities who believe they have been discriminated against in either employment or in access may file a grievance through local court system officials. Those who need printed material published by the court system in another format, those who have general questions about the court system in another format or those who have general questions about the court system's non-discrimination policies and procedures may contact the Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219. The telephone number is 804/786-6455; communication through a telecommunications device (TDD) is also available at this number.

The Judicial Council of Virginia
2004 Report to the General Assembly and Supreme Court of Virginia
Supreme Court of Virginia, Richmond, Virginia
Published January 12, 2005

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January 12, 2005

TO: Members of the General Assembly and Justices of the Supreme Court

It is my pleasure to submit to you the *2004 Report of the Judicial Council of Virginia* in accordance with §17-227 of the *Code of Virginia.* The purpose of this report is to advise you of the progress made during the past year on numerous initiatives undertaken by the Council, judges, and court personnel. These initiatives will improve the quality of justice rendered to our fellow Virginians.

Many of these initiatives have been undertaken as a result of the adoption of the Judicial Council's 2004-06 strategic plan. Additionally, in 2004, the Council, the Supreme Court of Virginia, and others throughout the Commonwealth, including the Bar, completed seven years of work in the area of simplifying civil practice and procedure. As a result, the judiciary will recommend to the General Assembly statutory changes that will permit both legal and equitable claims to be filed in a single lawsuit, to be known as a civil action. These changes, accompanied by appropriate changes in the Rules of the Supreme Court of Virginia, will simplify procedures in our circuit courts while preserving the historic differences between law and equity. A summary of the rationale for this important change is included in the attached document.

Each year, almost four million cases are commenced in the courts of our Commonwealth. The judiciary has an obligation to ensure the fair and efficient adjudication of cases for all litigants. Thus, the Council has recommended the establishment of an additional judgeship for the Twenty-eighth Circuit, which will enhance the efficient administration of justice in that circuit.

In 2004, the judiciary celebrated the 225th anniversary of the establishment of the Supreme Court of Virginia. During this commemoration, the judiciary reaffirmed its commitment and adherence to the rule of law and to the principles of freedom and liberty that we as Virginians and Americans value and cherish. Today, just as was true in 1779, we reaffirm our strong belief that no free government, or the blessings of liberty, can be preserved for our fellow Virginians without a firm adherence to justice. Through the coordinated efforts of the Council and the daily administration of justice by the trial and appellate courts, the judiciary shall work to ensure that this precept remains a reality for our Commonwealth and her people. On behalf of the judiciary, thank you for your steadfast support and assistance. May God bless our Commonwealth and our honorable courts.

Sincerely,

Leroy Rountree Hassell

Leroy Rountree Hassell, Sr.

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The Judicial Council of Virginia

The Honorable Leroy Rountree Hassell, Sr.	Chief Justice, Supreme Court of Virginia
The Honorable Johanna L. Fitzpatrick	Chief Judge, Court of Appeals of Virginia
The Honorable S. Bernard Goodwyn	Judge, First Judicial Circuit
The Honorable Randall G. Johnson	Judge, Thirteenth Judicial Circuit
The Honorable Paul M. Peatross, Jr.	Judge, Sixteenth Judicial Circuit
The Honorable Leslie M. Alden	Judge, Nineteenth Judicial Circuit
The Honorable William N. Alexander II	Judge, Twenty-second Judicial Circuit
The Honorable Birg E. Sergent	Chief Judge, Thirtieth Judicial Circuit
The Honorable Alfreda Talton-Harris	Judge, Fifth Judicial District (J&DR)
The Honorable Suzanne K. Fulton	Judge, Thirtieth Judicial District (General)
The Honorable Kenneth W. Stolle	Member, Senate of Virginia
The Honorable Walter A. Stosch*	Member, Senate of Virginia*
The Honorable William J. Howell*	Speaker, Virginia House of Delegates*
The Honorable Robert F. McDonnell	Member, Virginia House of Delegates
The Honorable Kenneth R. Melvin*	Member, Virginia House of Delegates*
William G. Broaddus, Esquire	Attorney-at-law, Member of the Bar of the City of Richmond
George W. Wooten, Esquire	Attorney-at-law, Member of the Bar of the City of Roanoke
Robert N. Baldwin, Esquire	Ex-officio Secretary

*By invitation of the Chief Justice of Virginia

Committees of the Judicial Council of Virginia

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The Honorable Johanna L. Fitzpatrick, Chief Judge
The Honorable Randall G. Johnson, Judge

Information and Public Relations Committee

The Honorable Johanna L. Fitzpatrick, Chief Judge, Chair
The Honorable Paul M. Peatross, Jr., Judge
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The Honorable Birg E. Sergent, Judge
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The Honorable Kathleen H. MacKay, Judge, Chair, Probation, Parole and Corrections Committee, Judicial Conference of Virginia
The Honorable Norman DeV. Morrison, Judge, Chair, Probation, Parole and Corrections Committee, Judicial Conference of Virginia for District Courts

Judicial Administration Committee

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The Honorable J. Martin Bass, Judge, Chair, Judicial Administration Committee, Judicial Conference of Virginia for District Courts

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Mr. Edward R. Slaughter, Esquire
Mr. J. Hume Taylor, Esquire
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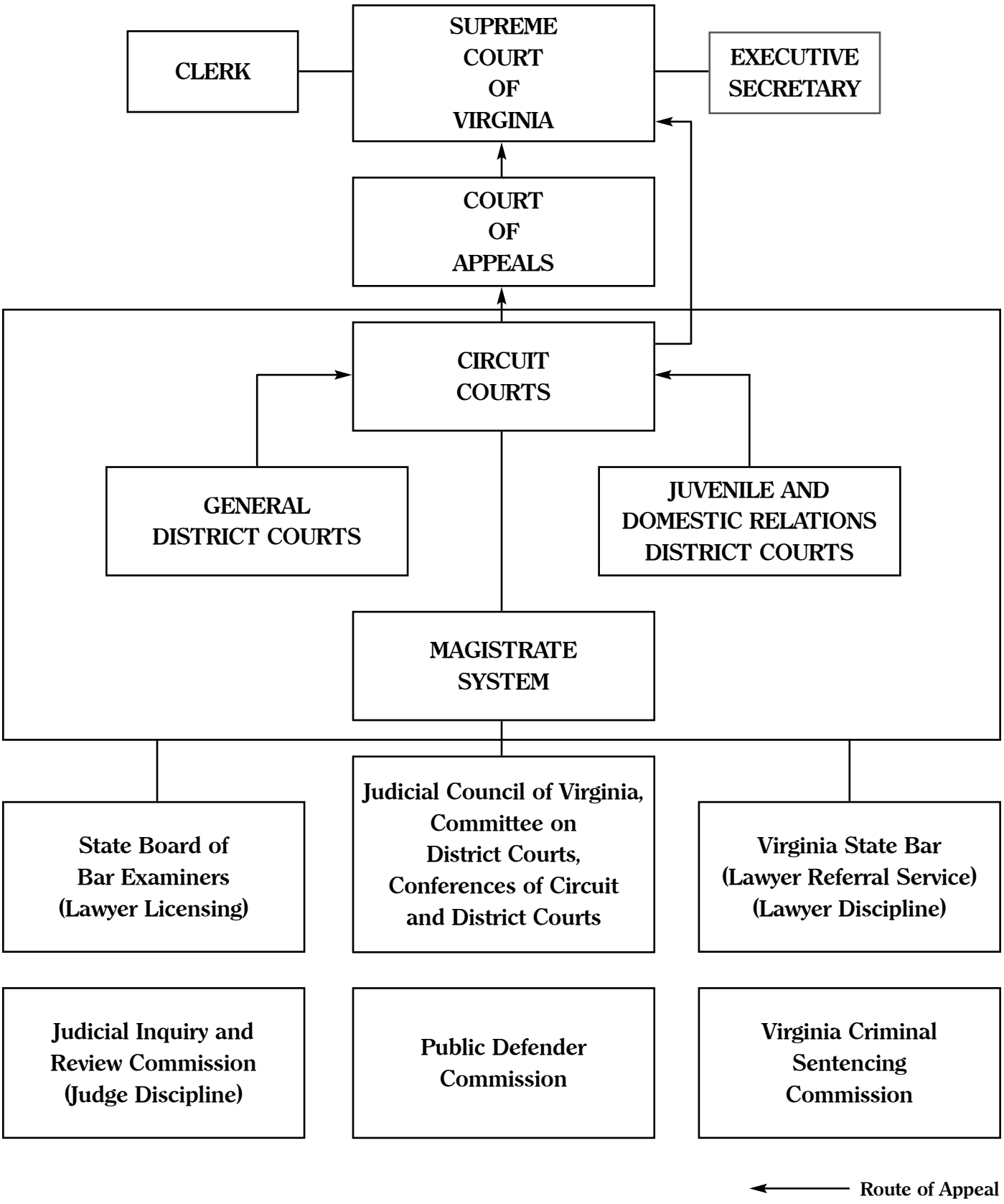
Virginia Judicial Branch



Proceedings of the Judicial Council

Chapter 1

Proceedings of the Judicial Council of Virginia

INTRODUCTION

The Judicial Council of Virginia was established by statute in 1930 and is charged with the responsibility of making a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth of Virginia. It is responsible for examining the work accomplished and results produced by the judicial system and its individual offices and courts. Central to meeting these responsibilities is the preparation and publication of the court system's biennial comprehensive plan.

During 2004, the judiciary continued to make progress under the strategic plan for 2004-2006, ***Bringing the Future to Justice: Charting the Course in the New Dominion***. Some of the actions required by the strategic plan are the direct responsibility of the Judicial Council or the Office of the Executive Secretary, while others directly involve local courts. The Judicial Council presents in this report a status report on the Plan's implementation in order to inform members of the General Assembly, judges and court personnel, the Bar, media, and the public about the judiciary's efforts to better serve the citizens of Virginia.

This report also sets forth the legislative recommendations of the Judicial Council for the 2005 Session of the General Assembly and reviews various other activities of the Council throughout 2004.

LEGISLATIVE PROPOSALS FOR THE 2005 SESSION OF THE GENERAL ASSEMBLY

Request for a New Judgeship in the Twenty-eighth Judicial Circuit

During 2004, the Judicial Council considered requests from two Judicial Circuits for an additional judgeship. After a careful review of these circuits' caseloads and judicial workloads, as well as interviews with judges and members of the bar in the circuits, the Council recommends an additional judgeship in the Twenty-eighth Judicial Circuit, effective July 1, 2005. A detailed analysis of workload for this circuit can be found in Chapter 3 of this report.

Simplifying Civil Practice: Creating a Unified Civil Procedure

The Judicial Council of Virginia recommends to the General Assembly minor amendments to several statutes that will allow both legal and equitable claims to be filed in a single lawsuit, to be known as a civil action. This recommendation is the result of seven years of work on the part of the Judicial Council and others throughout the Commonwealth, including the Bar.

The present system for filing of claims at the circuit court level requires a litigant either to file the entire case as an equity proceeding, thereby being forced to give up the jury trial right that would apply to the case "on the law side," or to file two lawsuits to litigate aspects of the same case, trying the damage case to a jury and in a separate proceeding asking the court to award equitable relief. The recommended statutory changes, accompanied by appropriate changes in the Rules of Court, would help to alleviate the burdens of these multiple filings on the trial courts and the unnecessary clogging of the courts with multiple actions that can create "pleading traps." In addition, these recommended changes would eliminate exposure to multiple claims arising from the same events which many feel are anti-business and do not constitute good service to individual parties in the Commonwealth.

A more thorough discussion of this matter can be found in Chapter 4 along with proposed changes to the Rules of Court. Proposed statutory amendments can be found under the Proposed Legislation section of this report.

Use of Commissioners in Chancery

During 2004, the Judicial Council of Virginia undertook a detailed examination of issues related to the use of Commissioners in Chancery, their effect on litigants, and the advisability of limiting and/or abolishing their use in domestic relations cases.

After consultation and input from judges, lawyers, and Commissioners in Chancery, the Judicial Council recommends amendments to § 8.01-607, § 25.1-241, § 56-522, and § 58.1-3969 to limit the use of Commissioners as follows: (1) the use of Commissioners in Chancery would not be permitted in uncontested divorce cases; and (2) in all the other cases, Commissioners in Chancery would be permitted only by agreement of the parties with the concurrence of the court; or (3) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case. Necessary changes to Rule 2:18 of the Rules of Court, Use of and Proceedings Before a Commissioner in Chancery, have been recommended by the Judicial Council to the Supreme Court of Virginia. Additional information on this proposal can be found in Chapter 5.

Exercise of Appointive Powers of Circuit Judges

The Judicial Council recommends an amendment to § 17.1-501 which would allow an order of appointment within a circuit to be signed by the chief judge or that judge's designee on behalf of the other judges.

Family Court Study

The 2004 General Assembly asked the Judicial Council to evaluate and make recommendations on the funding, resources, and statutory changes required to implement a system of family courts in Virginia pursuant to the provisions contained in Chapters 929 and 930 of the Acts of Assembly of 1993. The first phase of this study, undertaken during 2004, involved the updating of the original 1993 legislative enactments taking into account the numerous changes to the Code of Virginia during the intervening years. In addition, all reports identifying the number of judges, clerks' office personnel, and funding which would be required to implement this system of family courts were brought current. This preliminary work was completed and presented to Council for its at its December meeting.

During 2005, the second phase of this study will be completed. This step will involve a thorough review of the original proposal by a broad group of judges, clerks, and domestic relations attorneys. The Chief Justice will appoint a task force early in the year to accomplish this task and to make recommendations to the Judicial Council. The Council will then prepare and submit its final report to the General Assembly by December 1, 2005.

Continuing Education Policy for Retired Judges

During 2004, the Judicial Council reviewed the continuing education policies for retired judges who are subject to recall pursuant to the provisions of § 17.1-106 and § 16.1-69.35, and for substitute judges who are appointed pursuant to § 16.1-69.9. In order to assure that judges recalled to the bench remain informed on the current status of the law, the Council adopted policies to require retired recalled judges to attend the annual mandatory or voluntary Judicial Conference; those who elect to attend the voluntary conference are also required to certify completion of a distance learning program or other conference program dealing with recent legislation and recent state and federal law updates. Under the newly adopted policy, substitute judges must attend one four-hour regional continuing education program annually sponsored by the Office of the Executive Secretary (OES). In addition, substitute judges must certify completion of an annual learning program distributed by OES on topics designated by the Education Committee of the Judicial Conference of Virginia for District Courts.

Fee Guidelines for Fidiciaries

The Judicial Council in 2004 considered proposed Guidelines for Fiduciary Compensation from the Standing Committee on Commissioners of Accounts. The proposed guidelines were the result of a two-year effort involving substantial input from practitioners and banks. The Council approved these Guidelines which will be circulated to circuit court judges for implementation in 2005. The Guidelines can be found in Chapter 7.

The Honorable Harry L. Carrico Outstanding Career Service Award

In honor of the retired Chief Justice of Virginia, the Honorable Harry L. Carrico, the Judicial Council of Virginia, in 2004, created an Outstanding Career Service Award. This award will be presented annually to one who, over an extended career, has demonstrated exceptional leadersip in the administration of the courts while exhibiting the traits of integrity, coutesty, impartiality, wisdom, and humility.

The first recipient of this award was the Honorable Charles B. Flanagan, II, Judge of the Twenty-eighth Judicial Circuit. Judge Flanagan retired in early 2004 after over two decades of service on the bench. Judge Flanagan was honored for his unfailing commitment to the administration of justice, his contributions to bench-bar relations, and his advocay for the use of mediation. In addition, Judge Flanagan's contributions to citizens of his community, the local bar, and other government agencies earned for him the greatest respect of those who practiced or appeared before him.

Chapter 2

Bringing the Future to Justice: Status Report on the Implementation of the Judiciary's 2004-2006 Strategic Plan

INTRODUCTION

In December, 2003, the Judicial Council adopted the 2004-06 strategic plan for Virginia's judicial system. The plan also was reviewed and approved by the Supreme Court of Virginia. It contains 143 action items designed to enhance the quality of justice and the effectiveness of the court system. These action items will be undertaken and/or completed during the biennium.

The Plan is the result of a comprehensive process involving more than 1,000 Virginians-the most broad-based planning effort yet undertaken by the judiciary. Two new avenues for gathering information about the perceived needs for court reform were incorporated in the Plan's development. The first was a series of Town Hall Meetings held around the Commonwealth in 2003. Members of the Judicial Council and judges met with citizens and local government officials to discuss a wide range of issues regarding the administration of justice. Later in the year, community leaders, citizens, judges, lawyers, and court personnel met in Richmond at the statewide Solutions Conference to review the most promising ideas and innovations gleaned from the Town Hall meetings.

The Plan is the result of a comprehensive process involving more than 1,000 Virginians-the most broad-based planning effort yet undertaken by the judiciary.

Many of the Plan's action items flow from the six over-arching themes that capture the most pressing needs and concerns voiced by those outside and inside the courts. Each of the following themes identifies an area that the courts must address to ensure continued public trust and confidence in the judicial system.

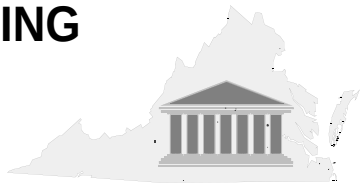
1. Widening the Courthouse Doors: Meeting the Diverse Need for Access to Justice
2. Children and Families in the Courts
3. Technology as a Way of Life
4. Courts and Communities: Exploring Roles, Responsibilities and New Paths to Justice

5. Courts as a Core Function of Government: Maintaining Independence and Accountability
6. Reclaiming a Secure Virginia: The Courts Post 9/11

Thus, assuring that the most vulnerable in our society are afforded meaningful access to the courts, despite language, financial, or physical limitations is a major focus of this Plan. So, too, is improving the courts' ability to address complex, emotionally charged, and vitally important cases involving children and families. The courts' continuing ability to function in an increasingly technological world, one where the use of technology is being perceived as the single most potent force transforming the justice system landscape, provides yet another focal point in the Plan. As offenses relating to substance abuse, family breakdown, and mental illness continue to flow into the courts in substantial numbers, the appropriate role and responsibilities of the courts in these matters is being challenged. The Plan establishes a framework for exploring these issues. Underlying all these concerns is recognition of the critical importance of maintaining the courts as a core function of our democratic form of government. Other action items reflect the importance of providing for security and continuity of court services and personnel in times of natural and man-made disaster.

Bringing the Future to Justice: The Judiciary's Strategic Plan for 2004 - 2006, conveys the Judicial Council's collective sense of the preferred course for the court system in meeting these challenges. Progress in implementing the goals established in the Plan will be reflected in Council's periodic status reports, evidencing the judiciary's accountability to all Virginians for achieving these goals. This report describes the progress to date in implementing selected tasks within the plan.

THE JUDICIARY'S STRATEGIC PLANNING AND MANAGEMENT SYSTEM



Consumer Research
- Citizens
- Consumers
- Stakeholders

Constituent Input
- Judges
- Clerks of Court
- Magistrates
- Bar

Futures Commission
(Once a Decade)
- Mission
- Vision
- Values

Environmental Scanning
(Continuous)
- Emerging Trends
- Trend Analysis
- *FutureView*

Analysis of Consumer and Constituent Research
Update of Emerging Trends
Plus
Legislative Mandates

Sept–Dec, Even Years
March, Odd years

Identification of
Major Themes, Findings and Issues

April, Odd Years

Venture Teaming with Consumers and Constituents
for Idea Generation, Identification of Options and Recommendations for Service Improvement

May–June, Odd Years

Present Research, Options and Recommendations to Judicial Council for Adoption of **Strategic Plan** for the Judiciary

July, Odd Years

Submission of Biennium Budget

August, Odd Years

Adoption of Annual Operating Plan
for State Court Administrator's Office

IMPLEMENTATION IN THE COURTS

Continuous — **EVALUATION** — Continuous

The Judiciary's Mission

To provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the United States and Virginia Constitutions.

Vision 1
All persons will have effective access to justice, including the opportunity to resolve disputes without undue hardship, cost, inconvenience or delay.

Vision 2
The court system will maintain human dignity and the rule of law, by ensuring equal application of the judicial process to all controversies.

Vision 3
The judicial system will be managed actively to provide an array of dispute resolution alternatives that respond to the changing needs of society.

Vision 4
Virginia's judicial system will be structured and will function in a manner that best facilitates the expeditious, economical and fair resolution of disputes.

Vision 5
The courts of Virginia will be administered in accordance with sound management practices which foster the efficient use of public resources and enhance the effective delivery of court services.

Vision 6
The court system will be adequately staffed by judges and court personnel of the highest professional qualifications, chosen for their positions on the basis of merit and whose performance will be enhanced by continuing education and performance evaluations. Lawyers, who constitute an essential element in the legal system, will receive a quality professional and continuing education befitting the higher professional and ethical standards to which they will be held, and the need to become increasingly service-oriented in their relationships with clients.

Vision 7
Technology will increase the access, convenience and ease of use of the courts for all citizens, and will enhance the quality of justice by increasing the courts' ability to determine facts and reach a fair decision.

Vision 8
The public's perception of the Virginia judicial system will be one of confidence in and respect for the courts and for legal authority.

Vision 9
The impact of changing socio-economic and legal forces will be systematically monitored and the laws of Virginia will provide both the substantive and procedural means for responding to these changes.

Vision 10
The judicial system will fulfill its role within our constitutional system by maintaining its distinctiveness and independence as a separate branch of government.

Vision 1

All persons will have effective access to justice, including the opportunity to resolve disputes without undue hardship, cost, inconvenience or delay.

Objective 1.1

To utilize technology to improve citizens' access to court information and records consistent with legitimate expectations for privacy.

Task 1.1.1

Redesign and expand the court system's Internet website in order to provide additional features, links, and search capabilities so that citizens may become better informed about court procedures and the availability of resources for legal representation.

The court system's Internet website was re-designed in mid-2004 and expanded to include a search capability, including a separate search for opinions. Links exist to provide information and contacts for legal aid offices throughout the state. The site will be further updated on a continuing basis.

Task 1.1.2

Conduct legal research pursuant to HJR631 (2003) on the protection of information contained in the records, documents and cases filed in the courts of the Commonwealth and report the results to the General Assembly.

A legislative study on this subject is underway. Research continues to identify all types of records maintained by courts and the statutory or regulatory requirements with regards to the confidentiality of these records. The research should be completed during 2005.

Task 1.1.3

Complete implementation of Internet access to appropriate trial court data to enable citizens to access specific case data from each circuit and general district court.

Internet access to appropriate trial court data is now available for 88 circuit courts, and all general district and combined courts.

Task 1.1.4

Implement Internet access to the circuit court records indexing system in accordance with the standards set forth in HB 2426, adopted by the 2003 General Assembly.

The Supreme Court's Records Indexing/Imaging system has received certification from the Virginia Information Technologies Agency. Two sites have been completed with access available through the Internet. Work is underway with an additional ten circuit courts.

Objective 1.2

To expand use of the Internet for conducting business with the courts.

Task 1.2.1

Complete implementation of the electronic pre-payment system for fines and costs in all remaining general district and combined district courts.

Through a joint effort of the Office of the Executive Secretary (OES) and the Virginia Information Providers Network (VIPNET), citizens may now pre-pay fines and costs for traffic offenses. This system is now available for almost all general district and combined courts. Through this system, the courts are receiving an average of 6,000 payments for approximately $725,000 in collections per month.

Task 1.2.2

Expand on-line submission by the courts of administrative forms to provide greater convenience to the courts and the OES and to integrate these data submissions directly into existing databases.

The Department of Judicial Information Technology, in conjuction with the Human Resources and Fiscal Departments of the Office of the Executive Secretary, have identified a number of high volume forms that are routinely submitted to the OES. Efforts are underway to automate these forms so that judicial personnel may complete them online and submit electronically to the appropriate OES department.

During January 2005, a pilot test will begin for the online entry and submission of Leave Report by District Court and Magistrate personnel. Forms to follow will include Wage Hour Reporting, CAIS Security Requests, and Judicial Branch Recruitment forms.

Task 1.2.3

Implement electronic case-filing in the circuit courts, including integration with the Courts Automated Information System, a docket management system and e-commerce.

Funding is being requested from the 2005 General Assembly in the amount of $1,109,803 for FY 2006 (plus additional funding in subsequent years), for Phase I of a pilot test of electronic filing with document imaging in the Circuit Courts (two initially, with roll-out to other courts once the system is operational and as funding is available). This funding request is to cover the costs for the personnel (for programming, database administration, and training), equipment (including a "library" server at the Supreme Court Computer Center, and document management servers, scanning workstations and mid-range printers in the courts). It also would support software required to convert documents to images and store them electronically, creation of an inter-

face with the Circuit Case Management System, and training for clerks, judges, attorneys, and the public. It also includes hiring an electronic filing vendor to enable the electronic filing of civil court documents.

Objective 1.4
To eliminate economic barriers to legal representation.

Task 1.4.1
Design and implement a statewide program to provide pro bono legal services to litigants involved in child custody and visitation disputes who cannot afford representation.

Chief Justice Hassell appointed a diverse committee of Virginia attorneys to design the program. The program is to be piloted in the Richmond and the Harrisonburg area in the near future.

Task 1.4.3
Work with the Virginia State Bar's Access to Legal Services Committee in its study of discrete task representation to determine additional potential avenues for access to low cost legal services.

The study of discrete task representation is underway under the auspices of the Virginia State Bar's Access to Legal Services Committee. The Committee made numerous presentations to Bar groups on the subject during 2004 and expects to complete its work in 2005.

Objective 1.5
To improve the court system's response to the challenges and needs presented by self-represented litigants.

Task 1.5.1
Develop principles, guidelines, protocols, and training curricula for all clerks' office personnel and magistrates to clarify the types of information and assistance that may be provided to self-represented litigants.

A one-page handout for petitioners seeking Family Abuse Protective Orders was developed based on informational materials developed for the Virginia Family Abuse Protective Order I-CAN! (Interactive Community Assistance Network) system. The handout contains information about the procedures, conditions and time limits applicable to Family Abuse Protective Orders. The handout will be provided to clerks, Court Service Units and magistrates so they can distribute it to litigants.

Task 1.5.3
Institutionalize a process within the circuit and district court forms committees which will ensure that all forms are developed in "plain language" in order to ensure comprehension by litigants.

The goal of this project is to institutionalize a procedure that will render court forms into "plan language" so that self-represented litigants are better-equipped to understand court process and to represent themselves. Several of the more useful forms to begin this project have been identified, a consultant has begun work on "translating" these forms and initial review of these drafts by court users has begun.

Objective 1.6
To facilitate the courts' resolution of disputes in a timely and efficient manner.

Task 1.6.1
Implement time-segmented dockets statewide in the district courts in order to assure that no litigants must wait more than one hour for their cases to be called and to enhance the dignity of all court proceedings.

During 2004, the Supreme Court, working with the General District Docketing Committee, oversaw the development and implementation of segmented docketing systems in general district courts throughout the state. All general district courts have begun a major effort to evaluate the new dockets and measure how well the courts are meeting the one-hour waiting time goal. This will be completed in 2005.

Task 1.6.3
Develop performance indicators for the processing of cases in each case type and provide judges and clerks of court relevant statistical reports and other performance data necessary for accurate monitoring of caseflow management.

The first phase of this task has begun with the review and enhancement of existing management information reports. These reports are now available to all courts through the Internet. Work is beginning on the design of additional reports within the existing case management system for circuit, general district, and juvenile and domestic relations district courts.

Task 1.6.4
Develop automated, standardized order forms so that district court judges may complete and print copies of their decisions and orders for parties in the courtroom.

The Legal Research Department has identified several form orders for automation by the Department of Judicial Information Technology. Currently, work is underway to convert these forms to PDF and add advanced features such as Spell Check and other editing options.

Objective 1.7

To improve the quality of the court system's handling of juvenile and family law matters.

Task 1.7.1

Seek legislation and funding to implement a family court to deal with all family related issues.

The 2004 General Assembly requested that the Judicial Council of Virginia evaluate and make recommendations on the funding, resources, and statutory changes required to implement a system of family courts in Virginia pursuant to the provisions contained in Chapters 929 and 930 of the Acts of Assembly of 1993. The first phase of this study, undertaken during 2004, involved the updating of the original 1993 legislative enactments taking into account the numerous changes to the Code of Virginia during the intervening years. In addition, all reports identifying the number of judges, clerks' office personnel, and funding which would be required to implement this system of family courts were updated. The Council received these reports in December 2004.

During 2005, the second phase of this study will be completed. This step will involve a thorough review of the original proposal by a broad group of judges, clerks, and domestic relations attorneys. The Chief Justice will appoint a task force early in the year to accomplish this task and to make recommendations to the Judicial Council. The Council then is expected to prepare and submit its final report to the General Assembly during the autumn of 2005.

Task 1.7.4

Undertake, in conjunction with the Department of Child Support Enforcement representatives, trial court judges, attorneys and citizens, a project to strengthen case management of child support cases by improving: 1) the quality of materials and support available to self-represented litigants in child support and other cases, 2) case and calendar management in the J&DR courts for child support and non-child support cases, and 3) the accuracy and timely communication of judicial paternity orders and other child support-related business among partner agencies (e.g., the courts, the Departments of Vital Records and Child Support Enforcement).

The Child Support Improvement Project is a joint effort of the Division of Child Support Enforcement in the Virginia Department of Social Services, the National Center for State Courts, and the Office of the Executive Secretary of

the Supreme Court of Virginia. It is funded by a two-year grant to improve the manner in which child support cases are managed in Virginia courts. The project also is focused upon creating means to assist self-represented litigants in child support litigation and improving communication and coordination between the courts and partner agencies.

A quantitative analysis of all child support litigation in Virginia during 2002 was undertaken at the beginning of the project in January 2004, followed by field observations of child support litigation in six juvenile and domestic relations district courts. Concurrently with the court visits, an Advisory Committee was formed with twelve members, representing both Circuit and Juvenile and Domestic Relations District Court Judges, court clerks, officials from the Division of Child Support Enforce, the Attorney General's Office, the Office of Vital Records, a legal aid organization, and the private bar. The Advisory Committee reviewed the data collected and observations recorded during the court visits and set the parameters for selecting eight pilot courts to participate in the testing of new procedures for managing child support litigation. The following Juvenile and Domestic Relations District Courts representing different geographic and demographic areas of the Commonwealth were selected as pilots: Arlington, Winchester/Frederick, Wise, Montgomery, Campbell, Chesterfield, Hampton, and Chesapeake.

The Advisory Committee focused upon designing "best practices" for the pilot courts, assisting self-represented litigants, improving communications between the courts and partner agencies. Additionally, a handbook for parents, entitled "Child Support, the Courts and You" was designed to help parents understand and navigate through the process of child support litigation. A website, containing more detailed information than the handbook, was designed in connection with the Division of Child Support Enforcement.

In October 2004, the eight pilot courts were brought to Richmond for a one-day comprehensive training session on suggested best practices and efforts to assist self-represented litigants. The courts were represented by a "pilot court team" comprised of judges, clerks, and representatives from each court's local Division of Child Support Enforcement office, the sheriff's office, and the private bar. After the training session, each pilot court team devised its own implementation plan for the best practices the team selected. Project staff continues to support each pilot court team with technical assistance. The best practices chosen by each pilot court are to be implemented beginning in January 2005. An evaluation will be conducted of the pilot courts and reported upon in early 2006.

Objective 1.8

To improve court practice in child abuse, neglect and foster care cases in order to expeditiously restore children to safe and permanent homes and measure the success of these efforts.

Task 1.8.1
Complete the delivery of local interdisciplinary training on child dependency litigation in every judicial district of the Commonwealth.

During 2004 eleven sessions for nearly 900 people in eight judicial districts were conducted by the staff of the Court Improvement Program in the Office of the Executive Secretary. All or portions of eight of the 32 judicial districts remain to be scheduled in 2005 in order to complete this local training for every judicial district in Virginia. These programs are conducted in conjunction with the judges and court staff in the involved localities. Many of these events involve all of the courts and agencies for an entire judicial district. Invited by the courts to attend these day-long sessions are:

- *Staff of the local department of social services, to include the director of the agency, supervisor and line staff who work in the program areas of child protective services, foster care and adoption.*
- *Members of the local bar who serve as guardians ad litem, counsel for parents and counsel for the local department of social services.*
- *Representatives of the Court Appointed Special Advocates (CASA) program that serves the court.*
- *Regional consultants for the Virginia Department of Social Services for the program areas of child protective services, foster care and adoption.*

These sessions provide an opportunity for professionals engaged in the front-line work of meeting the needs of the communities' children and families to come together to better understand the court process and to discuss their hopes and concerns for the effectiveness of how they serve their constituents. These meetings include training that is provided at no charge to the attendees. Continuing education credit is made available for the applicable court personnel in the clerks' offices and for attorneys and guardians ad litem for children through the Office of the Executive Secretary and the Virginia State Bar.

Task 1.8.2
Expand and support the Best Practice Courts program for juvenile and domestic relations district courts to promote the uniform application of law and best practices in child dependency cases.

The Court Improvement Program began development of a new initiative entitled "Best Practice Courts" in 2002. This program is designed to build on the significant efforts of many Virginia juvenile and domestic relations district courts to follow the Resource Guidelines: Improving Court Practices in Child Abuse and Neglect Cases, published by the National Council of Juvenile and Family Court Judges (NCJFCJ), Spring 1995. This initiative involves the commitment by a juvenile court to a series of local activities and the provision of

specialized training and technical support to these courts over and above normal CIP efforts. This program is recognized and supported by the NCJFCJ as a model state program and supports the leadership efforts of the juvenile court bench to improve the oversight and handling of child dependency cases. The first two classes of Best Practice Courts, totaling nineteen courts, have found that their initial efforts, focusing on the child dependency caseload, have a broad and positive impact on court operations and community collaboration.

In 2004, five additional juvenile and domestic relations district courts joined the nineteen juvenile courts that had previously committed to participation in this program. Twenty-nine judges in these twenty-four courts brought interdisciplinary teams to the Third Annual Best Practice Courts Conference held in Richmond on November 14-16, 2004. This meeting was convened for the purpose of sharing innovative ways of handling child dependency litigation. A special session was held at the Conference on "Health and Well-Being: Infants and Toddlers in J&DR District Courts," conducted by the Hon Cindy S. Lederman, Presiding Judge, Miami-Dade Juvenile Court, Miami, Florida (Miami Model Court) and Vicky Youcha, Ed.D., Project Director, Zero to Three, Washington, D.C.

During 2004, the nineteen courts that participated in the Best Practice Courts program sponsored a variety of activities designed to improve the court processes related to the trial of child abuse, neglect and foster care cases and to focus upon and improve the services needed for children and families in the community. These activities are highlighted in a newsletter, Best Practice Court Matters, published periodically by the Court Improvement Program in the Office of the Executive Secretary. These activities include: developing and supporting court policies that make hearings more efficient and valuable, reducing continuances, assuring that services are begun within 30 days in at least 50% of cases, and hosting community meetings which assemble local leaders to support the court teams' efforts. Additional activities are: providing joint education for interested stakeholders in the community, front-loading services and implementing concurrent planning, providing mandatory GAL training, and conducting Adoption Day Celebrations.

Task 1.8.3

Provide training for lawyers and juvenile and domestic relations district court and circuit judges on the Standards Governing the Performance of Guardians Ad Litem for Children.

During 2004, eight training sessions were organized at the local level on the Standards to Govern the Performance of Guardians Ad Litem. *Courts, local bar associations and local Court Appointed Special Advocate programs coordinated these programs with the assistance of the Office of the Executive Secretary and the Virginia Bar Association. A video on the* Standards *featuring lawyers from across the Commonwealth produced with grant funds available to the VBA is made available to each locality. Together with the video, a*

local panel discussion by judges, lawyers and CASA volunteers, where available, form the basis of these seminars. Localities that have sponsored these programs as of the close of 2004 are: Chesterfield/Colonial Heights, Staunton/Augusta, Charlottesville/Albemarle, Virginia Beach, Louisa, Roanoke County/Salem, Bedford/Campbell and Franklin County.

Task 1.8.4

Assess the handling of child dependency cases in the circuit courts to determine the extent and impact of the delay on permanency for children.

Virginia's court system provides due process for parties in child dependency cases through access to the appellate process. However, this inevitably results in delayed final resolution in some cases. A statutory requirement has long been in effect in Virginia that directs circuit courts to hold hearings on appeals of termination of parental rights from the juvenile court within 90 days of the perfection of the appeal. The law further provides that an appeal of the case to the Court of Appeals "shall take precedence on the docket of the Court." The Child and Family Services Review conducted in Virginia in July 2003 by the U.S. Department of Health and Human Services found delays in docketing cases on appeal, continuances of trial dates and lengthy time periods before final resolution of these cases, all of which delays the implementation of a permanency plan for a child.

In early 2004, the Court Improvement Program in the Office of the Executive Secretary initiated a study focusing on impediments to timely management of the appeal of termination of parental rights cases (TPR) in circuit courts. An analysis is being conducted that incorporates both quantitative and qualitative components of case data, policies and procedures. The project addresses such issues as how termination of parental rights cases are handled in circuit courts, whether the current data management system is supportive of efforts to monitor these cases, and whether new policies or procedures are necessary to assure that the resolution of child dependency cases are not delayed on the circuit court level.

A data collection instrument has been developed, and key individuals have been identified who are involved in the appeals process. They will be interviewed as part of the study. These individuals include judges, clerks, attorneys for the Department of Social Services, guardians ad litem for children and attorneys representing parents. Seventeen circuit courts were chosen as project sites based on the number of TPR cases on their dockets during calendar year 2003 and the first six months of 2004. Case file information including pertinent dates of hearings and court orders as well as other case history data is being collected from all TPR cases on appeal in the selected courts. Particular attention is being given to the date that a final order is entered by the Court and to reasons for any delay in the entering of the order by the court. The interview of key individuals focuses primarily on process and procedural issues causing delay in the finalization of the hearing.

As of the end of 2004, eight project sites have been visited and 165 cases reviewed. A preliminary report on this project was presented to the fall 2004 conference of circuit court judges. Final results of the study with recommendations for streamlining processes and procedures will be presented at 2005 conferences for circuit court judges and clerks and juvenile and domestic relations district court judges and clerks.

Task 1.8.5
Identify and eliminate barriers to the timely adoption of children in foster care due to court procedures or practices.

See Task 1.8.4

Task 1.8.6
Develop, in cooperation with the Virginia Departments of Social Services and of Mental Health, Mental Retardation and Substance Abuse Services improved protocols and enhanced resources for local courts when serving substance-addicted parents in child dependency cases.

Virginia is one of four states awarded a technical assistance grant from the National Center on Substance Abuse and Child Welfare (NCSACW) in 2003-04. This assistance has been used to develop an interagency Memorandum of Understanding between the Virginia Departments of Social Services and Mental Health, Mental Retardation and Substance Abuse Services and the Office of the Executive Secretary, Supreme Court of Virginia and a corresponding strategic plan for 2004-2009. The Safe Families in Recovery Project (SFRP) is a collaboration between these state entities in partnership with regional agencies and community-based service providers. It has focused upon finding effective ways to address concurrent substance abuse and child maltreatment problems in families before the courts and at-risk of coming before the courts.

Among accomplishments during 2004 have been an increased awareness among stakeholders of the interface between substance abuse, child welfare and court involvement and the importance of providing timely services to these families. Recommendations for both short and long-term activities in the areas of community development, funding and sustainability, information sharing, professional development and service delivery have been included in a Strategic Plan prepared for implementation by the affected entities.

Task 1.8.7
Evaluate the effectiveness of family treatment drug courts in reuniting the dependent children with substance-addicted parents.

The effectiveness of family treatment drug courts is being reviewed as part of a comprehensive evaluation of drug court programs in Virginia. The evaluation will be completed in 2005.

Task 1.8.8
Implement a management information system to track child abuse, neglect and foster care cases, including a related-case cross-referencing capability.

The OES received a federal grant to assist with the development of performance measure reports for the tracking of foster care cases. Seven of these reports should be ready for pilot court implementation by January 2005. Additional online features and reports will be developed throughout 2005. This task is supported by a two-year federally funded grant received by the Office of the Executive Secretary through the Court Improvement Program and the Department of Judicial Information Technology. The grant program, known as "Strengthening Abuse and Neglect in the Courts Act" (SANCA) is administered by the U.S. Department of Justice and is aimed at implementation of a management information system to track child abuse, neglect and foster care cases in the juvenile and domestic relations district courts. Funding for the project began on May 1, 2004.

The goal of the project is to implement case management system enhancements that will permit courts to measure their performance in the processing of abuse, neglect and foster care cases in relation to the state and federal statutory time lines and other requirements, as set out in the "Adoption and Safe Families Act" of 1997. The project team is streamlining court functions by creating a data record with the capability to conduct data searches by key data elements. In addition, the team is creating savable orders and administrative forms for court personnel that can feed information into the case management system, developing on-line manuals and HELP features, and developing initial abuse, neglect and foster care reports. Three of six pilot courts have been identified, with the three additional courts to be selected in Spring 2005.

Objective 1.9
Enhance the security of courthouses both for the general public and all personnel who work within them.

Task 1.9.1
Establish a committee to study the security needs within courthouses and to issue minimum security standards for all courthouses.

In order to improve the security and safety of the courts, the Technical Assistance Department within the Office of the Executive Secretary produced the Courthouse Security and Preparedness manual. This guide brings together recommendations on how to plan and prepare for, as well as to respond to both natural and man-made threats or disasters. The guide provides a step-by-step outline on how to prepare local security, preparedness, and contingency plans. Additionally, overviews of natural and man-made threats, including a summary of available security equipment, are treated in detail to

assist judicial administrators in developing model programs. A hard-bound copy, along with corresponding CD-Rom, has been delivered to all chief judges, chief magistrates, and clerks of courts. A copy of the manual is located on the courts' Intranet website.

Vision 2

The court system will maintain human dignity and the rule of law, by ensuring equal application of the judicial process to all controversies.

Objective 2.1

To ensure that courts merit the respect of society in the handling of criminal cases.

Task 2.1.1

Implement the automated entry of protective orders via the electronic interface between the Courts Automated Information System and the Virginia State Police.

This program has been completed and is available statewide as of January 2004.

Task 2.1.4

Seek funding to program and pilot the protective order component of the automated Interactive Community Assistance Network (I-CAN!) system.

The Department of Criminal Justice Services awarded a V-STOP grant to the Office of the Executive Secretary in 2004 to support the statewide rollout of the Virginia Family Abuse Protective Order I-CAN! (Interactive Community Assistance Network) system. In 2005 presentations will be provided to statewide conferences of Court Service Unit personnel, clerks, judges, victim service agencies and other key professional groups. Additionally, four regional one-day workshops will be conducted for interdisciplinary teams to develop information needed by litigants seeking to file petitions at the local level.

Task 2.1.5

Develop and distribute an interactive CD-ROM training module for magistrates on the effective handling of family abuse cases, with emphasis both on the legal requirements and respectful treatment of all parties involved.

An interactive CD ROM training program, the Family Abuse Case Management Course for Magistrates, has been developed along with an accompanying Resource Manual. The course is comprised of nine modules and covers both the legal issues related to the issuance of processes in family abuse cases and respectful treatment of all parties involved. The course will be distributed to all magistrates in 2005.

Objective 2.2

To improve the quality of indigent defense representation in Virginia.

Task 2.2.1
Support efforts to increase the compensation paid to court-appointed counsel in criminal cases.

Work continues with various committees of the Bar and the Virginia Indigent Defense Commission on identifying ways to improve compensation for court-appointed lawyers.

Task 2.2.2
Support the development and implementation of statewide training and qualification standards for court-appointed counsel.

Pursuant to legislation adopted by the 2004 General Assembly, the Virginia Indigent Defense Commission was created and charged with the responsibility of developing and implementing statewide training and qualification standards.

Objective 2.3
To assist the trial courts, as well as state and local criminal justice agencies, in the development, implementation and evaluation of problem-solving courts.

Task 2.3.1
Conduct a comprehensive evaluation of drug treatment court programs in Virginia and their impact on recidivism rates.

The evaluation of Virginia's drug treatment court programs is underway. There are five major components of the federally-funded evaluation: (1) a quasi-experimental impact study; (2) a process evaluation of all operational drug curt programs; (3) a Delphi study of drug court treatment methodologies; (4) a cost analysis model for evaluating the cost benefits of drug courts; and (5) a qualitative evaluation of staff and client perceptions of program effectiveness. During 2004, extensive data gathering for the process evaluations, the Delphi study and the qualitative evaluations was completed and is being analyzed at the present time. The evaluation report on each major component will be completed in 2005.

Task 2.3.3
Evaluate the concepts of therapeutic justice and problem-solving courts to determine ways in which the integration of those concepts may improve the processing and disposition of criminal cases.

This issue will be examined by the Second Commission on the Future of Virginia's Judicial System in 2005.

Objective 2.4

To strengthen the jury system by improving the selection process and the jury's method of operation.

Task 2.4.1

Evaluate the need for and cost effectiveness of a jury management system for circuit courts with small numbers of jury trials.

The Department of Judicial Information Technology is currently working with a vendor to develop an inexpensive jury management system to meet the needs of the smaller circuit courts. The plan is to implement the system in 5 – 7 pilot courts during the beginning of 2005 and make it available to other interested courts in the fall of 2005.

Task 2.4.2

Provide technical assistance to circuit courts in the implementation of the Judicial Council's Jury Management Standards.

The Technical Assistance Department within the Office of the Executive Secretary provides advice and support to circuit courts in the implementation of the jury management standards, as requested.

Vision 3

The judicial system will be managed actively to provide an array of dispute resolution alternatives that respond to the changing needs of society.

Objective 3.1

To establish a comprehensive range of dispute resolution services in Virginia's circuits and districts.

Task 3.1.1

Develop and implement a judicial settlement conference pilot program.

Training was provided for 14 retired Circuit Court judges in November 2003 in mediation and settlement skills. The judicial settlement conference program has been in place for a year now. Over 175 conferences have been conducted to date. Feedback from attorneys has been very positive. Information about the program was presented at the most recent Judicial Conference of Virginia and other regional meetings with circuit judges. A second training may be offered in March 2005 for newly retired circuit court judges.

Task 3.1.2

Provide continuing legal education programs for the Bar and judiciary, and on-site technical assistance to individual courts for the development and integration of ADR options into the litigation process and court procedures.

The Department of Dispute Resolution Services in the Office of the Executive Secretary works closely with Virginia CLE and the Joint VSB-VBA

Committee on ADR to provide Advocacy in Mediation Skills training to attorneys. The next Advanced Advocacy in Mediation CLE program will be held in May 2005. The Department of Dispute Resolution Services also trains and oversees mediation coordinators statewide who are responsible for developing mediation programs for the courts. There are 22 mediation coordinators currently who serve all levels of court in screening cases appropriate for referral, referring cases to mediators, and handling case management.

Task 3.1.3
Evaluate the need for revisions to existing Guidelines for the Certification of Court Referred Mediators to enhance the competency of mediators and the quality of services provided.

The Department of Dispute Resolution Services created a training and certification subcommittee on the subject of truancy mediation and on child dependency mediation. The truancy mediation subcommittee has developed a model truancy mediation course outline and suggested training and experiential guidelines for those mediators interested in providing truancy mediation services for the courts. These guidelines will be incorporated into the RFP for mediation services in 2005. The child dependency mediation committee's recommendations will be incorporated into the Guidelines for the Training and Certification of Court-Referred Mediators and presented to the Judicial Council for review and approval in March 2005.

Task 3.1.4
Develop a model truancy mediation curriculum to train mediators throughout the state in support of the expanded use of truancy mediations by schools and judges.

Working with a Training and Certification committee comprised of mediators experienced in truancy mediation, the Department of Dispute Resolution Services developed a model truancy mediation training curriculum as well as recommended training and experiential requirements for mediators wishing to provide truancy mediation. These recommendations will be built into the next Request for Proposals seeking truancy and other court-annexed mediation services.

Objective 3.2
To provide greater access to a broader range of dispute resolution options in family matters.

Task 3.2.1
Conduct a study of recidivism rates of custody/visitation cases mediated versus those adjudicated in the JDR courts.

In an effort to evaluate whether cases that are mediated are less likely to return to court, a study of cases mediated in 1998 in the Richmond Juvenile and Domestic Relations District Court was conducted. The research indicates that 43% of all mediated cases returned to court over the span of five years. This is only slighter smaller than the percentage of cases returning to court post adjudication – 52%. Parties returned on average to court at least twice post mediation and post adjudication. This study demonstrates that while mediation is a good process for the resolution of disputes, it does not necessarily preclude the need for parties to revisit matters where there is a continued relationship. The nature of custody, visitation and support cases lends itself to re-litigation due to changes in parents' circumstances as well as the fact that as children grow, their needs change. Given the case type that was studied here, the recidivism rate of 43% post mediation is not surprising. The issue of recidivism in mediated cases should be studied in rural, urban and suburban jurisdictions to determine whether similar findings would be noted.

Task 3.2.2
Evaluate the effectiveness and accessibility of mediation in custody/visitation cases for low-income families.

A study regarding the average income of individuals who receive no cost mediation services in custody/visitation cases was conducted. The study revealed that in fact those receiving free court-connected mediation services are low income and would otherwise not be able to afford mediation. Annually, approximately 8000 custody/visitation mediations are conducted at no cost to the parties pursuant to Virginia Code section 20-124.4.

Vision 4

Virginia's judicial system will be structured and will function in a manner that best facilitates the expeditious, economical and fair resolution of disputes.

Objective 4.1
To structure the judicial system in a manner that best enables the prompt, fair and cost-effective resolution of disputes.

Task 4.1.1
Evaluate the use of specialized dockets as a means for more effectively handling complex business and technology litigation.

Information on the operation of specialized business dockets was gathered in 2004 and will be provided to the Second Commission on the Future of Virginia's Judicial System for further examination.

Objective 4.2
To simplify legal procedures to enhance judicial effectiveness and efficiency.

Task 4.2.1
Circulate for consideration by the bench and bar a proposal to create a single form of action for claims at law and in equity.

The Judicial Council of Virginia approved the necessary Rule and statutory changes to create a single form of action for claim at law and in equity and referred the matter to the Supreme Court of Virginia. The Court has agreed to the submission of the legislative proposals to the 2005 Session of the General Assembly. The proposed Rule changes will be published for public comment one final time. If the legislation is adopted, the Rule changes will be approved to become effective January 1, 2006.

Task 4.2.2
Amend necessary court forms and Rules of Court to clarify procedures for accepting guilty pleas for misdemeanors in district courts.

The Advisory Committee on Rules of Court has recommended amendments to several Rules of the Supreme Court, which are presently before the Judicial Council. The Committee on District Courts has approved accompanying changes to the appropriate court forms.

Objective 5.1
To enhance the administration of the courts by clarifying and reinforcing lines of authority and responsibility.

Task 5.1.1
Conduct a study on the effect of eliminating or limiting the use of Commissioners in Chancery on court caseloads.

The Judicial Council in 2004 continued its study of issues related to the use of Commissioners in Chancery, their effect on litigants, and the advisability of limiting and/or abolishing the use of Commissioners in Chancery in domestic relations cases. The Council developed and administered a survey of judges, lawyers, and Commissioners in Chancery from across the state to ascertain their views relating to these issues and to seek their input in the development of specific recommendations to the Supreme Court and General Assembly. Based upon its study, the Judicial Council recommends changes to the Rules of Court, as well as statutory changes to limit the use of Commissioners as follows: (1) the use of Commissioners in Chancery would not be permitted in uncontested divorce cases; and (2) in all the other cases, Commissioners in Chancery would be permitted only by agreement of the parties with the concurrence of the court; or (3) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case.

Vision 5

The courts of Virginia will be administered in accordance with sound management practices that foster the efficient use of public resources and enhance the effective delivery of court services.

Task 5.1.2
Support legislation to remove from the judicial branch responsibility for certifying bail bondsmen.

Legislation adopted by the 2004 General Assembly provided for the Department of Criminal Justice Services to be responsible for the licensure and regulation of property and surety bail bondsmen.

Objective 5.2
To obtain full state funding of the court system.

Task 5.2.2
Secure on-going funding to modernize and maintain the judicial system's technology infrastructure and service delivery systems.

The budget amendments submitted to the Department of Planning and Budget for the 2005 session of the General Assembly included a request for $14.3 million to upgrade computers, improve telecommunication networks and to update case management systems.

Vision 6

The court system will be adequately staffed by judges and court personnel of the highest professional qualifications, chosen for their positions on the basis of merit and whose performance will be enhanced by continuing education and performance evaluations. Lawyers, who constitute an essential element in the legal system, will receive a quality professional and continuing education befitting the higher professional and ethical standards to which they will be held, and the need to become increasingly service-oriented in their relationships with clients.

Objective 6.1
To ensure that the judicial system attracts and retains the most qualified persons for service on the bench.

Task 6.1.1
Secure increases in salaries for judges and justices in order to maintain compensation levels that are attractive enough to encourage qualified individuals to choose a judicial career.

The 2004 session of the General Assembly approved a 5.1% salary increase for justices and judges.

Task 6.1.2
Conduct a pilot judicial performance evaluation program and report the results to the Supreme Court of Virginia and the General Assembly.

The pilot judicial performance evaluation program was completed in the fall of 2004. The primary goal of the pilot program was to assess the feasibility of a statewide Judicial Performance Evaluation program and to determine the processes and structures necessary to conduct this program. The JPE pilot program was implemented between August 2003 and July 2004 in seven "pilot" circuits and districts across Virginia. Based upon the successful test of the components of the Judicial Performance Evaluation program, the Interim Commission recommended to the Supreme Court of Virginia that a

statewide judicial performance evaluation program be implemented by Order of Court for purposes of self-improvement within the judiciary and to provide more objective information upon which retention decisions are made by the General Assembly. In December, 2004, the Court distributed the Interim Commission's report to all Virginia judges for review and comment. Following receipt of the comments of judges, the Court will forward its recommendation on the program to the 2005 General Assembly.

Objective 6.2

To provide education delivery options which will ensure expanded and career-long training opportunities for all persons in the judicial system's workforce.

Task 6.2.1

Provide training opportunities for judges, clerks and magistrates in the use of on-line learning resources and courses.

The Office of the Executive Secretary has partnered with Skillsoft, the world's largest e-learning company, to offer over 1,600 online courses in business and information technology skills to court personnel. Curricula topics include Communication, Customer Service, Finance/Accounting, Human Resources, Leadership, Management, Personal Development, Strategic Planning, Teambuilding, and IT Skills, including Microsoft Office and certification courses. Approximately 150 court users have been enrolled within the past year.

Eight on-line threaded discussion boards are now available for various court user groups: Circuit Judges (196), General District Judges (255), JDR Judges (249), Substitute Judges (241), Circuit Clerks (198), General District Clerks (151), JDR Clerks (125), and Magistrates (453). The number in parentheses represents the number of users that have been registered for that board. Participation is varied amongst the boards, but should increase as more users learn about the boards and their capabilities as communication tools.

In terms of training all judges and court personnel in the use of such resources, the Educational Services Department made presentations regarding the online learning opportunities at the various conferences throughout the year. One-on-one training in the use of WebBoard was also available at the August District Court Judges' Conference. Magistrates were sent packets of information regarding the online tools, and a videotape describing the opportunities was produced and distributed at regional meetings for clerks and at the Substitute Judges training in fall 2002. For the 2003 conferences and pre-bench orientation, handouts were prepared and distributed on the topic of "Available Electronic Resources." Included were sections on the Intranet, WebBoard, the Resource Directory, Skillsoft Online Courses, and the Virginia State Law Library Online Resources.

Opportunities for learning to use online learning resources and courses were offered at various conferences for judges, clerks and magistrates at regional and statewide conferences throughout 2004. The Department, in conjunction with DJIT, continues to explore other webcasting options and meet with various consultants and service providers. The OES has contracted with a vendor to provide a webcast of an archived video of the special session of the Supreme Court of Virginia held in 2004 to celebrate the 225th anniversary of the establishment of the Court in 1779. This webcast will serve as a pilot program for development of future webcasts of educational programming for all segments of the judicial branch.

A basic case management course for all new general district court employees was converted to CD-ROM format, including interactive self-assessment features, audio clips and direct links to supporting and related resources on the Virginia Courts Intranet website and the internet. This course is now being delivered to each new general district court employee immediately upon hiring. Conversion of the basic case management program for new juvenile and domestic relations court judges is underway as is development of a new basic course for new circuit court employees which will be offered via distance learning technology.

Task 6.2.3

Integrate the long-term training curriculum for Virginia's judicial system with the distance education plan.

Over the past year, hundreds of course descriptions have been added to the course lists drafted in the Supreme Court of Virginia's Curriculum Development Project. After the course lists were drafted, they were disseminated to the various education committees for review. Committee members then selected those courses they believed to be 1) core, 2) elective, or 3) unnecessary. Before the end of the year, those results will be re-analyzed and methods of "distant" delivery for a select number of "core" courses chosen.

All of the course listings for judges, clerks, and magistrates can be found on-line at http://www.courts.state.va.us/ed/courseinfo/home.html, in the Educational Services section of the Court's home page. Listings include a brief course description, along with links to the existing Skillsoft on-line courses (see Task 6.2.1). Offering some of these courses on-line through vendors such as Skillsoft is one way of expanding the Court's course offerings; other delivery methods previously described such as video conferencing, video streaming, and CD-ROM will aid in additional course distribution.

Task 6.2.4

Develop and implement educational programs to be delivered via satellite technology.

A study was completed on the use of satellite technology for delivery of educational programs. The study concluded that, in terms of cost, convenience and versatility, delivery of educational programming via internet technology is now generally superior to satellite technology. Thus, the Office of the Executive Secretary is further pursuing educational programming via the Internet as opposed to satellite technology.

Task 6.2.5
Develop a specialized Judicial Institute on the trial and management of capital cases to be delivered on an annual basis.

A planning committee, consisting of circuit court judges, a Commonwealth's Attorney, a public defender and a private-practice capital defense lawyer have met to plan the first annual workshop on managing a capital case trial, tentatively scheduled to be held in June 2005.

Task 6.2.6
Develop an on-line resource center to serve as a portal for judges and court system personnel to access a myriad of web-based education and training programs.

The Educational Services Department within the Office of the Executive Secretary continues to maintain conference materials and other resources online for the benefit of learners in the Virginia judicial system.

Task 6.2.7
Develop, in conjunction with Virginia law schools, a series of judicial education programs to be delivered via distance learning technology.

Discussions have been held with administration and faculty members in one Virginia law school to consider ideas for appropriate faculty and content for a course or courses to be delivered by distance education technology

Objective 6.3
To develop advanced and specialized training opportunities for all judges, clerks and magistrates.

Task 6.3.1
Increase the options for providing technical assistance services to the courts to include on-site support for strategic planning efforts, caseflow management projects and building collaborative relations within and between the trial courts and the magistrate offices.

The number of court management analysts within the Department of Technical Assistance of the Office of the Executive Secretary was increased in 2004. In addition, the focus of the assistance to be provided to court person-

nel by the analysts has been changed to focus on trial court performance measures and calendar management programs. Analysts will work with each level of court (J&DR, General District and Circuit) to promote consistency among and between courts and magistrates offices.

Task 6.3.2
Expand the delivery of training programs for substitute judges, with particular emphasis on substitute judges serving in the juvenile and domestic relations district courts.

Chief Justice Leroy Rountree Hassell, Sr. has established new policies governing continuing judicial education for retired circuit court and district court judges who perform judicial duties on a temporary recall basis. There are similar new requirements for lawyers who have been appointed to serve as substitute judges in the district court system. Those policies establish expanded mandatory continuing education requirements which may be satisfied, at least in part, by distance education courses being developed by the Educational Services Department for delivery via such methods as webcasting and CD-ROM.

Objective 6.4
To ensure that the judicial system provides a compensation, reward and benefit system and a working environment to attract and retain a highly-qualified, diverse and skilled workforce.

Task 6.4.1
Address the personnel shortages that exist in the district court and magistrate systems by seeking funding for additional positions and salary increases that will enable the judicial system to successfully attract and retain highly qualified clerks and magistrates.

The 2004 session of the General Assembly approved an additional 49 district court positions. These additional positions ensured that every court has at least 85% of the positions required based on the court system's staffing model.

The budget amendments submitted to the Department of Planning and Budget for the 2005 session of the General Assembly included a request for an additional 106.8 positions at an estimated cost of $3.9 million. These additional positions would ensure that every court has the positions required for optimal operation based on the staffing model.

Task 6.4.2
Assess, on a continuing basis, the competitiveness of salaries and benefits of court system employees with those provided for equivalent positions in the executive branch and private sector, and advance appropriate recommendations to eliminate any identified disparities.

The Department of Human Resources is now reviewing salary information from the Virginia Department of Human Resource Management. This information will be used to update a 1997 study of judicial personnel salaries and benefits in 2005.

Task 6.4.4
Explore means used in the private sector and in state and local executive branch agencies to enhance communications with judicial branch personnel and to recognize outstanding achievement and public service provided by judges and court system personnel.

The Department of Human Resources within the Office of the Executive Secretary has reviewed the court system's current communications infrastructure to determine what type of information is distributed throughout the court system. Department personnel are currently studying the costs, benefits and features of Web based technology to enhance communications as new technologies, and management initiatives or projects are deployed across the court system. In addition, extensive research has been completed on companies that provide reward and recognition programs through the Internet. Staff is reviewing the use other court systems are making of these technologies to provide rewards and recognition to their employees to provide a potential framework for redesigning our programs.

Objective 6.5
To provide ready access to magistrate services and increase the proficiency, expertise, and oversight of magistrates throughout the state.

Task 6.5.1
Increase access to magistrates throughout the state by eliminating on-call services and creating: (1) hub offices in designated localities to provide full-time in-person services and 24-hour video conferencing capabilities to each locality within a district; and (2) offices in other localities to provide in-person services on a specified schedule.

This action item emanated from the comprehensive study of the magistrate system conducted in 2003 under the auspices of the Committee on District Courts. Work to implement the 24-hour video conferencing capabilities is underway. This is a prerequisite to the establishment of hub offices.

Task 6.5.2
Improve the quality of decision-making and service delivery provided by all magistrates through the development and implementation of a nine-week comprehensive training and certification program.

This action item also was recommended in the magistrate study conduct-

ed by the Committee on District Courts. The judiciary will seek to implement this recommendation as funding becomes available.

Vision 7

Technology will increase the access, convenience and ease of use of the courts for all citizens and will enhance the quality of justice by increasing the courts' ability to determine facts and reach a fair decision.

Objective 7.1

To maximize the use of technology within the judicial system to enhance the quality of justice rendered by courts.

Task 7.1.1

Complete migration to a modern relational database and fourth generation computer programming languages in order to expand the capabilities of the Courts Automated Information System.

The circuit inactive database has been completed and implemented statewide. The active circuit database is scheduled to be piloted in February, 2005. The J&DR juvenile database was completed and implemented in over 60 J&DR and combined courts in 2004. The adult database began pilot stage in December, 2004. Plans are to roll-out to remaining courts in 2005. The general district database was modeled in 2004 and development will begin in 2005. The Department of Judicial Information Technology of the OES is working with vendors to assist with the conversion of the CAIS to a fourth generation language.

Task 7.1.3

Seek funding to upgrade and maintain the judicial system's telecommunications network to support existing and projected communications needs.

Expansion of the dedicated judicial telecommunications network is urgently needed to support applications such as:

- *Roll-out of e-mail to remaining Judicial Branch personnel*
- *Internet access for attorneys and the public*
- *The Judicial Intranet (secure internal network for courts and magistrates), and*
- *E-commerce (on-line payment of fines and costs)*
- *Online legal research for judges*
- *User-friendly, graphical user interfaces for CAIS (the "green screens" would be replaced with "Windows"-like functionality)*

OES is requesting funding in the amount of $2,267,576 from the 2005 General Assembly session, for:

- *A one-time expense to upgrade 150 routers (another 150 would need to be upgraded in the following year) to handle the growth in traffic, and to upgrade two DS3s (capable of speeds up to 43 Mbps) to OC-3s (capable of speeds up to 155 Mbps)*
- *Recurring funding is requested to cover the increase in network*

operating costs (hub upgrades, and line costs) due to network expansion and traffic growth. Specifically, OES proposes to:

- *Convert 150 court telephone lines operating at voice/data speeds of 256/512 Kbps to 768/1536 Kbps (T-1 speeds).*
- *Convert 100 magistrate office lines to 256/512 Kbps.*
- *Add one contract Network Administrator Senior position, to help manage the expanded network (especially management of security).*

This would enable the telecommunications network to handle increases in traffic due to (1) growing transaction volumes, (2) increases in the number of network users (such as will result from the Charge Standardization Project (CSP)) and (3) access for judges and magistrates to the Virginia Criminal Information Network (VCIN). It would also provide for the development of additional on-line user capabilities (including enhanced e-mail, electronic filing, and access to the Judicial Intranet as well as the Internet).

Task 7.1.4
Seek funding to pilot the use of imaging and documents management systems in all levels of courts to improve the handling of and legitimate access to court documents.

Funding has been requested in the 2005 budget to conduct pilot projects involving electronic filing and documents management.

Objective 7.2
To expand collaborative relationships between the courts, state and local governments, and the private sector to facilitate greater ease in the electronic exchange of information and in the conduct of judicial proceedings.

Task 7.2.4
Redesign the Automated Magistrate Information System (AMS) to serve as a primary gateway to exchange data in standardized formats with criminal justice agencies.

The magistrate system was redesigned and the updated version was implemented in several magistrate's offices during the second half of 2004 with statewide rollout planned for the first half of 2005. The new system captures data in an offense tracking number database located centrally at OES, which will provide the foundation for courts and other criminal justice agencies to have appropriate access to the information garnered through this system.

Task 7.2.5
Seek funding for Phase II of the Charge Standardization Project to permit integrated data exchange with additional criminal justice agencies throughout the state.

Federal grant funding has been sought from the Department of Criminal Justice Services for the second phase of the Charge Standardization Project. This phase will support integrated criminal justice information. In Phase one, funds were utilized to develop a new magistrate system, an offense tracking database, and interfaces between the Supreme Court and State Police for tracking of initial information from the issuance of warrants to the final disposition of the case.

Task 7.2.6
Provide magistrates direct connectivity to the Virginia Criminal Information Network administered by the State Police, where requested.

The Office of the Executive Secretary received grant funding from the Department of Criminal Justice Services to develop and implement a new statewide automated magistrates' system with a centralized offense tracking database. This project also enhanced information interfaces between the magistrates' and courts' databases and the Department of State Police's Central Criminal Records Exchange. A portion of the grant funds were set aside to provide direct access to CCRE for selected magistrates' and Commonwealth's attorneys offices.

Task 7.2.7
Implement the automated interface between the Central Criminal Records Exchange and juvenile division of the juvenile and domestic relations courts.

This project is included as a phase two project of the Charge Standardization Project. It will be conducted following completion of phase one.

Objective 7.3
To provide comprehensive training and support to judicial system personnel in the use of technology and automated systems.

Task 7.3.1
Establish an on-going, broad-based technology training program for judges and court system personnel to provide a continuum of initial and refresher training based on assessed needs.

Based on an assessment of technology education needs, a comprehensive listing was compiled of the types of training needed by judges, clerks, and magistrates to effectively utilize the judiciary's technology systems. A pilot project was created using PC-based learning tools for the basic course for general district court personnel. This reduced the amount of time that clerks' office staff was required to spend attending the basic case processing training course in Richmond. Given the success of this pilot, the OES's technology staff

will be developing PC-based training for the case management system, the financial management system, and the new magistrate system. Other classes will be developed for judges.

Objective 7.4
To facilitate the use of technology and automated systems by judges and judicial system personnel.

Task 7.4.2
Seek funding to expand the use of videoconferencing in trial courts and magistrates' offices to expedite proceedings.

The OES has received continuation grant funding from the Department of Criminal Justice Services to install an additional ten videoconferencing units to magistrates', police, and sheriffs' offices. The units will be installed by the close of 2005. The Office now supports approximately 120 videoconferencing units in courts, magistrates' offices, law enforcement offices, juvenile detention centers and regional jails.

Objective 8.1
To improve service quality by increasing the courts' awareness of and responsiveness to the needs of the citizens they serve.

Task 8.1.5
Participate with the legislative and executive branches in commemorating the 50th anniversary of the Brown vs. Board of Education decision by the Supreme Court of the United States.

The Supreme Court's courtroom was the site for filming a reenactment of the Brown v. Board of Education decision by the Supreme Court of the United States handed down on May 17, 1954. Eight Virginia judges including district, circuit and the Court of Appeals' judges played major parts in the film, entitled The Turning Point: Brown v Board of Education.

Objective 9.1
To expand the strategic planning capabilities of the judicial system.

Task 9.1.1
Establish and conduct a Commission on the Future of Virginia's Judicial System to study the anticipated demands on the court system and to set forth a plan to meet these requirements.

Planning for the convening of the Commission continued in 2004. The Commission's work is expected to be underway in 2005.

Vision 8

The public's perception of the Virginia judicial system will be one of confidence in and respect for the courts and for legal authority.

Vision 9

The impact of changing socioeconomic and legal forces will be systematically monitored and the laws of Virginia will provide both the substantive and procedural means for responding to these changes.

Task 9.1.2
Incorporate town hall meetings and statewide Solutions Conferences into the development of the judiciary's strategic plans as a means for obtaining citizen input.

This task was included in the 2004-06 Plan to expand on a permanent basis the means for eliciting citizen perspectives on the specific issues and problems they confront in gaining access to courts and utilizing the system to resolve disputes. Statewide telephone surveys have long been a feature in developing the judiciary's plans. In 2004, the information-gathering on citizens' perspectives was expanded to include the holding of five regional town hall meetings and a one-day statewide conference. For many of the citizens involved, the project provided their first opportunity to offer opinions and suggestions about court operations to judicial leaders. Both Bar representatives and citizens expressed their desires for the court system to continue to offer such forums.

Vision 10

The judicial system will fulfill its role within our constitutional system by maintaining its distinctiveness and independence as a separate branch of government.

Objective 10.1
To promote the independence and accountability of the judicial branch.

Task 10.1.2
Expand the judiciary's website as a method of providing additional information to judges, clerks and magistrates about issues arising during legislative sessions that affect the judicial branch and court operations.

The judicial system's Intranet was expanded in 2004 to provide easier access to information on measures before the General Assembly of interest and importance to judges and court system personnel.

Chapter 3

Request for New Judgeship

INTRODUCTION

During 2004, the Judicial Council approved the request for an additional judgeship from the Twenty-eighth Judicial Circuit. After a thorough review of caseload information and an analysis of workload in the circuit, as well as interviews with Judges, Commonwealth's Attorneys, members of the Bar and others with knowledge of the workings of the courts in this particular circuit, the Council recommends creation of a new judgeship to serve in the Twenty-eighth Circuit, effective July 1, 2005. A review of the caseload for this circuit follows.

THE TWENTY-EIGHTH JUDICIAL CIRCUIT

Twenty-eighth Judicial Circuit

The Twenty-eighth Judicial Circuit serves the localities of Bristol, Smyth, and Washington. The estimated 2003 population of the area was 101,200, a decrease of 0.3% from the 2000 population of 101,551. The Twenty-eighth Circuit has two authorized judgeships. Serving currently are C. Randall Lowe and Larry B. Kirksey. The Twenty-eighth Circuit is requesting an additional judgeship.

Review of 2003 Caseload

Caseload data for 2003 show that 5,107 cases were commenced in the Twenty-eighth Circuit during the year, an increase of 24.3% or 998 cases from 2002 levels. This growth was due to a rise of 0.4% in civil cases and an increase of 37.8% in criminal cases.

The total number of cases concluded rose 16.7% during the year, from 3,636 in 2002 to 4,245 in 2003. The number of juries impaneled fell 42.9% from 35 in 2002 to 20 last year. The circuit judges averaged 11 jury trial days each during the year while the number of criminal defendants increased by 48 (or 6.2%) from 778 to 826.

The two judges in the Twenty-eighth Circuit averaged 2,554 com-

The Twenty-Eighth Judicial Circuit 2003 AT A GLANCE	
Population	101,200
Cases Commenced	
Law	610
Equity	881
Felony	3,270
Misdemeanor	346
Total	5,107
Cases Concluded	
Law	495
Equity	857
Felony	2,616
Misdemeanor	277
Total	4,245
Judges	2.0
Commenced Cases/Judge	
Twenty-Eighth	2,554
State	1,831
Rural	1,994
Concluded Cases/Judge	
Twenty-Eighth	2,123
State	1,761
Rural	1,918

2004 FORECAST*	
Commenced Cases/Judge	
With 2 Judges	2,678
With 3 Judges	1,785
State (2003)	1,831
State (2004)*	1,807
Rural (2003)	1,994
Concluded Cases/Judge	
With 2 Judges	2,212
With 3 Judges	1,475
State (2003)	1,761
State (2004)*	1,734
Rural (2003)	1,918

***Estimate based on historical data.**

menced cases each in 2003, ranking 3rd among the 31 circuits. The Twenty-eighth averaged 2,123 concluded cases per judge, 8th highest in the state in 2003. The number of commenced cases per judge was 723 above the state average of 1,831 and 560 above the rural average of 1,994. The number of concluded cases per judge (2,123) was 361 above the state average (1,761) and 205 above the rural average (1,918).

At the end of 2003, pending cases in the Twenty-eighth totaled 4,510, an increase of 29.0% over 2002 levels. The number of pending cases per judge stood at 2,255, 4th in the state among the circuits.

Civil Cases

The number of commenced civil cases increased 0.4% in 2003 to total 1,491. Of these cases, 5.3% were general district appeals, 35.6% other law, 36.7% divorce, 15.0% other equity and 7.4% appeals from the J&DR district courts. Statewide, the distribution was 2.9% general district appeals, 40.3% other law, 32.0% divorce, 15.0% other equity and 5.9% J&DR appeals.

Of the 1,352 civil cases concluded in 2003, 28.4% were concluded prior to trial by settlement or voluntary dismissal. Bench trials accounted for 23.4% of concluded civil cases while 0.7% were concluded by a jury trial. Statewide, 30.0% of civil cases settled prior to trial in 2003, 20.1% were concluded by bench trial and 0.9% ended by a trial by jury.

Approximately 66.4% of civil cases concluded reached termination with 12 months of filing. Statewide, 71.3% of civil cases ended within that time frame. About 77.2% reached conclusion within two years while 9.3% actually took five years or longer. The Judicial Council's voluntary case processing time guidelines establish a goal of concluding 90% of civil cases within one year and 100% within two years.

The two judges in the Twenty-eighth Circuit averaged 746 civil cases each in 2003, ranking 8th among the 31 circuits. The state average for the year totaled 696 civil cases per judge, and the average for judges in rural circuits was 658 civil cases per judge.

Criminal Cases

The number of criminal cases filed in the Twenty-eighth Circuit increased 37.8% in 2003 from 2,624 cases to 3,616. Of these cases, 90.4% were felonies compared to the statewide average of 67.5%.

Of the 2,893 criminal cases concluded, 23.2% were disposed of by a judge trial while 0.5% reached conclusion by a trial by jury. Statewide, 33.0% of criminal cases were concluded by a judge trial and 1.3% by a jury trial.

Approximately 54.5% of felony cases concluded in the Twenty-eighth Circuit in 2003 reached termination within 120 days of initiation while 72.2% were disposed of within 180 days. Statewide, 51.5% of criminal cases were concluded within 120 days and 71.2% within 180 days.

Among misdemeanor cases, the Twenty-eighth disposed of 54.9% within 60 days and 71.5% within 90 days compared to state averages of 53.2% and 71.0%, for the same 60 and 90 day time frames. For criminal cases, the Judicial Council's guidelines call for 90% of all felonies to be concluded within 120 days of arrest, 98% within 180 days, and 100% within one year. For misdemeanor cases, the goal is to conclude 90% within 60 days and 100% within 90 days from the date of arrest.

The judges of the Twenty-eighth Circuit averaged 1,808 criminal cases each in 2003, 4th among the 31 circuits. This was 673 above the average for judges statewide (1,135) and 471 above the average for judges in rural circuits (1,337 criminal cases each).

Forecast for 2004

Based on historical data, the number of cases commenced in the Twenty-eighth Circuit is forecast to increase 4.9%, from 5,107 cases in 2003 to 5,356 in 2004. The number of cases concluded is expected to rise 4.2%, from 4,245 to 4,424.

At the forecast caseload levels for 2004, the two judges in the Twenty-eighth Circuit would each average 2,678 commenced cases and 2,212 concluded cases. This number of commenced cases per judge would be 871 cases above the projected state average for 2004 of 1,807 cases per judge. The number of concluded cases per judge would be 478 cases above the projected state average of 1,734 cases per judge.

If the additional judgeship is granted, the number of commenced cases per judge for the three judges would fall to 1,785, 22 cases below the projected state average of 1,807 cases per judge and 209 less than the 2003 average for rural circuits of 1,994. The number of concluded cases per judge would total 1,475, 259 less than the forecast average for judges statewide (1,734) and 443 fewer than the 2003 average for rural circuits (1,918 cases per judge).

Chapter 4

Simplifying Civil Practice: Creating a Unified Civil Procedure

INTRODUCTION

The Judicial Council of Virginia recommends to the General Assembly minor amendments to several statutes that will allow both legal and equitable claims to be filed in a single lawsuit, to be known as a civil action. This recommendation is the result of seven years of work on the part of the Judicial Council and others throughout the Commonwealth, including the Bar.

The present system for filing of claims at the circuit court level requires a litigant either to file the entire case as an equity proceeding, thereby being forced to give up the jury trial right that would apply to the case "on the law side," or to file two lawsuits to litigate aspects of the same case, trying the damage case to a jury and in a separate proceeding asking the court to award equitable relief. The recommended statutory changes, accompanied by appropriate changes in the Rules of Court, would help to alleviate the burdens of these multiple filings on the trial courts and the unnecessary clogging of the courts with multiple actions that can create "pleading traps." In addition, these recommended changes would eliminate exposure to multiple claims arising from the same events which many feel are anti-business and do not constitute good service to individual parties in the Commonwealth.

The Judicial Council of Virginia recommends to the General Assembly minor amendments to several statutes that will allow both legal and equitable claims to be filed in a single lawsuit, to be known as a civil action.

This Chapter sets forth the amendments to the Rules of Court necessary to establish a single form of civil action in the Virginia Circuit Courts. The rules are being published along with minor statutory modifications that are also proposed in implementing the changed rules. As directed by the Supreme Court, a final comment period on the proposed rule changes will extend until April 15, 2005. Following the comment period, it is expected that technical and substantive revisions of the proposed amendments will be made as a result of comments received.

While the simplification eliminates traps for clients and counsel in Virginia, it preserves the historic differences between the domains of law

and equity. The revised procedures would simply adjust the procedural rules to recognize a single "side" of court, melding present Parts Two and Three of the Rules of Court so that pleading and procedure would be uniform and the parties would always be in the correct court. Legal and equitable claims would remain distinct.

The concept of harmonizing the procedure in all civil cases in Virginia has been endorsed by the Litigation Sections of the Virginia State Bar and The Virginia Bar Association, by the Virginia Trial Lawyers Association and the Virginia Association of Defense Attorneys, among others. It has also been approved by general consensus votes of the Boyd-Graves Conference on Virginia Practice in both 1997 and 2002. Numerous state-wide and local bar groups have taken the opportunity to study prior drafts of these materials, and to submit comments endorsing this improvement.

The minor statutory revisions needed to facilitate this reform are set forth in the "Proposed Legislation" section of this report. Included below is a brief overview of the nature and scope of the proposed Rules, as well as the proposed Rules called "Part Nine," blending provisions of present Parts Two and Three into a single set of procedures for civil litigation. A table is provided indicating the sources for each draft rule and the location where all topics are addressed.

SCOPE OF THE PROPOSAL

What the Proposal Would Do

The draft Rules of Court provide that there will be one form of action in the Virginia courts, called a civil action, and that the procedural provisions in Parts Two and Three of the Rules of the Supreme Court be harmonized. This simplification of procedure would accomplish one fundamental goal: it would avoid the mistakes and burdens that now occur when parties attempt to select the side of court on which to bring a claim, defense, counter-claim or cross-claim, and the problems of transferring suits from one side of court to the other, the Chancellor enjoining action at law, and the confusion and multiplicity of proceedings required to accord jury trial rights where they belong.

The paradigm example of the problems and pitfalls for practitioners and trial courts at present is Stanardsville Volunteer Fire Dept. v. Berry, 229 Va. 578, 331 S.E.2d 466 (1985). In this case, where the parties litigated back and forth in two actions on opposite sides of court and the difficult management of jury rights with counterclaims and "pleas in equity" led to reversal by the Supreme Court and direction that the parties start over, five years after litigation of the dispute began.

The uncertainty about which side of court is appropriate affects a large number of causes of action; indeed the Clerks of Court and the Director of Legal Research for the Supreme Court of Virginia have identi-

fied a list of problematic proceedings running several pages.

The present proposal suggests, in effect, that there be one side of court; equitable claims could be pursued there when the required elements are present, and legal claims could be pursued when the established legal requirements are present. The trial court would accord a jury for legal claims, and hear equitable claims as at present. In essence, the procedure would not differ markedly from present procedure on one side of court or the other, but the parties would always be in the correct forum.

A single form of civil action would permit a trial judge to follow equitable doctrines for claims and defenses of that nature, and accord jury trial rights and monetary relief for claims at law, without requiring the parties to file multiple suits, transfer (sometimes improvidently) from side to side, or to seek a stay of one court's actions to pursue the other exclusively.

A broader, and simpler, range of case management tools would thus be provided to the trial court, allowing it to reduce delays without cutting off any party's procedural rights and options. A further benefit of this limited form of unification of procedure would be reduction in filing, microfilming and related expenses of court administration through the maintenance of a single docket.

As will be seen below, parts Two and Three of the rules are largely congruent already, and very few changes are required to coordinate these two portions of the rules into a single body of rules. This simplification is aided by the fact that the general principles of Part One of the rules already apply to both legal and equitable claims, and the discovery provisions in Part Four of the rules also apply in both forms of action.

Thus melding Parts Two and Three into a single roster of procedural rules applicable to both legal and equitable claims would complete a unification and coordination of principles already largely in place through Parts One and Four of the rules. The result would be a simple set of trial level procedural rules applicable to all civil causes of action, easier for lawyers to follow and for trial judges to administer.

The proposal creates a single procedure system for civil cases in the Commonwealth, while preserving in all respects the distinctions between law and equity

What the Proposal Would Not Do

1. Law and Equity Would not be "Merged". The proposal creates a single procedure system for civil cases in the Commonwealth, while preserving in all respects the distinctions between law and equity, as noted below, concerning the substance of equitable claims and defenses, rights of action, limitations principles, and the powers and limits on the courts in entertaining such actions.

2. Subject matter Competence, and Powers, of the Courts would not be altered. Apart from creating a single "side" at the circuit court level, no expansion or contraction of powers of any court, or of the claims properly heard therein, would result. (Nor would venue, forum non conveniens, or

service of process rules be affected in any way.)

3. What is a Legal Claim, and what is Equitable, would not be changed. The proposal would make no changes in the historic characterization of causes of action as legal or equitable in nature.

4. Jury Trial Rights would not be affected. The proposal would not alter the historic rules for availability of a jury. The right to demand a jury trial in actions at law in which a jury is available would be preserved. Actions sounding in equity would be heard by the court without a jury. Virginia's well-articulated rules for jury consideration of dispositive factual matters arising in Pleas in equity, and for advisory jury verdicts on issues out of chancery, would also be maintained. In mixed claims, it is expected that claims triable to a jury will be heard before judgment is entered on claims tried to the court.

5. The Law applicable to Equitable Claims would not change. The proposal would also not affect the established law of Virginia on the elements or requirements for equitable causes of action, e.g., partition of real property.

6. The Law applicable to Claims or Defenses at Law would not change. Similarly, no change would be effected in the nature or application of law governing claims heretofore brought on the law side of the court, or defenses applicable to such claims. See Rules 1:4(k), 3:8, Code § 8.01-422.

7. Pleading and Motion Practice would not be affected. No change would be worked in the philosophy of Virginia toward the broad goals of "notice pleading", expressed in rules and practices governing sufficiency and particularity of pleadings, or such considerations as variance between pleading and proof. Similarly, motions, pleas, demurrers and related procedures would not be affected.

8. Requirements for Equitable Relief would not be altered. The proposal would not affect the requirements for obtaining an injunction, specific performance, or other forms of equitable relief. The showings required under existing law would continue to apply.

9. Equitable Defenses would not be applied differently. Defenses of an equitable nature (such as unclean hands) would be applied to equitable claims as they have in the past, and the proposal would not enlarge the range or use of defenses in legal claims.

10. The rules governing Joinder of Claims would not be altered. The proposal would not alter the rules permitting joinder of claims or defenses under alternative factual or legal theories, arising out of the same transaction or occurrence. See Rule 1:4(k) and Code § 8.01-272 (contract and tort claims). The trial court would retain discretion to determine the propriety of conjoined causes of action, for pretrial and trial purposes. Similarly, multifarious equitable claims would also be subject to the power of the court, and it is not intended that any greater freedom be created to bring, for example, independent and unrelated claims in a single suit.

11. Joinder of Parties would not be changed. The proposal will neither expand nor contract existing provisions for joinder of parties plaintiff

or defendant under the Code, the Rules, or case law. See, e.g., Fox v. Deese 234 Va. 412, 362 S.E.2d 699 (1987). (Likewise, the law of joint tortfeasors, contribution and indemnity would not be affected.)

12. The law of Standing would not be altered. The proposal would not affect the established rules in Virginia concerning who has standing to maintain action, whether controlled by statute (see, e.g., Code §55-22) or case law. See, e.g., Wells v. Lorcom House Condominiums' Council of Co-Owners, 237 Va. 247, 377 S.E.2d 381 (1989).

13. Collateral Estoppel and Res Judicata principles are not affected. The proposal would not seek to alter the doctrines or res judicata or collateral estoppel, or the requirement of mutuality of estoppel articulated in the Virginia cases. By allowing a party to bring all claims in a single action, the single-form-of-action rules would make it easier to complete all claims in a single case, and make final disposition of the parties' dispute a more complete resolution than it can be under the present structure.

14. Statute of Limitations and Laches law would not be changed. The proposal, by preserving the distinction between legal and equitable claims, would work no alteration in the limitations principles found in the Code and Supreme Court decisions, nor would it affect the law of laches. Limitations principles would continue to apply to legal claims, and laches would apply as in the past for equitable claims. Any overlap would be handled as it has historically been dealt with. See, e.g., Belcher v. Kirkwood, 238 Va. 430, 383 S.E.2d 729 (1989).

15. The practices for use of Commissioners in Chancery would not be altered. In suits upon equitable claims the trial court would remain free to use Commissioners to the extent permitted by the Code of Virginia, applicable Rules of Court, and local practice.

16. The role of the General District Court and the J&DR Court would not change. This proposal would not confer on the General District Court, or the J&DR Court, any greater power to issue injunctions or other equitable relief than the court has at present. Rather, the focus of the proposal is to harmonize the two sides of the circuit court.

PART NINE

Draft of Proposed Rules Replacing Present Parts Two and Three of the Rules of Court

Practice and Procedure in Civil Actions

Rule 9:1. Scope

There shall be one form of civil case, known as a civil action. These Rules apply to all civil actions ~~at law in a court of record seeking a judgment in personam for money only, actions for establishment of boundaries, ejectment, unlawful detainer, detinue, a refund of taxes and declaratory judgments (when at law)~~, in the circuit courts, whether the claims involved arise at law or in equity, unless otherwise provided by law. These rules apply in~~cluding~~ cases appealed or removed to such courts from inferior courts whenever applicable to such cases. In matters not covered by these Rules, the established practices and procedures are continued. Whenever in this Part Nine the words "action" or "suit" appear they shall include claims arising at law and in equity.

[Source: Rule 3:1, which also encompasses the invocation found in Rule 2:19 for uncodified practice to fill gaps. The deleted phrase is

unnecessary under the unified procedure since the draft Part Nine would apply to actions, whether they involve legal or equitable claims. The Rules govern "unless otherwise provided by law" to recognize that certain subject matters have been governed by specific statutes, and the present unification of civil procedure is not intended to alter those provisions. The final insertion is in accord with Code § 8.01-2(1), and is similar to the present provisions of Rule 4:0.]

Rule 9:2. Commencement of Civil Actions

(a) Commencement. A ~~suit in equity~~ civil action shall be commenced by filing a ~~bill of~~ complaint in the clerk's office. The ~~suit~~ action is then instituted and pending as to all parties defendant thereto. The statutory writ tax and clerk's fees shall be paid before the ~~subpoena in chancery~~ summons is issued.

(b) Caption. The ~~bill~~ complaint shall be captioned with the name of the court and the full style of the ~~suit~~ action, which shall include the names of all the parties. The requirements of Code § 8.01-290 may be met by giving the address or other data after the name of each defendant.

(c) Form and Content of the Complaint. It shall be sufficient for ~~the prayer of~~ the ~~bill~~ complaint to ask for the specific relief sought~~, and to call for answer under oath if desired~~. Without more it will be understood that all the defendants mentioned in the caption are made parties defendant and required to answer the ~~bill of~~ complaint; that proper process against them is requested; that answers under oath are waived, except when required by law, and that all relief authorized by law and demanded in the complaint may be granted. No formal conclusion is necessary.

[Source: Rule 2:2 with insertions from Rule 3:3]

Rule 9:3. Filing of Pleadings; Return of Certain Writs.

(a) Filing. The clerk shall receive and file all pleadings when tendered, without order of the court. The clerk shall note and attest the date of filing thereon. Any controversy over whether a party who has filed a pleading has a right to file it shall be decided by the court.

(b) Return of writs. No writ shall be returnable more than ninety days after its date unless a longer period is provided by statute.

[Source: Rule 3:2 with insertions from Rule 2:1]

Rule 9:4. Copies of ~~Bill of~~ Complaint.

(a) Copies for Service. The plaintiff shall furnish the clerk when the ~~bill~~ complaint is filed with as many copies thereof as there are defendants upon whom it is to be served.

(b) Exhibits. It is not required that copies of exhibits filed with the ~~bill~~ complaint be furnished or served.

(c) Additional copies. A deficiency in the number of copies of the ~~bill~~ complaint shall not affect the pendency of the ~~suit~~ action. If the plaintiff fails to furnish the required number of copies, the clerk shall request ~~him to do so~~ that additional copies be furnished as needed, and if ~~he~~ the plaintiff fails to do so promptly, the clerk shall bring the fact to the attention of the judge, who shall notify the plaintiff's counsel, or the plaintiff personally if ~~he have~~ no counsel has appeared for plaintiff, to furnish them by a specified date. If the required copies are not furnished on or before that date, the court may enter an order dismissing the suit.

[Source: Rule 2:3. The provisions in present Rule 3:3(b) are to the same effect. Since "counsel of record" is defined in Rule 1:5 to include unrepresented parties appearing pro se, subdivision (c) of this proposed Rule could be streamlined by requiring the clerk to notify counsel of record; as drafted here, the rule tracks the existing provisions rather than undertaking to effect that change.]

Rule 9:5. The ~~Subpoena in Chancery~~ Summons.

(a) Form of process. The process of the courts in ~~equity suits~~ civil actions shall be a ~~subpoena in chancery~~ summons in substantially this form:

Commonwealth of Virginia

In the .....Court of the .....of .....

~~Subpoena in Chancery~~ SUMMONS

~~Suit~~ Civil Action No. ...

The party upon whom this ~~writ~~ summons and the attached ~~paper~~ complaint are served is hereby notified that unless within twenty-one (21) days after such service response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this ~~subpoena~~ summons.

Done in the name of the Commonwealth of Virginia, this ..... day of ....., 20.....

....., Clerk.

(b) Attachment for service; voluntary appearance. Upon the commencement of a ~~suit in equity~~ civil action defendants may appear voluntarily and file responsive pleadings and may appear voluntarily and waive process, but in cases of divorce or annulment of marriage only in accordance with the provisions of the controlling statutes. With respect to defendants who do not appear voluntarily ~~and/~~or file responsive pleadings or waive service of process, the clerk shall issue ~~subpoenas~~ summonses and securely attach one to and upon the front of each copy of the ~~bill~~ complaint to be served. The copies of the ~~bill~~ complaint, with a ~~subpoena~~ summons so attached, shall be delivered by the clerk for service together as the plaintiff may direct.

(c) Defendant under a disability. Except when ~~he is~~ sued for divorce or annulment of ~~his~~ marriage, or a judgment in personam is sought ~~against him~~, a ~~subpoena~~ summons need not be issued for or served upon a defendant who is a person under a disability (except as otherwise provided in § 8.01-297), the procedure described in Code § 8.01-9 constituting due process as to such defendants.

(d) Additional summonses. The clerk shall on request issue additional ~~subpoenas~~ summonses, dating them as of the day of issuance.

(e) Service more than one year after commencement of the action. No order, judgment or decree shall be entered against a defendant who was served with process more than one year after the institution of the ~~suit~~ action against ~~him~~ that defendant unless the court finds as a fact that the plaintiff exercised due diligence to have timely service on ~~him~~ that defendant.

[Source: Rules 2:4 and 3:3.]

Rule 9:6. Proof of Service.

Returns shall be made on a paper styled "Proof of Service" which shall be substantially in this form:

Virginia:
In the ..... Court of the .....of .....:

.....)

v. (short style)) Proof of Service

.....)

Returns shall be made hereon, showing service of ~~subpoena in chancery~~ the summons issued ....., 20....., with copy of ~~bill of~~ the complaint filed ....., 20....., attached.

The clerk shall prepare as many as may be needed and deliver them with the ~~subpoena~~ summons and copies of the ~~bill~~ complaint.

~~Returns shall be made thereon and shall show when, where, how and upon whom service was made.~~

The ~~subpoena~~ summons with copy of the ~~bill~~ complaint attached shall constitute and be served as one paper.

It shall be the duty of all persons eligible to serve process to make service within five days after receipt, and make return as to those served within seventy-two hours after the earliest service upon any party shown on each Proof of Service; but failure to make timely service and return shall not prejudice the rights of any party except as provided in Rule 9:5.

Additional copies of the Proof of Service may be obtained from the clerk and returns thereon made in similar manner.

[Source: Rules 2:5 and 3:4.]

Rule 9:7. Bills of Particulars

(a) Timing and Grounds. On motion made promptly, a bill of particulars may be ordered to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case.

(b) Striking of Insufficient Bills of Particulars. A bill of particulars that fails to inform the opposing party fairly of the true nature of the claim or defense may, on motion made promptly, be stricken and an amended bill of particulars ordered. If the amended bill of particulars fails to inform the opposite party fairly of the true nature of the claim or defense, the pleading not so amplified and the bills of particulars may be stricken.

(c) Date for Filing Bill of Particulars. An order requiring or permitting a bill of particulars or amended bill of particulars shall fix the time within which it must be filed.

(d) Date for Responding to Amplified Pleading. If the bill of particulars amplifies a complaint, a defendant shall respond to the amplified pleading within twenty-one (21) days after the filing thereof, unless the

defendant relies on pleadings already filed. If the bill of particulars amplifies any other pleading, any required response shall be filed within twenty-one (21) days after the filing of the bill of particulars, or within such shorter or longer time as the court may prescribe.

[Source: Consolidates the provisions presently scattered in Rule 3:16(b) and (c) and Rules 3:5 and 3:7.]

Rule 9:8. Answers, Pleas, Demurrers and Motions

(a) Response Requirement. A defendant shall file pleadings in response within twenty-one (21) days after service of the summons and complaint upon that defendant. A demurrer, plea, motion to dismiss, and motion for a bill of particulars shall each be deemed a pleading in response for the count or counts addressed therein. If a defendant files no other pleading than the answer, it shall be filed within said time.

(b) Response After Demurrer, Plea or Motion. When the court has entered its order overruling all motions, demurrers and other pleas filed by a defendant, such defendant shall, unless the defendant has already done so, file ~~his~~ an answer within twenty-one (21) days after the entry of such order, or within such shorter or longer time as the court may prescribe.

[Source: Consolidates provisions from present Rules 2:12, 3:5 and 3:7. Default portions of these rules are collected in Rule 9:19.]

Rule 9:9. Counterclaims.

(a) Scope. ~~Within twenty-one days after service on him of the notice of motion for judgment, a~~ A defendant may, at ~~his~~ that defendant's option, plead as a counterclaim any cause of action at law or in equity ~~for a money judgment in personam~~ that the defendant has against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the ~~notice of motion for judgment~~ complaint, whether or not it is for liquidated damages, whether it is in tort or contract, and whether or not the amount demanded in the counterclaim is greater than the amount demanded in the ~~notice of motion for judgment~~ complaint.

(b) Time for initiation. A counterclaim shall, subject to the provisions of Rule 1:9, be filed within twenty-one (21) days after service of the summons and complaint upon the defendant asserting the counterclaim.

(c) Response to counterclaim. The plaintiff shall file pleadings in response to such counterclaim within twenty-one (21) days after it is served.

(d) Separate trials. The court in its discretion may order a separate trial of any cause of action asserted in a counterclaim.

[Source: Rules 3:8 and 2:13. The provisions have been made parallel with the rule governing cross-claims, now set forth in Rule 9:10.]

Rule 9:10. Cross-Claims.

(a) Scope. A defendant may, at ~~his~~ that defendant's option, plead as a cross-claim any cause of action that ~~he~~ such defendant has or may have against one or more other defendants growing out of any matter pled in the ~~motion for judgment~~ complaint. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant. ~~The court in its discretion may order a separate trial of any cause of action asserted in a cross claim.~~

(b) Time for initiation. A cross-claim shall, subject to the provisions of Rule 1:9, be filed within twenty-one (21) days after service of the ~~notice of motion for judgment~~ summons and complaint on the defendant asserting the cross-claim.

(c) Response to cross-claim. ~~A cross-claim is a new action and all provisions of these Rules applicable to notices of motion for judgment shall apply to cross-claims, except those provisions requiring payment of writ tax and clerk's fees; and all provisions of these Rules applicable to defendants shall apply to the parties on whom cross-claims are served.~~ The cross-claim defendant shall file pleadings in response to such cross-claim within twenty-one (21) days after it is served.

(d) Separate trials. The court in its discretion may order a separate trial of any cause of action asserted in a cross-claim.

[Source: Rule 3:9.]

Rule 9:11. Reply

Responding to new matter. If a pleading, motion or affirmative defense sets up new matter and contains words expressly requesting a reply, the adverse party shall within twenty-one (21) days file a reply admitting or denying such new matter. If it does not contain such words, the allegation of new matter shall be taken as denied or avoided without further pleading. All allegations contained in a reply shall be taken as denied or avoided without further pleading.

[Source: Rule 3:12.]

Rule 9:12. Joinder of Additional Parties

(a) Persons to Be Joined if Feasible. A person who is subject to service of process may be joined as a party in the action if (1) in ~~his~~ the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in ~~his~~ the person's absence may (i) as a practical matter impair or impede ~~his~~ the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of ~~his~~ the claimed interest of the person to be joined. If ~~he~~ such a person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) Method of Joinder. A motion to join an additional party shall, subject to the provisions of Rule 1:9, be filed with the clerk within twenty-one (21) days after service of the ~~motion for judgment~~ complaint and shall be served on the party sought to be joined who shall thereafter be subject to all provisions of these Rules, except the provisions requiring payment of writ tax and clerk's fees.

(c) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to ~~him~~ the absent person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(d) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) hereof who are not joined, and the reasons why they are not joined.

[Source: Rule 3:9A.]

Rule 9:13. Third-Party Practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may file and serve a third-party ~~motion for judgment~~ complaint upon a person not a party to the action who is or may be liable to ~~him~~ the third-party plaintiff for

all or part of the plaintiff's claim against ~~him~~ the third-party plaintiff. The third-party plaintiff need not obtain leave therefor if ~~he files~~ the third-party ~~motion for judgment~~ complaint is filed not later than twenty-one (21) days after the third-party plaintiff serves ~~his~~ an original pleading in response. Otherwise the third-party plaintiff must obtain leave therefor on motion after notice to all parties to the action. The person served with the third-party ~~motion for judgment~~ complaint, hereinafter called the third-party defendant, shall make ~~his~~ defenses to the third-party plaintiff's claim as provided in Rules ~~3:5~~ 9:7 and ~~3:7~~ 9:8. The third-party defendant may plead counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rules ~~3:8~~ 9:9 and ~~3:9~~ 9:10. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may, at ~~his~~ plaintiff's option, within twenty-one (21) days after service of the third-party ~~motion for judgment~~ complaint upon the third-party defendant, assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert ~~his~~ defenses as provided in Rules ~~3:5~~ 9:7 and ~~3:7~~ 9:8 and ~~his~~ any counterclaims and cross-claims, including claims against the plaintiff, as provided in Rules ~~3:8~~ 9:9 and ~~3:9~~ 9:10. Any party may move to strike the third-party ~~motion for judgment~~ complaint, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to ~~him~~ the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances that under this rule would entitle a defendant to do so.

[Source: Rule 3:10.]

Rule 9:14. Intervention

A new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding.

All provisions of these Rules applicable to civil cases, except those provisions requiring payment of writ tax and clerk's fees, shall apply to such pleadings. The parties on whom such pleadings are served shall respond thereto as provided in these Rules.

[Source: Rules 2:15 and 3:19 presently are identical, and would be carried over unchanged into this Rule 9:14.]

Rule 9:15. Statutory Interpleader

Proceedings brought pursuant to statutory provisions relating to interpleader shall, to the extent not inconsistent with the governing statutes, be conducted in accordance with the Rules contained in this Part ~~Two~~ Nine.

Rule 9:16. New Parties

~~A~~N new party~~ies~~ may be added, ~~by leave of court,~~ on motion of the plaintiff by order of the court at any stage of the case as the ends of justice may require. The motion, accompanied by an amended ~~motion for judgment~~ complaint, shall be served on the existing parties as required by Rule 1:12. If the motion is granted, the amended ~~motion for judgment~~ complaint shall be filed in the clerk's office and all the provisions of Rule ~~3:3~~ 9:4 shall apply as to the new parties, but no writ tax, clerk's fee or deposit for costs is required. A~~nd a~~ll defendants shall file pleadings in response thereto as required by these Rules.

[Source: Rule 3:14.]

Rule 9:17. Substitution of Parties

(a) Substitution of a successor. If a ~~party~~ person becomes incapable of prosecuting or defending because of death, ~~insanity~~ disability, conviction of felony, removal from office, or other cause, a ~~his~~ successor in interest may be substituted as a party in ~~his~~ such person's place.

(b) Motion, Consent, Procedure. Substitution shall be made on motion of the successor or motion of any party to the action upon reasonable written notice to the proposed successor. ~~If the successor does not make or consent to the motion, the party making the motion shall file it in the clerk's office and the procedure thereon shall be as if the motion were an original motion for judgment against the successor.~~

[Source: Rule 3:15; Rule 2:16.]

Rule 9:18. General Provisions as to Pleadings

(a) Pleadings. All motions in writing, including a motion for a bill of particulars and a motion to dismiss, are pleadings.

(b) Allegation of negligence. An allegation of negligence or contributory negligence is sufficient without specifying the particulars of the negligence.

(c) Contributory negligence as a defense. Contributory negligence shall not constitute a defense unless pleaded or shown by the plaintiff's evidence.

(d) Pleading the statute of limitations. An allegation that an action is barred by the statute of limitations is sufficient without specifying the particular statute relied on.

(e) Separate or combined papers. Answers, ~~Grounds of defense,~~ counterclaims, cross-claims, pleas, demurrers, affirmative defenses and motions may all be included in the same paper if they are separately identified.

[Source: Rule 3:16. Portions relating to bills of particulars have been collected in Rule 9:7.]

Rule 9:19. Default

(a) Failure Timely to Respond. A defendant who fails timely to file a responsive pleading as prescribed in Rule 9:8 is in default. A defendant in default is not entitled to notice of any further proceedings in the case, including notice to take depositions, except that written notice of any further proceedings shall be given to counsel of record, if any. The defendant in default is deemed to have waived any right to trial of issues by jury.

(b) Relief from Default. Prior to the entry of judgment, for good cause shown the court may grant leave to a defendant who is in default to file a late responsive pleading. Relief from default may be conditioned by the court upon the defendant reimbursing any extra costs and fees, including attorney's fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

(c) Default Judgment and Damages.

(1) Except in suits for divorce or annulling a marriage, ~~T~~ the court shall, on motion of the plaintiff, enter judgment for the relief appearing to the court to be due. When service of process is effected by posting no judgment by default shall be entered until the requirements of Code § 8.01-296(2)(b) have been satisfied.

(2) If the relief demanded is unliquidated damages, the court shall hear evidence and fix the amount thereof, unless the plaintiff demands trial by jury, in which event, a jury shall be impaneled to fix the amount of damages.

(3) If a defendant participates in the hearing to determine the amount of damages such defendant may not offer proof or argument on the issues of liability, but may (i) object to the plaintiff's evidence regarding damages, (ii) offer evidence regarding the quantum of damages, (iii) participate in jury selection if a jury will hear the damage inquiry, (iv) submit proposed jury instructions regarding damages, and (v) make oral argument on the issues of damages.

(d) Relief from Default Judgment.

(1) Within 21 Days. During the period provided by Rule 1:1 for the modification, vacation or suspension of a judgment, the court may by written order relieve a defendant of a default judgment after consideration of the extent and causes of the defendant's delay in tendering a responsive pleading, whether service of process and actual notice of the claim were timely provided to the defendant, and the effect of the delay upon the plaintiff. Relief

from default may be conditioned by the court upon the defendant reimbursing any extra costs and fees, including attorney's fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

(2) After 21 Days. A final judgment no longer within the jurisdiction of the trial court under Rule 1:1 may not be vacated by that court except as provided in Virginia Code §§ 8.01-428 and 8.01-623.

[Source: Rule 3:17; inserts from Rules 3:7, 2:8, 2:12 and 2:17 and governing case law. Subdivision (c)(3) eliminates a prior restriction on objecting to a plaintiff's damage evidence.]

Rule 9:20. Summary Judgment

~~Either~~ Any party may make a motion for summary judgment at any time after the parties are at issue, except in an action for divorce or for annulment of marriage. If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, or, upon sustaining a motion to strike the evidence, that the moving party is entitled to judgment, the court shall enter judgment in ~~his~~ that party's favor. Summary judgment, interlocutory in nature, may be entered as to the undisputed portion of a contested claim or on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment shall not be entered if any material fact is genuinely in dispute. No motion for summary judgment or to strike the evidence shall be sustained when based in whole or in part upon any discovery depositions under Rule 4:5, unless all parties to the action shall agree that such deposition may be so used.

[Source: Rule 3:18, with the limiting clause from Rule 2:21 placed in the first sentence.]

Rule 9:21. Jury Trial of Right

(a) Jury Trial Situations Unchanged. The right of trial by jury as declared by the Constitution of Virginia, or as given by an applicable statute or other authority, is unchanged by these rules, and shall be implemented as established law provides. Established practice for the trial and decision of equitable claims by the judge alone shall be continued.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to the issue, and (2) filing the demand with the trial court. Such demand may be endorsed upon a pleading of the party. The court may set a final date for service of jury demands.

(c) Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury.

[Source: New. Like the present Virginia Rules of Court, the draft Rule takes no position on the issue whether adversary consent is required for the withdrawal of a jury demand. The proposal changes Virginia law in one respect: failure to make a timely jury demand will operate as a waiver, because in a system where both legal and equitable claims can be pled in a single action, it is important to require that a clear claim of the right to a jury hearing be lodged early in the proceedings.]

Rule 9:22. Trial by Jury or by the Court

(a) By Jury. When trial by jury has been demanded as provided in Rule 9:21, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury; or (2) the court upon motion or of its own initiative finds that a right of trial by jury on some or all of those issues does not exist under applicable law.

(b) By the Court. Except as otherwise provided in this Rule, issues not demanded for trial by jury as provided in Rule 9:21, and issues as to which a right of trial by jury does not exist, shall be tried by the court.

(c) Statutory Jury Rights in Certain Equitable Claims.

(1) In an equitable claim where no right to a jury trial otherwise exists, where empanelment of an advisory jury to hear an issue out of chancery under Code § 8.01-336 will be helpful to the court concerning sharply disputed fact issues, such a jury may be seated. Decision on such claims and issues shall be made by the judge.

(2) Where a jury trial on a defendant's plea in an equity claim is authorized under Code § 8.01-336, trial of the issues presented by the plea shall be by a jury whose verdict on those issues has the same effect as if trial by jury had been a matter of right.

(d) Party Consent to Jury. As to any claim not triable of right by a jury, the court, with the consent of the parties, may (i) order trial of any claim or issue with an advisory jury or, (ii) a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

[Source: New]

Rule 9:23. Proceedings Before a Commissioner in Chancery

(a) Referral to a commissioner. To the extent permitted by law, a judge of the circuit court may enter ~~Upon entry of~~ a decree ~~by the court~~ referring any matter arising in an equitable claim to a commissioner in chancery.~~;~~ T~~t~~he clerk shall mail or deliver to the commissioner a copy of the decree of reference. Unless the decree prescribes otherwise, the commissioner shall promptly set a time and place for the first meeting of the parties or their attorneys, and shall notify the parties or their attorneys of the time and place so set. It shall be the duty of the commissioner to proceed with all reasonable diligence to execute the decree of reference.

(b) Powers. A commissioner may require the production ~~before him~~ of evidence upon all matters embraced in the decree of reference including the production of all books, papers, vouchers, documents and writings applicable thereto. The commissioner ~~He~~ shall have the authority to call witnesses or the parties to the action to testify ~~before him~~ and may ~~himself~~ examine them upon oath. The commissioner ~~He~~ may rule upon the admissibility of evidence unless otherwise directed by the decree of reference; but when a party so requests, the commissioner shall cause a record to be made of all proffered evidence which is excluded by the commissioner as inadmissible.

(c) Reports. The ~~C~~commissioner shall prepare a report stating ~~his~~ findings of fact and conclusions of law with respect to the matters submitted ~~to him~~ by the decree of reference. The commissioner ~~He~~ shall file the report, together with all exhibits admitted in evidence and a transcript of the proceedings and of the testimony ~~before him~~ taken, with the clerk of the court. The commissioner ~~He~~ shall mail or deliver to counsel of record and to parties not represented by counsel, using the last address shown in the record, written notice of the filing of the report. Provided, however, that in divorce cases a copy of the report shall accompany the notice. Provided, further, that no such notice or copy shall be given parties who have not appeared in the proceeding.

[Source: Rule 2:18. These proposed single-form-of-action rules do not make any change in the permissible functions of Commissioners.]

Chapter 5 The Use of Commissioners in Chancery

INTRODUCTION

The Judicial Council of Virginia has long been interested in various issues related to the use of Commissioners in Chancery, their effect on litigants, and the advisability of limiting and/or abolishing their use in domestic relations cases. In 2004, 10.9% of divorces and 4.5% of other equity cases concluded in the Circuit Courts of Virginia were handled by Commissioners. Eight of the 31 judicial circuits showed significant use of Commissioners to conclude divorce cases. These circuits were all in the Tidewater area or northern Virginia. The use of Commissioners in handling other equity cases was geographically more widespread.

The Council began its study of these issues during 2003 and reviewed recommendations adopted by the Boyd Graves Conference related to the use of Commissioners in Chancery in Virginia. Upon deliberation, the Council decided that it would be appropriate to ask judges, lawyers, and Commissioners in Chancery from across the state for their input relating to the use of Commissioners in general and to these recommendations in particular. Therefore, the Council recommended sending a survey to judges, lawyers, and Commissioners in Chancery throughout the Commonwealth. In early 2004, surveys were sent to these groups and many responses to the survey were received and reviewed. This chapter presents the results of this survey below.

With the input from judges, lawyers, and Commissioners in Chancery, the Judicial Council has recommended to the Supreme Court of Virginia changes to the Rules of Court necessary to implement these recommendations. Council also recommends certain statutory changes to limit the use of Commissioners as follows: (1) the use of Commissioners in Chancery would not be permitted in uncontested divorce cases; and (2) in all the other cases, Commissioners in Chancery would be permitted only by agreement of the parties with the concurrence of the court; or (3) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case.

The Judicial Council of Virginia has long been interested in various issues related to the use of Commissioners in Chancery . . . [and] recommends certain statutory changes to limit the use of Commissioners.

SURVEY ON THE USE OF COMMISSIONERS IN CHANCERY: SURVEY RESULTS

Types of Cases Referred to Commissioners in Chancery

Among the responses to the Commissioners in Chancery Survey undertaken by the Judicial Council, there was general consensus among judges, Commissioners, and attorneys about the types of cases routinely referred to Commissioners. A majority (62.4%) indicated that all issues related to divorce are referred (judges=57.9%, Commissioners=61.4%, and attorneys=80.8%). When asked whether cases with particular issues were referred to Commissioners, only 26.0% of respondents said contested divorce cases were referred; 38.8% uncontested divorce cases, 28.1% custody and visitation matters; 14.0% spousal/child abuse cases; and 16.5% equitable distribution cases.

The overall percentage of responses for real estate cases referred were: 36.4% mechanics liens, 41.7% boundary disputes, and 45.0% partition suits. Other cases referred included 76.0% will/trusts/estates, 24.4% contract disputes, and 12.8% personal injury. Other matters such as tax suits and debtors' interrogatories were cited as also being referred to Commissioners.

Rules and Training

The survey asked whether there were prescribed rules, guidelines or standards for Commissioners in their jurisdictions. Two-thirds of respondents indicated there were not.

Among judges, 6.6% indicated that Commissioners are required to attend specialized training; 5.7% of Commissioners responded similarly. 53.8% of attorneys indicated that specialized training should be required. Attorneys suggested that general CLE courses, training in procedures, as well as specialized training should be required. Commissioners indicated in written responses that annual training for Commissioners should be provided by the Supreme Court of Virginia; CLE classes and general "update" meetings were also mentioned as desirable.

When asked if Commissioners have specialized qualifications to hear the issues referred to them, 77.6% of judges and 51.4% of Commissioners indicated that they do, and 69.2% of attorneys indicated that they should. Together, 61.6% of respondents thought specialized qualifications were, therefore, important. Judges' in their written comments regarding Commissioners' qualifications generally indicated that Commissioners are capable, well-trained, highly experienced attorneys who tend to be senior members of the bar, are ethical and competent and have expertise in a particular area of law. Commissioners and attorneys also stressed expertise in related areas of the law and minimum years of practice.

Fee Schedules

The survey asked whether or not there was a prescribed fee schedule for Commissioners in Chancery. 28.9% of judges and 20.7% of Commissioners answered that there was a fee schedule. 30.8% of attorneys indicated they were aware of court prescribed fee schedules in the courts where they practice; 3.8% said they were aware of fee schedules published by Commissioners in Chancery.

Case Processing Issues

The majority of respondents (69.4%) indicated that cases referred to Commissioners in Chancery do not take longer to disposition than non-referred cases. Of the 60 who answered yes to this question, 17 indicated that referred cases take up to 90 days longer while four said referred cases take at least 180 days more.

Nearly three quarters (74.4%) of respondents said referred cases do not require more hearings than non-referred cases. Of those that indicated that referred cases do require more hearings, 60.0% estimated that only one additional hearing was needed.

Overwhelmingly (80.2%), those that returned surveys indicated that cases referred to Commissioners receive the same uniformity of treatment as those cases heard only by the court.
(Judges 85.5%, Commissioners 80.0%, and attorneys 61.5%).

Judges and attorneys were asked to evaluate whether of not from their perspectives cases referred to Commissioners in Chancery are more difficult to manage than a case not referred. 40.8% of judges indicated that there was no difference between referred and non-referred cases; 28.9% said referred cases were less difficult to manage. For attorneys, 46.2% said there was no difference between cases while 26.9% said that referred cases were more difficult to manage and an identical percentage (26.9%) said that referred cases were less difficult to manage.

Commissioners were asked to identify particular problems which occur in the referral process that affect the management of a case. Common responses to this question included comments about conflicts of interest, lack of appointment schedules, and the difficulties in scheduling multiple parties. Commissioners also described the time it takes to receive needed reports and to get paid as being too long.

Expense to Litigants

Just over 92% (92.1%) of judges, 73.6% of Commissioners, and 80.8% of attorneys indicated that litigants incur additional expenses when a case in referred to a Commissioner as compared to a similar case that is not referred. This is an overall response of 80.2%. A somewhat lower percentage of respondents (44.2%) said this additional expense was "significant," defined as over $1,000.

Pro Se Litigants

Among respondents, 43.4% of judges and 55.0% of Commissioners indicated that cases are referred to Commissioners in Chancery when a pro se litigant is involved. Of the 41 judges who responded to the question, 87.8% (or 36 judges) indicated that they believe no undue hardships are placed on pro se litigants when their cases are referred to Commissioners. 75.0% of judges also responded that the use of Commissioners does not limit access to the courts for pro se litigants.

Commissioners were asked to describe what problems are caused when a pro se litigant is referred. Many Commissioners responded to this question. They generally agreed that pro se litigants do not understand the process so education on procedural and evidentiary matters is necessary. Cases tend to take longer and the Commissioner must do more work when pro se litigants are involved. Some Commissioners wrote that the problems they encounter with self-represented litigants are little different from those they experience trying a case in front of the Court.

Complaints About Commissioners

Judges were asked to describe complaints they receive from lawyers and litigants about Commissioners. The common themes of these complaints involved costs and delays but only 19.7% of judges indicated that they received such complaints. 10.0% of Commissioners said they receive complaints. Cost and delay characterize most of these as well. Interestingly, 38.5% of attorneys indicated they receive complaints about Commissioners from their clients.

Consequences of Abolishing Commissioners in Chancery

Judges, Commissioners, and attorneys were asked to describe the consequences that would attend abolishment of Commissioners in Chancery. Many judges wrote of the increase in court caseloads that would result if Commissioners were no longer available and the corresponding increase in court delay. Judge: "Additional court sessions would have to be scheduled for an already overcrowded docket. These cases would be delayed because of the multiple trial dates they require." Judge: "Dockets would become congested immediately accelerating the need for an additional judge. Access to the court by litigants would be delayed."

Commissioners and attorneys generally shared the opinion of judges about the consequences for the court if Commissioners were abolished: increased caseload, delay, and additional burdens on judges. Commissioner: "A long delay in setting a hearing for a contested divorce case because the judges do not have time to hear the equitable distribution issues." Commissioner: "Court dockets would explode. We are a rural jurisdiction and most courts only meet once or twice a week. Litigants tend to request one full day or more for trial." Attorney: "Heavier court dockets-unnecessary lengthening of court hearings-suppression of chance for case to be settled. Higher attorney fees to litigants."

Attorneys were asked to describe the objections and benefits to the use of Commissioners in Chancery. Again, costs to litigants and increased delay were common themes of attorneys' written responses. As for benefits, attorneys stated that use of Commissioners frees up court time and allows concentrated focus on cases in a less formal and adversarial environment which increases the chances of settlement. Some attorneys, however, saw no benefits to the use of Commissioners.

Chapter 6

Actions Relating to Commissioners of Accounts

RULES FOR ADDRESSING COMPLAINTS AGAINST COMMISSIONERS OF ACCOUNTS

INTRODUCTION

In 2002, the Chief Justice of the Supreme Court of Virginia asked the Standing Committee on Commissioners of Accounts of the Judicial Council to review and investigate complaints concerning the performance of Commissioners of Accounts. To implement this task, the Judicial Council expanded the authority of the Standing Committee to allow it to receive, directly or by referral from the Virginia State Bar, complaints and inquiries concerning the performance of Commissioners of Account. The Council also authorized the Committee to evaluate such complaints and inquiries, attempt to resolve the issues with the Commissioners of Accounts, and refer any complaints or inquiries with or without recommendations to the chief judge of the circuit court having jurisdiction over the Commissioner of Accounts with a copy of the referral being sent to the Chief Justice.

Upon recommendation of the Standing Committee on Commissioners of Accounts, the Judicial Council of Virginia adopted the following Rules regarding the handling of complaints about Commissioners of Accounts. These Rules became effective July 1, 2004.

Upon recommendation of the Standing Committee on Commissioners of Accounts, the Judicial Council of Virginia adopted Rules regarding the handling of complaints about Commissioners of Accounts.

RULES

A. Applicability. These Rules shall govern procedures for addressing Complaints and Inquiries to and handling them by the Standing Committee on Commissioners of Accounts.

B. Gender. The words "he", "him", "his" or similar words as used in these Rules are intended to include both the feminine and the masculine.

C. Exceptions. When the interests of justice require and for good cause, the Standing Committee may waive the requirements of all or any portion of these Rules.

DEFINITIONS

A. Standing Committee shall mean the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia.

B. Member or Members shall mean a member or members of the Standing Committee.

C. Commissioner or Commissioner of Accounts shall mean the person, including a Commissioner of Accounts, an Assistant Commissioner of Accounts, or a Deputy Commissioner of Accounts, concerning whom the Standing Committee is reviewing, investigating and evaluating a complaint or inquiry.

D. Meeting shall include a gathering of individuals either in person or by telephone conference call.

E. Document shall mean any writing including but not limited to a letter, notice, exhibit, chart, table, photograph or any of the above preserved in electronic form.

F. Presiding member shall mean the Chair or any other Standing Committee member who presides at any meeting conducted by the Standing Committee or a Subcommittee thereof pursuant to these Rules.

PROCEDURE FOR HANDLING COMPLAINTS AND INQUIRIES.

A. The Standing Committee requests that all Complaints and Inquiries be submitted in writing to the Executive Secretary of the Supreme Court of Virginia, 100 N. 9th Street, Richmond, VA 23219. A Complaint or Inquiry must be made in writing, be legible, state as clearly and succinctly as possible its basis, be signed by the person or persons making it, and be submitted with the name, address and daytime telephone number of the Complainant. If a Complaint or Inquiry shall come into the possession of the Standing Committee from a source other than the Executive Secretary of the Supreme Court, the Standing Committee shall, at its discretion, handle the Complaint or return it to the Complainant with instructions that it be sent to the Executive Secretary of the Supreme Court.

B. The Executive Secretary shall promptly acknowledge receipt of the Complaint or Inquiry and forward it to the Chair of the Standing Committee.

C. The Chair of the Standing Committee shall refer the Complaint or Inquiry to a Subcommittee consisting of three members of the Standing Committee and shall specify which of the three shall be the Chair. The Subcommittee shall consist of one Member of the Standing Committee who is a Commissioner of Accounts and two Members of the Standing Committee who are not Commissioners of Accounts. The Chair of the Standing Committee shall send a copy of the Complaint or Inquiry to all three Members of the Subcommittee.

D. Upon receipt of a referral from the Chair of the Standing Committee, the Chair of the Subcommittee shall begin the Investigation or Evaluation. The Chair and Members of the Subcommittee shall have broad discretion as to the procedure which they shall employ in conducting the investigation. At a minimum, however, one or more Members (a Member of the Subcommittee noted herein shall include the Chair of the Subcommittee) must make contact with the Complainant either personally, by telephone, in writing, or more than one of the above, and must give the Complainant a full opportunity to amplify his Complaint or Inquiry. The Commissioner must be given a copy of the Complaint or Inquiry and the amplification furnished the Subcommittee. Upon receipt of the amplification of the Complaint or Inquiry, the Members of the Subcommittee shall consult with one another, either in a meeting or by an exchange of written correspondence forwarded by mail, facsimile, private delivery or e-mail, at the conclusion of which a vote shall be taken on the question of whether or not the Investigation shall proceed further. The question shall be resolved by majority vote.

E. If the Subcommittee shall decide not to proceed further, it shall prepare a Report to that effect to the Standing Committee, which Report will embody enough detail of the Subcommittee's Findings to inform the Standing Committee of the grounds for its decision. Thereafter, the Standing Committee shall decide by majority vote whether to confirm or reject the Report of the Subcommittee. If the Standing Committee shall decide to confirm the Report of the Subcommittee, the Chair of the Standing Committee shall instruct the Subcommittee to draft a letter to the Complainant for the signature of the Chair of the Standing Committee setting out the decision of the Subcommittee and the Standing Committee. The Chair of the Standing Committee shall have the power to make editorial changes and changes in style to the letter before it is sent to the Complainant. A copy of the letter shall be sent to the Commissioner of Accounts. If the Standing Committee shall decide to reject the Report of the Subcommittee, the Chair of the Standing Committee shall, following the Instructions of the Standing Committee, re-refer the matter to the same Subcommittee or refer the matter to another Subcommittee with the Instructions that the Commissioner of Accounts be asked for a response.

F. In investigating and evaluating the Complaint or Inquiry, the Subcommittee may request written submissions from the parties and/or confer with the parties. Additional information - verbal, written, or both - may be obtained from outside sources. All information obtained shall be made available to the Complainant and the Commissioner. The Subcommittee, in carrying out the authority granted the Standing Committee in Paragraph (3) of the Resolution of the Judicial Council (". . . to attempt to resolve the issues with the Commissioners of Account,") may attempt to reach such a resolution by consulting with the Complainant and the Commissioner separately and/or convening them together for one or more mediation sessions.

G. If the matters of disagreement between the Complainant and the Commissioner are resolved by agreement between the Complainant and the Commissioner, a brief written summary of the agreement shall be signed by the Complainant, the Commissioner, and the Chair of the Subcommittee, and a copy shall be furnished to each person. A copy shall also be furnished by the Chair of the Subcommittee to the Chair of the Standing Committee who shall inform the other Members of the Standing Committee that the matter has been resolved by agreement but shall not circulate copies of the Document to the other Members of the Standing Committee unless he finds there is a particular reason to do so.

H. If the matters of disagreement are not resolved by agreement between the Complainant and the Commissioner, the Subcommittee shall proceed with its Investigation and Evaluation and reach a decision based thereon. The decision shall be reached by a majority vote of the Subcommittee.

I. When the Subcommittee has reached a decision, the Chair of the Subcommittee shall prepare or request another Member of the Subcommittee to prepare a Report setting forth the Subcommittee's decision and its reasons therefor. The Report shall be submitted to the Subcommittee, and when it shall have been approved by the Subcommittee - either as originally drafted or as subsequently revised - it shall be submitted to the Chair of the Standing Committee. Any Member of the Subcommittee who voted against the Report shall have the right to submit a Minority Report to the Chair of the Standing Committee.

J. The Chair of the Standing Committee shall promptly circulate the Report to all Members of the Standing Committee who are not Members of the Subcommittee. At the following meeting of the Standing Committee, whether a regularly scheduled meeting or a meeting called specifically for the purpose, the Standing Committee, including the Members of the Subcommittee, shall consider the Subcommittee Report and the Minority Report, if any. The Standing Committee may approve the Report; conduct a further investigation following which it may approve the original Report or amend the Report and

approve it as amended; or reject the Report and either prepare its own Report, recommit the matter to the Subcommittee which has previously acted, or refer the matter to another Subcommittee with such instructions as it shall decide to give. The Report of the Subcommittee and the Standing Committee must contain a recommendation as to whether the matter should be referred to the Chief Judge of the Circuit from which the Commissioner has been appointed, and if so whether or not such Report shall contain a recommendation.

PROCEDURE FOR REFERRING A DECISION OF THE STANDING COMMITTEE.

Regardless of the Decision of the Standing Committee in its final Report, the Report shall be transmitted by Certified Mail, Return Receipt Requested, to the Complainant and the Commissioner of Accounts. In addition to those notifications, if the Standing Committee shall decide to refer the Complaint, with or without recommendations, to the Chief Judge of the Circuit Court having jurisdiction over the Commissioner, the Report shall be transmitted by Certified Mail, Return Receipt Requested, to such Chief Judge and to the Chief Justice of the Supreme Court of Virginia.

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GUIDELINES FOR FIDUCIARY COMPENSATION

INTRODUCTION

The Judicial Council of Virginia, in establishing the Standing Committee on Commissioners of Accounts in 1993, charged the Standing Committee with promoting uniformity of practice among commissioners of accounts. Mindful of the Supreme Court's consistent holdings that the circumstances in each case determine the allowance of fiduciary compensation, the Standing Committee recommended to the Council for approval the following Guidelines for Fiduciary Compensation in order to promote a degree of uniformity among the Commissioners of Accounts in Virginia in their task of determining compensation to be allowed fiduciaries. The guidelines are not intended as a substitute for the analysis the Commissioner must do to determine the statutory "reasonable compensation" in each case. The Judicial Council approved the Guidelines in December 2004.

A. DECEDENTS' ESTATES

1. Where the will clearly sets out compensation in a specific dollar amount or a specific percentage that the Executor is to receive, the will controls, and the Executor is entitled to the amount set out.

2. Where the will states that the Executor shall receive for services the compensation set out in a referenced published fee schedule in effect at the time such services are rendered, fees as set out in the fee schedule shall be presumed to be reasonable, as that term is used in §26-30. The burden of persuading the Commissioner that fiduciary compensation taken according to such a fee schedule is not reasonable would be on an objecting party. The ultimate responsibility of determining the reasonableness of the compensation rests with the Commissioner.

3. Paragraph 2. above does not apply in the case where the will is silent as to the Executor's compensation. In such a case, if the Executor (corporate or otherwise) uses a published fee schedule to determine compensation, the other guidelines set out herein apply. There is, however, no presumption that such a published fee schedule is not reasonable.

4. Where all parties affected by the amount of the compensation are (i) competent to contract (ii) understand the issues involved (i.e., can give "informed consent") and (iii) agree in writing as to the amount of the compensation to be paid, then the agreement should be honored by the Commissioner.

5. Unless determined as set out in paragraphs 1., 2. or 4. above, the fee to be allowed the Executor on all property in the decedent's probate estate (calculated on the inventory value, including amended inventories) is as follows:

(a) 5% of first $400,000.
4% of next $300,000.
3% of next $300,000.
2% over $1,000,000.
Over $10,000,000. - by agreement with the Commissioner (prior consultation is required).

AND

(b) 5% of income receipts (not including capital gains).

6. The value of real estate will be included as property in the decedent's probate estate for fee purposes only if the Executor is given the power to sell real estate and (i) is instructed to sell real estate in the will, or (ii) is requested to sell real estate by all affected beneficiaries or devisees, or (iii) is required to sell real estate to pay taxes or other charges against the estate, or (iv) the Commissioner determines that such sale is clearly in the best interest of the estate and the devisees or beneficiaries as a whole.

7. If the Executor employs an attorney or accountant to perform duties that should be performed by the Executor, the fees of those persons should be deducted from the compensation due the Executor. Note that this does not

apply to reasonable fees paid to attorneys or accountants for tax work or litigation or other legal services reasonably necessary for the orderly administration of the estate.

8. If the Executor employs an investment advisor, the advisor's fees, if reasonable, should generally not be deducted from the Executor's compensation.

9. The Commissioner may also increase or decrease the otherwise allowable compensation in exceptional circumstances. Factors to be considered in determining the compensation include the nature of the assets, the character of the work, the difficulties encountered, the time and expertise required, the responsibilities assumed, the risks incurred and the results obtained. A consideration of these factors could result in a decrease or an increase of the compensation that would otherwise be determined using the standards set out elsewhere in these guidelines.

10. As a general rule, an Executor is not allowed compensation based on the value of assets not includable in the probate estate. The Commissioner may allow such compensation in circumstances where it is necessary for the Executor to assume some responsibility for the asset. The Executor is advised to make separate fee arrangements with the beneficial owners of non-probate assets.

11. If, after examining these "Guidelines", the Executor has any questions about the fee to be taken in a specific estate he or she should be encouraged to consult with the Commissioner in advance of taking any fee.

NOTE: The use of the word Executor above includes all fiduciaries charged with administering decedent's estates. The words "fee" and "compensation" are used interchangeably.

B. TRUSTS

With respect to Trusts, the specific guidelines for compensation are:

1. Compensation should be taken on an annual basis, based on the fair market value of the trust assets (i.e, principal and undistributed income) at the beginning of the accounting period. Previously distributed income, of course, is not to be counted in determining compensation. Where the required accounting is for a period of less than one full year (see, for example, § 26-17.6.A.), the compensation should be pro-rated.

2. Paragraphs A. 1. through A. 4. apply as well to trusts.

3. Undistributed income and principal should be treated alike in determining

the fair market value of the trust assets at the beginning of the accounting period. The fee schedule set out below applies to undistributed income and principal combined, with no compensation to be calculated on income received and distributed during the year.

4. The schedule of fees is as follows:

1% of the first $500,000. (.01)
3/4 of 1% of the next $500,000. (.0075)
½ of 1% over $1,000,000. (.005)
$10,000,000. or more - by agreement with the Commissioner (prior consultation is required).

5. The guidelines set out in A. 7., 8., 9. and 11. above also apply to Trustees. In addition, the Commissioner may reduce the allowable compensation in certain circumstances, such as where the Trustee has delegated total investment responsibility to professionals or is not making any discretionary distributions.

C. CONSERVATORS AND GUARDIANS

1. The same schedule of fees as set out for Trustees in B. 4. above should apply to both Conservators, Guardians of infants and Trustees of veterans under § 37.1 - 134.20. The percentages should be applied annually to the principal amount as shown on the inventory (initial account) and on the beginning balance of accountings (subsequent accounts). However, an additional fee of 5% should be allowed on non-investment income received during the account period (for example, periodic payments such as retirement payments). Compensation should be pro-rated when the required accounting is for a period of less than one full year (see § 26-17.4.A.). In situations where the ward or incapacitated person dies within a short time after the qualification, the Commissioner could consider additional compensation, understanding that much of the fiduciary's work occurs at the beginning of the estate.

2. The guidelines set out in paragraphs A. 7., 8., 9. and 11., and B. 1. above shall apply where appropriate.

D. SUCCESSOR FIDUCIARIES

Where a fiduciary is succeeded by another, the annual fees (Trustees, Conservators and Guardians) shall be pro-rated. In the case of Executors, the fees shall be based on the guidelines, but the Commissioner should determine the amount to be allowed, based on the factors set out in A. 9. above. More than one full fee may be allowed, if the Commissioner determines this to be appropriate.

E. CO-FIDUCIARIES

1. Generally, one fee will be divided equally among the co-fiduciaries. The co-fiduciaries may agree among themselves on a different division.

2. The Commissioner can agree to an increased fee under all the circumstances of the matter, and considering the factors set out in A. 9. above. See also paragraph A. 11. above.

3. In case of a dispute concerning the division of the fee, the Commissioner may hold a hearing to resolve the dispute, but all of the fiduciaries should first agree to the use of this hearing procedure.

ENDNOTES:

(1) The time to take compensation: Executors no longer must wait to take their fees until the estate is closed; however, the time of taking should bear some relationship to the expected life of the estate, the work already done, and the work remaining to be done.

(2) Statutes: Nothing in these Guidelines is intended to alter any statute concerning fiduciary compensation. See especially § 26-19, headed "(w)hen fiduciaries to forfeit their commissions, etc."

(3) Monthly Fees: If the fiduciary's account is set up so that the assets are valued and the fee calculated on a monthly basis, the Commissioner, if requested, may approve the taking of fees on a monthly basis.

(4) Other matters: Reference to the "Manual for Commissioners of Accounts" is recommended where other questions occur. See in particular § 9.204 of the Manual, "Fiduciary Compensation and Attorney's Fees."

(5) Suggestions: Suggestions or questions about "Guidelines for Fiduciary Compensation" should be mailed to:

Chair, Standing Committee on Commissioner of Accounts
c/o Office of Executive Secretary
Supreme Court of Virginia
100 North 9th Street
Richmond, VA 23219

Chapter 7

Changes to Rules of Court

BACKGROUND

The Constitution of Virginia authorizes the Supreme Court of Virginia to promulgate rules governing the practice and procedures to be used in the courts of the Commonwealth.

In 1974, the Judicial Council of Virginia established an Advisory Committee on the Rules of Court to provide members of the Virginia Bar a means of more easily proposing Rule changes to the Council for recommendation to the Supreme Court. The duties of this committee include: (a) providing the machinery for the evaluation of suggestions for modification of the Rules made by the Bench and Bar and presenting proposed changes to the Judicial Council for its consideration; (b) keeping the Rules up to date in light of procedural changes in other jurisdictions; (c) suggesting desirable changes to clarify ambiguities and eliminate inconsistencies in the Rules; and (d) recommending changes in the Rules to keep them in conformity with the Code of Virginia in order to eliminate possible conflict.

The Advisory Committee on the Rules of Court, as well as the entire Judicial Council, is called upon continually to study and to make recommendations on Rules of Court. Rules recommended by the Council and subsequently adopted by the Supreme Court are published in Volume 11 of the Code of Virginia. All adopted Rule changes are also posted on the Judiciary's website at www.courts.state.va.us.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL AND ADOPTED BY THE SUPREME COURT OF VIRGINIA

Rule 3:17 Judgment by Default

Rule 3A:11 Discovery and Inspection

Rule 3A:25	Special Rule Applicable to Post-Conviction Proceedings: Inmate Filings in the Trial Courts
Rule 3B:2	Uniform Fine Schedule
Rule 4:9(b)	Production of Documents and Things and Entry on Land for Inspection and Other Purposes; Production at Trial
Rule 4:9(c)	Production of Documents and Things and Entry on Land for Inspection and Other Purposes; Production at Trial
Rule 5:17	Petition for Appeal
Rule 5:18	Brief in Opposition
Rule 5:19	Reply Brief
Rule 5:20	Denial of Appeal; Petition for Rehearing
Rule 5:20A	Denial of Appeal; Petition for Rehearing. (Effective January 1, 2005 to December 31, 2005)
Rule 5:39	Rehearing
Rule 5:39A	Rehearing Petition. (Effective January 1, 2005 to December 31, 2005)
Rule 5A:1	Scope, Applicability and General Provisions
Rule 5A:11	Special Rule Applicable to Appeals From the Virginia Workers' Compensation Commission
Rule 5A:15	Denial of Appeal; Petition for Rehearing (Effective January 1, 2005 to December 31, 2005)
Rule 5A:15A	Denial of Appeal; Petition for Rehearing (Effective January 1, 2005 to December 31, 2005)
Rule 5A:19	Briefs
Rule 5A:21	Brief of Appellee or Guardian Ad Litem
Rule 5A:24	Covers of Documents
Rule 5A:28	Oral Argument

Rule 5A:33	Rehearing - On Motion of a Party (Effective January 1, 2005 to December 31, 2005)
Rule 5A:33A	Rehearing - On Motion of a Party (Effective January 1, 2005 to December 31, 2005)
Rule 5A:34	Rehearing En Banc (Effective January 1, 2005 to December 31, 2005)
Rule 5A:34A	Rehearing En Banc (Effective January 1, 2005 to December 31, 2005)
Rule 7B:9	Failure of Defendant to Appear
Rule 8:3	Contents of Petitions in Certain Proceedings

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL TO THE SUPREME COURT OF VIRGINIA (not adopted as of December 10, 2004)

1:1A	Recovery of Appellate Attorney's Fees in Circuit Court
2:16	Substitution of Parties
2:18	Use of and Proceedings Before a Commissioner in Chancery
2A:1	Authorization; Definitions; Application
2A:2	Notice of Appeal
3:15	Substitution of Parties
3A:8	Pleas
4:5(d)	Depositions Upon Oral Examination
5:22	Special Rule Applicable to Cases in Which Sentence of Death has been Imposed
5A:4(a)	Forms of Briefs and Other Papers
7C:6	Pleas
8:18	Pleas
Part Nine (new)	See recommended rules in Chapter 4

Form 10, Appendix of Forms, Part Three - A
Contents of Sentencing Orders

Form 11, Appendix of Forms, Part Three - A
Misdemeanor Proceedings in District and Circuit Courts

RULE CHANGES ADOPTED BY THE SUPREME COURT

Rule 3:17. Judgment by Default.

Cross references.- As to civil practice and procedure in the general district courts, see Rule 7B:9.

See Title II of the Servicemembers Civil Relief Act, 50 U.S.C. Appx. § 520 et seq. (as affecting the validity of default judgments entered against defendants in military service). Also see, Va. Code § 8.01-15.2.

Rule 3A:11. Discovery and Inspection.

(a) Application of Rule. -- This Rule applies to any prosecution for a felony in a circuit court and to any misdemeanor brought on direct indictment.

(b) Discovery by the Accused.

(1) Upon written motion of an accused a court shall order the Commonwealth's attorney to permit the accused to inspect and copy or photograph any relevant (i) written or recorded statements or confessions made by the accused, or copies thereof, or the substance of any oral statements or confessions made by the accused to any law enforcement officer, the existence of which is known to the attorney for the Commonwealth, and (ii) written reports of autopsies, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath tests, other scientific reports, and written reports of a physical or mental examination of the accused or the alleged victim made in connection with the particular case, or copies thereof, that are known by the Commonwealth's attorney to be within the possession, custody or control of the Commonwealth.

(2) Upon written motion of an accused a court shall order the Commonwealth's attorney to permit the accused to inspect and copy or photograph designated books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, that are within the possession, custody, or control of the Commonwealth, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable. This subparagraph does not authorize the discovery or inspection of statements made by Commonwealth witnesses or prospective Commonwealth witnesses to agents of the Commonwealth or of reports, memoranda or other internal Commonwealth documents made by agents in connection with the investigation or prosecution of the case, except as provided in clause (ii) of subparagraph (b)(1) of this Rule.

(c) Discovery by the Commonwealth. -- If the court grants relief sought by the accused under clause (ii) of subparagraph (b)(1) or under subparagraph

(b)(2) of this Rule, it shall, upon motion of the Commonwealth, condition its order by requiring that:

(1) The accused shall permit the Commonwealth within a reasonable time but not less than ten (10) days before trial or sentencing, as the case may be, to inspect, copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint, blood, urine and breath analyses, and other scientific tests that may be within the accused's possession, custody or control and which the defense intends to proffer or introduce into evidence at trial or sentencing.

(2) The accused disclose whether he intends to introduce evidence to establish an alibi and, if so, that the accused disclose the place at which he claims to have been at the time of the commission of the alleged offense.

(3) If the accused intends to rely upon the defense of insanity or feeblemindedness, the accused shall permit the Commonwealth to inspect, copy or photograph any written reports of physical or mental examination of the accused made in connection with the particular case, provided, however, that no statement made by the accused in the course of an examination provided for by this Rule shall be used by the Commonwealth in its case-in-chief, whether the examination shall be with or without the consent of the accused.

(d) Time of Motion. -- A motion by the accused under this Rule must be made at least 10 days before the day fixed for trial. The motion shall include all relief sought under this Rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

(e) Time, Place and Manner of Discovery and Inspection. -- An order granting relief under this Rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(f) Protective Order. -- Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the Commonwealth the court may permit the Commonwealth to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court denies discovery or inspection following a showing in camera, the entire text of the Commonwealth's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the accused.

(g) Continuing Duty to Disclose; Failure to Comply. -- If, after disposition of a motion filed under this Rule, and before or during trial, counsel or a party discovers additional material previously requested or falling within the scope of an order previously entered, that is subject to discovery or inspection under this Rule, he shall promptly notify the other party or his counsel or the court of the existence of the additional material. If at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with this Rule or with an order issued pursuant to this Rule, the court shall order such party to permit the discovery or inspection of mate-

rials not previously disclosed, and may grant such other relief as it may deem appropriate.

Rule 3A:25. Special Rule Applicable to Post-Conviction Proceedings: Inmate Filings in the Trial Courts Under Code § 8.01-654.

In actions brought under Code § 8.01-654, filed by an inmate confined to an institution, a paper is timely filed if deposited in the institution's internal mail system, with first-class postage prepaid on or before the last day for filing. Timely filing of a paper by an inmate confined to an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

Rule 4:9. Production of Documents and Things and Entry on Land for Inspection and Other Purposes; Production at Trial.

(b) Procedure.-- The request may, without leave of court, except as provided in paragraph (c-1), be served upon the plaintiff after commencement of the action and upon any other party with or after service of the bill of complaint or motion for judgment upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, period and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 21 days after the service of the request, except that a defendant may serve a response within 28 days after service of the bill of complaint or motion for judgment upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 4:12(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection either shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

When one party to a civil proceeding subpoenas documents concerning another party, the subpoenaing party, upon receipt of the subpoenaed documents, shall, if requested, provide true and full copies of the same to any party or to the attorney for any other party in accordance with Code § 8.01-417(B).

Rule 3B:2 Uniform Fine Schedule

See latest amendments on the judiciary's website at www.courts.state.va.us.

Rule 4:9. Production of Documents and Things and Entry on Land for Inspection and Other Purposes; Production at Trial.

(c) Production by a Person Not a Party.

(1) Subpoena duces tecum issued by clerk of court. Upon written request therefor filed with the clerk of the court in which the action or suit is pending by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel, the clerk shall, subject to paragraph (c-1), issue to a person not a party therein a subpoena duces tecum which shall command the person to whom it is directed, or someone acting on his behalf, to produce the documents and tangible things (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 4:1(b) which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena; but, the court, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (1) quash or modify the subpoena if it is unreasonable and oppressive, (2) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the documents and tangible things so designated and described or (3) direct that the documents and tangible things subpoenaed be returned only to the office of the clerk of the court through which such documents and tangible things are subpoenaed in which event, upon request of any party in interest, or his attorney, the clerk of such court shall permit the withdrawal of such documents and tangible things by such party or his attorney for such reasonable period of time as will permit his inspection, photographing, or copying thereof.

(2) Subpoena duces tecum issued by attorney. In a pending civil proceeding, a subpoena duces tecum may be issued by an attorney-at-law as an officer of the court if he is an active member of the Virginia State Bar at the time of issuance. An attorney may not issue a subpoena duces tecum in those civil proceedings excluded in Virginia Code § 8.01-407. An attorney-issued subpoena duces tecum must be signed as if a pleading and be accompanied on the subpoena by the attorney's address, telephone number and Virginia State Bar identification number. A copy of any attorney-issued subpoena duces tecum must be mailed or delivered to the clerk's office of the court in

which the case is pending by the attorney on the day of issuance with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel. If time for compliance with an attorney-issued subpoena duces tecum is less than fourteen (14) days after service of the subpoena, the person to whom the subpoena is directed may serve on the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection or testing should not be had. If an objection is made, the party issuing the subpoena shall not be entitled to the requested production, inspection or testing, except pursuant to an order of the court in which the civil proceeding is pending. If an objection is made, the party issuing the subpoena may, upon notice to the person to whom the subpoena is directed, move for an order to compel the production, inspection or testing.

Upon a timely motion, the court may quash, modify or sustain the subpoena as provided above in subsection (c)(1) of this Rule.

Rule 5:17. Petition for Appeal.

(c) Form and Content. --

A short conclusion stating the precise relief sought.

Seven copies of the petition shall be filed. Carbon copies are acceptable. Except by leave of a justice of this Court, a petition for appeal shall not exceed 35 typed or 25 printed pages.

Rule 5:18. Brief in Opposition.

Filing Time. -- A brief in opposition to granting the appeal may be filed with the clerk of this Court by the appellee within 21 days after petition for appeal is served on counsel for the appellee. Within the same time he shall mail or deliver a copy to counsel for appellant. Seven copies shall be filed. Carbon copies are acceptable.

Rule 5:19. Reply Brief.

When a brief in opposition to the petition for appeal has been filed, the appellant may, within 7 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to exceed 15 typed or printed pages in length. Seven copies shall be filed. Carbon copies are acceptable.

When cross-error is assigned in a brief in opposition, the appellant may, without waiving oral argument, file with the clerk of this Court within the said 7-day period a 10-page typed or printed reply brief which addresses only the cross-error. Seven copies shall be filed. Carbon copies are acceptable.

Rule 5:20. Denial of Appeal; Petition for Rehearing.

(a) When a petition for appeal is denied, the clerk of this Court shall mail a copy of the order denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may, within 14 days after the date of this notice, file in the office of the clerk of this Court a petition for

rehearing. Oral argument on the petition for rehearing will not be allowed. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall notify counsel for the appellant and counsel for the appellee of the action taken by this Court on the petition for rehearing.

(b) Except for petitions for rehearing filed by pro se prisoners or with leave of Court, a petition for rehearing shall be filed as an Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail in compliance with Rule 5:20A. Petitions filed by pro se prisoners or with leave of Court shall be filed in compliance with subsection (c) of this Rule. This subsection will expire on December 31, 2005 unless otherwise ordered by the Court.

(c) The petition for rehearing shall not exceed 15 typed or printed pages in length. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Ten copies shall be filed.

Rule 5:20A. Denial of Appeal; Petition for Rehearing. (Effective January 1, 2005 to December 31, 2005.)

Except for petitions for rehearing filed by pro se prisoners, or with leave of Court, the petition shall be filed as a PDF document attached to an e-mail addressed to scvpfr@courts.state.va.us and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due.

The petition must be formatted to print on a page 8 ½ x 11 inches, must be in 12 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to counsel for the appellee and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by scvpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Supreme Court record number. The e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel. The

message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be forwarded to counsel seeking the rehearing.

The clerk of this Court shall notify counsel for both parties of the action taken by this Court on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Rule 5:39. Rehearing.

(f) Notwithstanding subsection (c) a petition for rehearing shall be filed as a PDF document attached to an e-mail in compliance with Rule 5:39A unless filed by a pro se prisoner or with leave of Court. In those instances, the petition for rehearing shall be filed in compliance with subsection (c) of this Rule. This subsection will expire on December 31, 2005 unless otherwise ordered by the Court.

Rule 5:39A. Rehearing Petition. (Effective January 1, 2005 to December 31, 2005.)

(a) The notice of intent to apply for a rehearing may be filed as a PDF document attached to an e-mail addressed to scvpfr@courts.state.va.us and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due.

(b) Except for petitions filed by pro se prisoners, or with leave of Court, the petition for rehearing shall be filed as a PDF document attached to an e-mail addressed to scvpfr@courts.state.va.us and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due. The petition must be formatted to print on a page 8 ½ x 11 inches, must be in 12 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by scvpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to e-mail the petition, any delivery failure notice received in response to the attempt, and a

copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Supreme Court record number. The e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be forwarded to counsel seeking the rehearing.

Rule 5A:1. Scope, Applicability and General Provisions.

(a) Scope of Rules. -- Part Five A governs all proceedings in the Court of Appeals of Virginia.

(b) Definitions. --

(1) "Appeal," "appellant," and "appellee" include "writ of error," "plaintiff in error," and "defendant in error," respectively.

(2) "Clerk of the trial court" means clerk of the trial court from which an appeal is taken to the Court of Appeals, and shall include a deputy clerk and the clerk of the Virginia Workers' Compensation Commission where the context requires.

(3) "Clerk of the Court of Appeals" includes a deputy clerk.

(4) "Counsel" has the definition given in Rule 1:5 for Counsel of Record and in this Part Five A includes a party not represented by counsel and any attorney appointed as a Guardian Ad Litem.

(5) "Counsel for appellant" means one of the attorneys representing each appellant represented by an attorney, and each appellant not represented by an attorney.

(6) "Counsel for appellee" means one of the attorneys representing each appellee represented by an attorney, and each appellee not represented by an attorney and shall include a Guardian Ad Litem, unless the Guardian Ad Litem is the appellant.

(7) "Opposing counsel" means, depending on the context, "counsel for the appellant" or "counsel for the appellee."

(8) "Judge" means judge of the trial court, unless the context otherwise requires, or if he be not available, any judge authorized to act under Rule 5A:9.

(9) "Judgment" includes an order or decree from which an appeal is taken.

(10) "File with the clerk" or "files with the clerk" or "filed with the clerk" means deliver to the clerk specified a paper, a copy of which has been mailed or delivered to opposing counsel, and appended to which is either acceptance of service or a certificate showing the date of mailing or delivery. "File in the

office of the clerk" or "files in the office of the clerk" or "filed in the office of the clerk" means, on the other hand, deliver a paper to the clerk specified.

(11) "Trial court" means the circuit court from which an appeal is taken to the Court of Appeals.

(12) The "date of entry" of any final judgment or other appealable order or decree shall be the date the judgment, order, or decree is signed by the judge.

Rule 5A:11. Special Rule Applicable to Appeals From the Virginia Workers' Compensation Commission.

(b) Notice of Appeal. -- No appeal from an order of the Commission shall be allowed unless, within 30 days after entry of the order appealed from, or within 30 days after receipt of notice by priority mail with delivery confirmation or equivalent mailing option of the order appealed from, counsel files with the clerk of the Virginia Workers' Compensation Commission a notice of appeal which shall state the names and addresses of all appellants and appellees, the names, addresses, and telephone numbers of counsel for each party, and the address and telephone number of any party not represented by counsel, and whether the appellant challenges the sufficiency of the evidence to support the findings of the Commission. A copy of the notice of appeal shall be filed in the office of the clerk of the Court of Appeals, and except as otherwise provided by law, must be accompanied by a check or money order in the amount of $25 payable to the clerk of the Court of Appeals. The fee shall be due at the time the notice of appeal is presented. The clerk of the Court of Appeals may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal shall be dismissed.

Rule 5A:15. Denial of Appeal; Petition for Rehearing. (Effective January 1, 2005 to December 31, 2005.)

When a petition for appeal is denied by a judge of the Court of Appeals pursuant to Code § 17.1-407(C), the clerk of the Court of Appeals shall mail a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of Court to proceed under this Rule may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). The demand shall be filed in writing and in quadruplicate with the clerk of the Court of Appeals within fourteen days after the date of the order by which the petition was denied. The demand, which shall include a statement identifying how the one-judge order is in error, shall not exceed one typed or printed page in length. Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). A petitioner who has previously requested oral argument may waive oral argument by so stating in the demand for review. All petitioners other than pro se prisoners and those with leave of Court to proceed

under this Rule must follow the provisions of Rule 5A:15A(a) when filing a demand for three-judge review pursuant to Code § 17.1-407(D).

(b) When a petition for appeal is denied by a three-judge panel, the clerk of the Court of Appeals shall mail or e-mail a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of Court to proceed under this Rule may, within 14 days after the date of this notice, file a petition for rehearing in writing in the office of the clerk of the Court of Appeals unless the denial was by a three-judge panel after its consideration of a petition denied by a judge of the Court pursuant to Code § 17.1-407. The petition for rehearing shall not exceed 15 typed or printed pages in length. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Four copies shall be filed. Carbon copies are acceptable. Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of the Court of Appeals that considered the petition for appeal. No responsive brief shall be filed unless requested by the Court of Appeals. The clerk of the Court of Appeals shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing. All petitioners other than pro se prisoners and those with leave of Court to proceed under this Rule must follow the provisions of Rule 5A:15A(b) when filing a petition for a rehearing of an order of a three-judge panel denying a petition for appeal.

Rule 5A:15A. Denial of Appeal; Petition for Rehearing. (Effective January 1, 2005 to December 31, 2005.)

(a) When a petition for appeal is denied by a judge of the Court of Appeals pursuant to Code § 17.1-407(C), the clerk of the Court of Appeals shall mail a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. The appellant may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). Demands for three-judge review filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:15(a) shall be filed in accordance with the provisions of Rule 5A:15(a).

Except for demands for three-judge review filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:15(a), the demand shall be filed as a single Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@courts.state.va.us and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

The demand, which shall include a statement identifying how the one-judge order is in error, must be formatted to print on a page 8 ½ x 11 inches, must be in 11 point type or larger, must be double-spaced, and must not exceed a word count of 500. The demand must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The demand must also include a certificate of compliance

with the word count limit. The demand will be considered filed on the date and time that it is received by cavpfr@courts.state.va.us. If the demand does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the demand to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed demand for three-judge review, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the demand by e-mail, any delivery failure notice received in response to the attempt, and a copy of the demand for three-judge review.

The e-mail message to which the demand is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a demand for three-judge review is being filed, the style of the case, the Court of Appeals record number, the name and bar number of counsel filing the demand, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel filing the demand. The message shall also state whether a copy of the demand has been served by e-mail or another means on opposing counsel and the date of such service. If the demand has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the demand for three-judge review in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). An appellant who has previously requested oral argument may waive oral argument by so stating in the demand for review.

(b) When a petition for appeal is denied by a three-judge panel, the clerk of the Court of Appeals shall mail or e-mail a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may file a petition for rehearing in the office of the clerk of the Court of Appeals unless the denial was by a three-judge panel after its consideration of a petition denied by a judge of the Court pursuant to Code § 17.1-407. Petitions for rehearing filed by pro se prisoners or by those with leave of court to proceed under Rule 5A:15(b) shall be in accordance with the provisions of Rule 5A:15(b).

Except for petitions for rehearing filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:15(b), the petition shall be filed as a single PDF document attached to an e-mail addressed to cavpfr@courts.state.va.us and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

The petition must be formatted to print on a page 8 ½ x 11 inches, must be in 11 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. Petitions filed by e-mail will be considered filed on the date and time that it is received by cavpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of the Court of Appeals that considered the petition for appeal. No responsive brief shall be filed unless requested by the Court of Appeals. The clerk of the Court of Appeals shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Rule 5A:19. Briefs.

(a) Length. -- Except by permission of a judge of the Court of Appeals, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae shall exceed 35 typed or 25 printed pages. No reply brief shall exceed 10 typed or 7 printed pages. Page limits under this Rule do not include appendices.

(b) Filing Time: Appeal as a Matter of Right. -- In cases where appeal lies as a matter of right to the Court of Appeals, briefs shall be filed as follows:

(1) The appellant shall file the opening brief in the office of the clerk of the Court of Appeals within 40 days after the date of the filing of the record in such office.

(2) The brief of appellee shall be filed in the office of the clerk of the Court of Appeals within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of the Court of Appeals within 14 days after filing of the brief of appellee or Guardian Ad Litem.

(c) Filing Time: Grant of Petition for Appeal. -- In cases where a petition for appeal has been granted by the Court of Appeals, briefs shall be filed as follows:

(1) The appellant shall file the opening brief in the office of the clerk of the Court of Appeals within 40 days after the date of the certificate of appeal issued by the clerk of the Court of Appeals pursuant to Rule 5A:16 (b).

(2) The brief of appellee shall be filed in the office of the clerk of the Court of Appeals within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of the Court of Appeals within 14 days after filing of the brief of appellee.

(d) If a Guardian Ad Litem joins with either appellant or appellee, the Guardian Ad Litem must notify the Clerk's Office, in writing, which side it joins. Thereafter, the Guardian Ad Litem may rely on the brief of that party and is entitled to oral argument under Rule 5A:26.

(e) Extension of Time. -- By agreement of all counsel and with permission of a judge of the Court of Appeals, the time for filing any brief in the Court of Appeals may be altered.

(f) Copies. -- Seven copies of each brief shall be filed and one copy shall be mailed or delivered to opposing counsel on or before the date of filing.

Rule 5A:21. Brief of Appellee or Guardian Ad Litem.

The brief of appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases shall be to the Virginia Reports and the Southeastern Reporter. Citations of all authorities shall include the year thereof.

(b) A statement of the case and of the questions presented if the appellee disagrees with the statement or questions presented by the appellant, and a statement of any additional questions the appellee wishes to present with a clear and exact reference to the page(s) of the transcript, written statement, record, or appendix where each additional question was preserved in the trial court.

(c) A statement of the facts necessary to correct or amplify the statement in the brief of appellant with appropriate references to the pages of the transcript, written statement, record, or appendix. The testimony of individual wit-

nesses should not be summarized seriatim unless the facts are in dispute and such a summary is necessary to support the appellee's version of the facts.

(d) The principles of law, the argument, and the authorities relating to each question presented. For any additional question presented by appellee which was not preserved in the trial court, counsel shall state why the good cause and/or ends of justice exceptions to Rule 5A:18 are applicable. With respect to each question, the principles, the argument, and the authorities shall be stated in one place and not scattered through the brief. At the option of counsel, the argument may be preceded by a brief summary.

(e) A statement of the precise relief sought, if any.

(f) The signature (which need not be in handwriting) of at least one counsel and his address.

(g) A certificate (which need not be signed in handwriting) stating (1) that Rule 5A:19(e) has been complied with, and (2) whether counsel desires to waive oral argument. Additionally, any party may waive oral argument without leave of court by written notification to the clerk of this court within 21 days after the date on which the appellee's brief is due to be filed or has been filed.

Rule 5A:24. Covers of Documents.

(a) To facilitate identification, documents shall bear covers colored as follows:

Document	Color of Cover
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Brief of Guardian Ad Litem (if separate from appellant and appellee)	Brown
Reply Brief of the Appellant	Green
Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow
Petition for Rehearing En Banc	Yellow

(b) No appeal shall be dismissed for failure to comply with the provisions of this rule; however, the clerk of the Court of Appeals may require that a document be redone in compliance with this Rule.

Rule 5A:28. Oral Argument.

(a) Notice. -- Whenever appeal lies as a matter of right or a petition for appeal has been granted, oral argument shall be permitted except in those cases disposed of pursuant to Rule 5A:27. The Clerk of the Court of Appeals, except in extraordinary circumstances, shall give at least 15 days advance notice to counsel of the date, time, and place for oral argument.

(b) Length. -- Except as otherwise directed by the Court of Appeals, argument for a party shall not exceed 30 minutes in length. Such time may be apportioned among counsel for the same side at their discretion, except that only one counsel may present the opening argument for the appellant. If a Guardian Ad Litem joins with either appellant or appellee, the Guardian Ad

Litem shall share the time for oral argument with the party. If a Guardian Ad Litem wants additional time to argue, the Guardian Ad Litem must state that request in its brief, subject to approval of the court.

(c) Amicus Curiae. -- No oral argument is permitted by amicus curiae except by leave of the Court of Appeals.

(d) Waiver. -- Any party may waive oral argument. See Rules 5A:20(h) and 5A:21(g).

Rule 5A:33. Rehearing - On Motion of a Party. (Effective January 1, 2005 to December 31, 2005.)

(a) Petition for Rehearing. -- Pro se prisoners and those with leave of Court to proceed under this Rule desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall, within 14 days following such decision or order, file seven copies of a petition for rehearing with the clerk of the Court of Appeals. Carbon copies are permitted. The petition for rehearing shall not exceed 15 typed or printed pages in length. All petitioners other than pro se prisoners and those with leave of Court to proceed under this Rule must follow the provisions of Rule 5A:33A when filing a petition for rehearing.

(b) Response. -- No response to a petition for rehearing will be received unless requested by the Court of Appeals.

(c) No Oral Argument. -- No oral argument on the petition will be permitted.

(d) Grounds. -- No petition for rehearing will be allowed unless one of the judges who decided the case adversely to the petitioner certified that there is good cause for such rehearing.

Rule 5A:33A. Rehearing - On Motion of a Party. (Effective January 1, 2005 to December 31, 2005.)

(a) Petition for Rehearing. -Any party desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall, within 14 days following such decision, file a petition for rehearing with the clerk of the Court of Appeals. Petitions for rehearing filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:33 shall be filed in accordance with the provisions of Rule 5A:33.

Except for petitions for rehearing filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:33, the petition shall be filed as a single PDF document attached to an e-mail addressed to cavpfr@courts.state.va.us and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

The petition must be formatted to print on a page 8 ½ x 11 inches, must be in 11 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and

the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by cavpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file e-mail the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition for rehearing.

Response. -- No response to a petition for rehearing will be received unless requested by the Court of Appeals.

(c) No Oral Argument. -- No oral argument on the petition will be permitted.

(d) Grounds. -- No petition for rehearing will be allowed unless one of the judges who decided the case adversely to the petitioner certifies that there is good cause for such rehearing. The clerk of the Court of Appeals shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Rule 5A:34. Rehearing En Banc. (Effective January 1, 2005 to December 31, 2005.)

A *pro se* prisoner or a party who has leave of Court to proceed under this Rule aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc within 14 days after the date of the order sought to be reheard. Twelve copies of any such petition shall be filed with the clerk of the

Court of Appeals. The petition for rehearing en banc shall not exceed 15 typed or printed pages in length. No answer to a petition for a rehearing en banc will be received unless requested by the Court of Appeals. A rehearing en banc on motion of the Court of Appeals shall be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of the Court of Appeals shall promptly notify all counsel of action taken pursuant to this Rule. All petitioners other than pro se prisoners and those with leave of Court to proceed under this Rule must follow the provisions of Rule 5A:34A when filing a petition for rehearing en banc.

Rule 5A:34A. Rehearing En Banc. (Effective January 1, 2005 to December 31, 2005.)

A party aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc. Petitions for rehearing filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:34 shall be filed in accordance with the provisions of Rule 5A:34.

Except for petitions for rehearing en banc filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:34, the petition shall be filed as a single PDF document attached to an e-mail addressed to cavpfr@courts.state.va.us and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

The petition must be formatted to print on a page 8 ½ x 11 inches, must be in 11 point type or larger, must be double-spaced, and must not exceed a word count of 7,500. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by cavpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing en banc is being filed, the style of the case, the Court of Appeals record number, the name and bar number of counsel filing the peti-

cation. The appellee shall not be required to file a separate suit or action to recover the fees and costs incurred on appeal, and the circuit court shall have 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, shall be a final order for purposes of Rule 1:1.

(b) Nothing in this Rule shall restrict or prohibit the exercise of any other right or remedy for the recovery of attorneys' fees or costs, by separate suit or action, or otherwise.

Rule 2:16. Substitution of Parties.

(a) *Substitution permitted.* If a party becomes incapable of prosecuting or defending because of death, insanity, conviction of felony, removal from office, or other cause, his successor in interest may be substituted as a party in his place.

(b) *Motion for substitution.* Substitution shall be made on motion of the successor or of any party to the suit. If the successor does not make or consent to the motion, the party making the motion shall file ~~it~~ the motion and a proposed amended pleading effecting the substitution in the clerk's office and serve a copy of the motion and the proposed amended pleading upon the party to be substituted in the manner prescribed by the Code of Virginia for serving original process upon such party. ~~the procedure thereon shall be as if the motion were a bill against the successor.~~ Unless the movant and the party to be substituted agree otherwise, or the court orders a different schedule, the party sought to be substituted shall file a written response to the motion for substitution within twenty-one days after service of the motion and proposed amended pleading upon the party sought to be substituted.

Rule 2:18. Use of and Proceedings Before a Commissioner in Chancery.

(a) Commissioners in chancery shall not be used in uncontested divorce cases. Commissioners in chancery may be used only (1) when there is agreement by the parties with concurrence of the court or (2) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case.

(~~a~~b) Upon entry of a decree by the court referring any matter to a commissioner in chancery, the clerk shall mail or deliver to the commissioner a copy of the decree of reference. Unless the decree prescribes otherwise, the commissioner shall promptly set a time and place for the first meeting of the parties or their attorneys, and shall notify the parties or their attorneys of the time and place so set. It shall be the duty of the commissioner to proceed with all reasonable diligence to execute the decree of reference.

(~~b~~c) A commissioner may require the production before him of evidence upon all matters embraced in the decree of reference including the production of all books, papers, vouchers, documents and writings applicable thereto. He shall have the authority to call witnesses or the parties to the action to testify

before him and may himself examine them upon oath. He may rule upon the admissibility of evidence unless otherwise directed by the decree of reference; but when a party so requests, the commissioner shall cause a record to be made of all proffered evidence which is excluded by the commissioner as inadmissible.

(~~c~~d) The commissioner shall prepare a report stating his findings of fact and conclusions of law with respect to the matters submitted to him by the decree of reference. He shall file the report, together with all exhibits admitted in evidence and a transcript of the proceedings and of the testimony before him, with the clerk of the court. He shall mail or deliver to counsel of record and to parties not represented by counsel, using the last address shown in the record, written notice of the filing of the report. Provided, however, that in divorce cases a copy of the report shall accompany the notice. Provided, further, that no such notice or copy shall be given parties who have not appeared in the proceeding.

Rule 2A:1. Authorization; Definitions; Application.

(a) These rules are promulgated pursuant to § ~~9-6.14:16~~ 2.2-4026 of the Code of Virginia.

(b) All terms used in this part that are defined in Chapter ~~1.1:1 of Title 9~~ 40, Article 1 of Title 2.2 are used with the definitions therein contained. In addition, the term "agency secretary" means the secretary of the agency or, if there be none, the executive officer or a member of the agency. Every agency may, by regulation, name some individual to perform the function of agency secretary. The term "party" means any person affected by and claiming the unlawfulness of a regulation or a party aggrieved who asserts a case decision is unlawful and any other affected person or aggrieved person who appeared in person or by counsel at a hearing, as defined in § ~~9-6.14:4 E~~ 2.2-4001, with respect to the regulation or case decision as well as the agency itself.

(c) These rules shall apply to the review of, by way of direct appeal from, the adoption of a regulation or the decision of a case by an agency.

Rule 2A:2. Notice of Appeal.

Any party appealing from a regulation or case decision shall file, within 30 days after adoption of the regulation or after service of the final order in the case decision, with the agency secretary a notice of appeal signed by him or his counsel. In the event that service of a case decision upon a party is accomplished by mail, 3 days shall be added to the 30-day period. Service under this Rule shall be consistent with § ~~9-6.14:14~~ 2.2-4023 and, if made by mail, shall be sufficient if sent by registered or certified mail to the party's last address known to the agency. The notice of appeal shall identify the regulation or case decision appealed from, shall state the names and addresses of the appellant and of all other parties and their counsel, if any, shall specify the circuit court to which the appeal is taken, and shall conclude with a certificate that a copy of the notice of appeal has been mailed to each of the parties. Any copy of a

notice of appeal that is sent to a party's counsel or to a party's registered agent, if the party is a corporation, shall be deemed adequate and shall not be a cause for dismissal of the appeal; provided, however, sending a notice of appeal to an agency's counsel shall not satisfy the requirement that a notice of appeal be filed with the agency secretary. The omission of a party whose name and address cannot, after due diligence, be ascertained shall not be cause for dismissal of the appeal. Any final agency case decision as described in § ~~9-6.14:14~~ 2.2-4023 shall advise the party of the time for filing a notice of appeal under this Rule.

Rule 3:15. Substitution of Parties.

(a) *Substitution permitted.* If a party becomes incapable of prosecuting or defending because of death, insanity, conviction of felony, removal from office, or other cause, his successor in interest may be substituted as a party in his place.

(b) *Motion for substitution.* Substitution shall be made on motion of the successor or of any party to the action. If the successor does not make or consent to the motion, the party making the motion shall file ~~it~~ the motion and a proposed amended pleading effecting the substitution in the clerk's office and serve a copy of the motion and the proposed amended pleading upon the party to be substituted in the manner prescribed by the Code of Virginia for serving original process upon such party. ~~the procedure thereon shall be as if the motion were an original motion for judgment against the successor.~~ Unless the movant and the party to be substituted agree otherwise, or the court orders a different schedule, the party sought to be substituted shall file a written response to the motion for substitution within twenty-one days after service of the motion and proposed amended pleading upon the party sought to be substituted.

Rule 3A:8. Pleas.

(a) *Pleas by a Corporation.* - A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

(b) *Determining Voluntariness of Pleas of Guilty or Nolo Contendere.* - (1) A circuit court shall not accept a plea of guilty or nolo contendere to a felony charge without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea.

(2) A circuit court shall not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

(c) *Plea Agreement Procedure.* -

(1) The attorney for the Commonwealth and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon entry by the defendant of a plea of guilty, or a plea of nolo contendere, to a charged offense, or to a lesser or related offense, the attorney for the Commonwealth will do any of the following:

(A) Move for nolle prosequi or dismissal of other charges;

(B) Make a recommendation, or agree not to oppose the defen-

dant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding on the court;

(C) Agree that a specific sentence is the appropriate disposition of the case.

In any such discussions under this Rule, the court shall not participate.

(2) If a plea agreement has been reached by the parties, it shall, in every felony case, be reduced to writing, signed by the attorney for the Commonwealth, the defendant, and, in every case, his attorney, if any, and presented to the court. The court shall require the disclosure of the agreement in open court or, upon a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (c)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report. If the agreement is of the type specified in subdivision (c)(1)(B), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw his plea, unless the Commonwealth fails to perform its part of the agreement. In that event, the defendant shall have the right to withdraw his plea.

(3) If the court accepts the plea agreement, the court shall inform the defendant that it will embody in its judgment and sentence the disposition provided for in the agreement.

(4) If the agreement is of the type specified in subdivision (c)(1)(A) or (C) and if the court rejects the plea agreement, the court shall inform the parties of this fact, and advise the defendant personally in open court or, on a showing of good cause, in camera, that the court will not accept the plea agreement. Thereupon, neither party shall be bound by the plea agreement. The defendant shall have the right to withdraw his plea of guilty or plea of nolo contendere and the court shall advise the defendant that, if he does not withdraw his plea, the disposition of the case may be less favorable to him than that contemplated by the plea agreement; and the court shall further advise the defendant that, if he chooses to withdraw his plea of guilty or of nolo contendere, his case will be heard by another judge, unless the parties agree otherwise.

(5) Except as otherwise provided by law, evidence of a plea of guilty later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged, or any other crime, or of statements made in connection with and relevant to any of the foregoing pleas or offers, is not admissible in the case-in-chief in any civil or criminal proceeding against the person who made the plea or offer. But evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, a plea of nolo contendere, or any offer to plead guilty or nolo contendere to the crime charged or to any other crime, is admissible in any criminal proceeding for perjury or false statement, if the statement was made by the defendant under oath and on the record. In the event that a plea of guilty or a plea of nolo con-

tendere is withdrawn in accordance with this Rule, the judge having received the plea shall take no further part in the trial of the case, unless the parties agree otherwise.

Rule 4:5. Depositions Upon Oral Examination.

(a) *When Depositions May Be Taken.* - After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition before the expiration of the period within which a defendant may file a responsive pleading under Rule 2:7 or 3:5, except that leave is not required (1) if a defendant has served a notice of taking deposition, or (2) if special notice is given as provided in subdivision (b)(2) of this Rule. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(a1) *Taking of Depositions.* - Depositions shall be taken in the county or city in which suit is pending, in an adjacent county or city or in the county or city of the Commonwealth of Virginia where a nonparty witness resides, is employed, or has his principal place of business, except that depositions may be taken at a place upon which the parties agree or at a place that the court in such suit may, for good cause, designate. If a nonparty witness is not a resident of the Commonwealth, his deposition may be taken in the locality where he resides or is employed or at any other location agreed upon by the parties. Additionally, the restrictions as to parties within the Commonwealth set forth in this Rule shall not apply where no responsive pleading has been filed or an appearance otherwise made.

(b) *Notice of Examination: General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization.*

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the Commonwealth, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the period for filing a responsive pleading under Rule 2:7 or 3:5, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) [Deleted.]

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 4:9 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 4:9 shall apply to the request.

(6) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules.

(7) Unless the court orders otherwise, a deposition may be taken by telephone, video conferencing, or teleconferencing. A deposition taken by telephone, video conferencing, or teleconferencing shall be taken before an appropriate officer in the locality where the deponent is present to answer questions propounded to him.

(c) *Examination and Cross-Examination; Record of Examination; Oath; Objections.* - Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Objections, Duration and ~~*Motion to* *Terminate*~~*ions* ~~*or Limit Examination*~~. -

(1) Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under Rule 4:5(d)(4).

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. Additional time may be granted by the court upon a showing that such relief is needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes, or delays the examination.

(3) If the court finds that any impediment, delay or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county or city where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 4:1(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) *Submission to Witness; Changes; Signing.* - When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 4:7(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.*

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. In a divorce or annulment case, he shall then promptly file the deposition in the office of the clerk, notifying all other parties of such action. In all other cases, he shall then lodge it with the attorney for the party who initiated the taking of the deposition, notifying the clerk and all parties of such action. Depositions taken pursuant to this Rule or Rule 4:6 (except depositions

taken in divorce and annulment cases) shall not be filed with the clerk until the court so directs, either on its own initiative or upon the request of any party prior to or during the trial.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) *Failure to Attend or to Serve Subpoena; Expenses.*

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

Rule 5:22. Special Rule Applicable to Cases in Which Sentence of Death Has Been Imposed.

(a) Upon receipt of a record pursuant to § 17.1-313B, the clerk of this Court shall notify in writing counsel for the accused in the circuit court (who shall be deemed to be counsel for the appellant), the Attorney General (who shall be deemed to be counsel for the appellee), and the Director of the Department of Corrections of the date of its receipt (the Filing Date). The case shall thereupon stand matured as if an appeal had been awarded to review the conviction and the sentence of death, and the notice issued by the clerk of this Court shall be deemed to be the certificate of the clerk of this Court pursuant to Rule 5:23 that an appeal has been awarded, and the enforcement of the sentence of death shall thereby be stayed pending the final determination of the case by this Court.

(b) Within 10 days after the Filing Date, counsel for the appellant shall file with the clerk of this Court assignments of error upon which he intends to rely for reversal of the conviction or review of the sentence of death. He shall accompany the assignments of error with a designation of the parts of the record relevant to the review and to the assignments of error. Not more than 10 days after such assignments of error and designation are filed, counsel for the appellee may file with the clerk of this Court a designation of the additional parts of the record that he wishes included as germane to the review or to any assignments of error. Counsel for the appellant shall include in the appendix the parts so designated. The provisions of Rules 5:31 and 5:32 (except Rule 5:32(d)) shall apply to the appendix.

(c) With respect to the sentence of death, it shall be a sufficient assignment of error to state that the sentence was imposed under the influence of passion, prejudice, or other arbitrary factor or that the sentence is excessive or disproportionate to the penalty imposed in similar cases.

(d) Except to the extent that a conflict with this Rule may arise (and this Rule shall then be controlling), further proceedings in the case shall conform to the Rules relating to cases in which an appeal has been perfected.

(e) This Court may, on motion in a particular case, vary the procedure prescribed by this Rule in order to attain the ends of justice and the purpose of § ~~17-110.1 [17.1-313]~~ 17.1-313.

Rule 5A:4. Forms of Briefs and Other Papers.

(a) Briefs, appendices, motions, petitions, and other papers may be printed, typewritten, or prepared by a mechanical duplication process. All such papers shall be produced on pages 8-1/2 x 11 inches; printed matter shall occupy approximately 5 by 8 inches of a page, and typewritten matter shall occupy approximately 6 by 9 inches. All printed matter must be in at least ~~11~~ 12 point type. Typed papers shall not be reduced, and must be double-spaced except for quotations and footnotes. Carbon copies are prohibited except where specifically authorized by these Rules, and otherwise only by permission of a judge of the Court of Appeals.

(b) All briefs (Rules 5A:19 through 5A:23 and 5A:35), appendices (Rule 5A:25), petitions for rehearing (Rule 5A:33) and petitions for rehearing en banc (Rule 5A:34) shall be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The caption (with the name of the appellant stated first) and the record number of the case and the names and addresses of counsel submitting the paper shall be placed on the front cover.

(c) No appeal shall be dismissed for failure to comply with the provisions of this Rule; however, the clerk of the Court of Appeals may require that a document be redone in compliance with this Rule.

Rule 7C:6. Pleas.

(a) A court shall not accept a plea of guilty or nolo contendere to any misdemeanor charge punishable by confinement in jail without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea. Before accepting a plea to such a charge, the court shall inform the accused that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(b) A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

Rule 8:18. Pleas.

(a) Permissible Pleas by Child. A child may admit the allegations of the petition or summons by pleading guilty, or the child may plead not guilty, nolo contendere, or enter no plea. If the child enters no plea, the court will proceed as if a denial were entered to the allegations of the petition or summons.

(b) Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by a Juvenile. The court shall not accept a plea of guilty or nolo contendere to a charge of delinquency by a child without first determining that the plea is made voluntarily with an understanding of the nature of the allegations in the petition or summons and the consequences of the plea, including that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(c) Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by an Adult. In any case involving an adult charged with a crime, the court shall not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

tion, as well as the law firm name, mailing address, telephone number, and e-mail address of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition.

No answer to a petition for a rehearing en banc will be received unless requested by the Court of Appeals. A rehearing en banc on motion of the Court of Appeals shall be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of the Court of Appeals shall promptly notify counsel for both parties of the action taken by this Court on the petition for rehearing en banc via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

Rule 7B:9. Failure of Defendant to Appear.

Cross references.- See also § 16.1-97.1, granting the Court authority to grant a rehearing.

See Title II of the Servicemembers Civil Relief Act, 50 U.S.C. Appx. § 520 et seq. (as affecting the validity of default judgments entered against defendants in military service). Also see, Va. Code § 8.01-15.2.

Rule 8:3. Contents of Petitions in Certain Proceedings.

(c) Proceedings for Support.- Except for temporary child support orders issued pursuant to Va. Code § 16.1-279.1, when a petition is filed seeking a court order for support of a spouse or child, the petition shall contain:

RULE CHANGES RECOMMENDED TO THE SUPREME COURT (not adopted as of December 10, 2004)

Rule 1:1A. Recovery of Appellate Attorney's Fees in Circuit Court.

(a) Notwithstanding any provision of Rule 1:1, in any civil action in which an appeal lies from the circuit court to the Supreme Court and a petition for appeal is denied by the Supreme Court (and, if a petition for rehearing has been filed pursuant to Rule 5:20, such petition has been denied), an appellee who has recovered attorneys' 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 attorneys' fees, costs or both incurred on appeal. The application must be filed with thirty (30) days after denial of the petition for appeal or of any petition for rehearing, whichever is later, and may be made in the same case from which appeal was taken, which case shall be reinstated on the circuit court docket upon the filing of the appli-

Form 10, Appendix of Forms for Part Three A. Contents of Sentencing Orders.

(Pursuant to the provisions of Code § 19.2-307, all orders wherein an accused is sentenced for a criminal conviction shall conform substantially to the following form. In cases where no prior criminal conviction order has been entered of record, state the defendant's plea, the verdict or findings, the adjudication, whether or not the case was tried by a jury, and, if not, whether the consent of the accused was concurred in by the court and the attorney for the Commonwealth.)

SENTENCING ORDER

VIRGINIA: IN THE CIRCUIT COURT OF _____

FEDERAL INFORMATION
PROCESSING STANDARDS
CODE: _____

Hearing Date: _____
Judge: _____

COMMONWEALTH OF VIRGINIA

v.

_____, DEFENDANT

This case came before the Court for sentencing of the defendant, who appeared in person with his attorney, _____. The Commonwealth was represented by _____.

On _____ the defendant was found guilty of the following offenses:

CASE NUMBER	OFFENSE DESCRIPTION AND INDICATOR (F/M)	OFFENSE DATE	VA. CODE SECTION	VIRGINIA CRIME CODE REFERENCE

The presentence report was considered and is ordered filed as a part of the record in this case in accordance with the provisions of Code § 19.2-299.

Pursuant to the provisions of Code § 19.2-298.01, the Court has considered and reviewed the applicable discretionary sentencing guidelines and the

guidelines worksheets. The sentencing guidelines worksheets and the written explanation of any departure from the guidelines are ordered filed as a part of the record in this case.

Before pronouncing the sentence, the Court inquired if the defendant desired to make a statement and if the defendant desired to advance any reason why judgment should not be pronounced.

The Court **SENTENCES** the defendant to:

Incarceration with the Virginia Department of Corrections for the term of: _____ for _____, and _____ for _____. The total sentence imposed is _____.

A fine of $_____ for _____.

This sentence shall run with any other sentences imposed.

The Court **SUSPENDS**_____ of the _____ sentence and _____ of the _____ sentence, for a period of _____, for a total suspension of _____, upon the following condition(s):

Good behavior. The defendant shall be of good behavior for _____ from the defendant's release from confinement.

Community-based Corrections System Program. The defendant shall successfully complete the _____ program.

Supervised probation. The defendant is placed on probation to commence _____ under the supervision of a Probation Officer for _____ or unless sooner released by the court or by the Probation Officer. The defendant shall comply with all the rules and requirements set by the Probation Officer. Probation shall include substance abuse counseling and/or testing as prescribed by the Probation Officer.

Post-release supervision. The defendant shall be subject to a period of post-release supervision of _____.

Costs. The defendant shall pay costs of _____.

Restitution. The defendant shall make restitution as follows: _____ to _____.

Credit for time served. The defendant shall be given credit for time spent in confinement while awaiting trial pursuant to Code § 53.1-187.

_____
DATE

ENTER:_____
JUDGE

DEFENDANT IDENTIFICATION:

Alias: _____
SSN: _____ DOB: _____ Sex: _____

SENTENCING SUMMARY:

TOTAL SENTENCE IMPOSED: _____
TOTAL SENTENCE SUSPENDED: _____

Suggested Questions to Be Asked When Taking Pleas of Guilty or Nolo Contendere

A. Pleas of Guilty or Nolo Contendere with Plea Agreements Requiring Imposition of an Active or Suspended Sentence of Confinement in Jail

1. Do you understand the charge(s) against you?
2. When Defendant appears without counsel:
   (a) Do you understand you have the right to be represented by a lawyer?
   (b) Do you understand that if you do not have the financial ability to hire your own lawyer, and you want me to, I will have you interviewed to see if you qualify for court-appointed counsel and I will appoint an attorney to represent you if you qualify?
   (c) Do you want to hire an attorney to represent you, or be interviewed for court-appointed counsel or do you want to proceed today without a lawyer?
3. In Circuit Court:
   (a) Do you understand that you have the right to have your case heard by a jury?
   (b) Do you want your case to be heard by a judge without a jury or do you want a jury trial?
4. (a) I understand that you have agreed to plead guilty (no contest) with the understanding that you will be sentenced to _____. Is that correct? or
   (b) I understand that you have agreed to plead guilty (no contest) with the understanding that the prosecutor will recommend a sentence of _____. Do you understand that I do not have to accept the recommendation and that I can sentence you from _____ to _____? (provide full sentence range allowed by law)
5. Have you been promised anything else to get you to plead guilty (no contest)?
6. Are you being forced or threatened into pleading guilty (no contest)?
7. Do you understand that by pleading guilty (no contest) you are giving up your right to a trial including the right to hear from and question the witnesses against you and the right to avoid being required to give evidence against yourself?
8. Do you have any questions before I accept your plea(s) of guilty (no contest)?

B. Pleas of Guilty or Nolo Contendere Without a Plea Agreement

1. Do you understand the charge(s) against you?
2. When Defendant appears without counsel:
   (a) Do you understand you have the right to be represented by a lawyer?
   (b). Do you understand that if you do not have the financial ability to hire your own lawyer, and you want me to, I will have you interviewed to see if you qualify for court-appointed counsel and I will appoint an attorney to represent you if you qualify?
   (c) Do you want to hire an attorney to represent you, or be interviewed for court-appointed counsel or do you want to proceed today without a lawyer?
3. In Circuit Court:
   (a) Do you understand that you have the right to have your case heard by a jury?
   (b) Do you want your case to be heard by a judge without a jury or do you want a jury trial?
4. Do you understand that based upon your plea of guilty (no contest) the possible range of punishment is _____ to _____?
5. Have you been promised anything else to get you to plead guilty (no contest)?
6. Are you being forced or threatened into pleading guilty (no contest)?
7. Do you understand that by pleading guilty (no contest) you are giving up your right to a trial including the right to hear from and question the witnesses against you and the right to avoid being required to give evidence against yourself?
8. Do you have any questions before I accept your plea(s) of guilty (no contest)?

Suggested Plea of Guilty to Misdemeanor Plea Form with Plea Agreement Requiring Imposition of an Active or Suspended Sentence of Confinement in Jail

1. I understand the charge(s) against me.
2. a) I understand that I have the right to be represented by an attorney.
   b) I understand that if I do not have the financial ability to hire my own attorney, I could be interviewed to see if I qualify for court appointed counsel and if I did qualify the court would appoint an attorney to represent me.
   c) I do not want to be represented by an attorney and I do not want to be interviewed to see if I qualify for court appointed counsel. It is my

desire to give up my right to counsel and to proceed today without an attorney.

3. In Circuit Court:
   a) I understand that I have the right to have my case heard by a jury.
   b) I do not want my case to be heard by a jury and wish to proceed to have my case heard today by a judge without a jury.
4. a) I am pleading guilty (no contest) today based upon my understanding that I will be sentenced to _____.
   b) I am pleading guilty (no contest) today based upon my understanding that the prosecutor will recommend a sentence of _____. I understand that the judge does not have to accept the recommendation and can sentence me from _____ to _____.
5. I have not been promised anything to get me to plead guilty (no contest).
6. I am not being forced or threatened to get me to plead guilty (no contest).
7. I understand that by pleading guilty (no contest) I am giving up my right to a trial including the right to hear from and question the witnesses against me and the right to avoid being required to give evidence against myself.
8. I do not have any questions to ask the court before the court decides whether to accept my plea of guilty (no contest).

_____ _____

Counsel for Defendant Defendant

Suggested Plea of Guilty to Misdemeanor Plea Form without Plea Agreement

1. I understand the charge(s) against me.
2. a) I understand that I have the right to be represented by an attorney.
   b) I understand that if I do not have the financial ability to hire my own attorney, I could be interviewed to see if I qualify for court appointed counsel and if I did qualify the court would appoint an attorney to represent me.
   c) I do not want to be represented by an attorney and I do not want to be interviewed to see if I qualify for court appointed counsel. It is my desire to give up my right to counsel and to proceed today without an attorney.
3. In Circuit Court:
   a) I understand that I have the right to have my case heard by a jury.
   b) do not want my case to be heard by a jury and wish to proceed to have my case heard today by a judge without a jury.
4. I am pleading guilty (no contest) today based upon my understanding that I could be sentenced from _____ to _____.
5. I have not been promised anything to get me to plead guilty (no contest).
6. I am not being forced or threatened to get me to plead guilty (no contest).
7. I understand that by pleading guilty (no contest) I am giving up my right to a trial including the right to hear from and question the witnesses against me and the right to avoid being required to give evidence against myself.
8. I do not have any questions to ask the court before the court decides to accept my plea of guilty (no contest).

_____ _____

Counsel for Defendant Defendant

Proposed Legislation

REQUEST FOR NEW JUDGESHIP IN THE TWENTY-EIGHTH JUDICIAL CIRCUIT

A BILL to amend and reenact § 17.1-507 of the Code of Virginia, relating to number of circuit court judges.

Be it enacted by the General Assembly of Virginia:

1. That § 17.1-507 of the Code of Virginia is amended and reenacted as follows:

§ 17.1-507. Number of judges; residence requirement; compensation; powers; etc.

A. For the several judicial circuits there shall be judges, the number as hereinafter set forth, who shall during their service reside within their respective circuits and whose compensation and powers shall be the same as now and hereafter prescribed for circuit judges.

The number of judges of the circuits shall be as follows:

First - 5
Second - 10
Third - 4
Fourth - 9
Fifth - 3
Sixth - 2
Seventh - 5
Eighth - 4
Ninth - 4
Tenth - 3
Eleventh - 3
Twelfth - 5
Thirteenth - 8
Fourteenth - 4
Fifteenth - 8
Sixteenth - 5
Seventeenth - 4
Eighteenth - 3
Nineteenth - 15
Twentieth - 4
Twenty-first - 3
Twenty-second - 4
Twenty-third - 6
Twenty-fourth - 5
Twenty-fifth - 4
Twenty-sixth - 5
Twenty-seventh - 5
Twenty-eighth - ~~2~~ 3
Twenty-ninth - 4
Thirtieth - 3
Thirty-first - 5

B. No additional circuit court judge shall be authorized or provided for any judicial circuit until the Judicial Council has made a study of the need for such additional circuit court judge and has reported its findings and recommendations to the Courts of Justice Committees of the House of Delegates and Senate. The boundary of any judicial circuit shall not be changed until a study has been made by the Judicial Council and a report of its findings and recommendations made to said Committees.

C. If the Judicial Council finds the need for an additional circuit court judge after a study is made pursuant to subsection B, the study shall be made available to the Compensation Board and the Courts of Justice Committees of the House of Delegates and Senate and Council shall publish notice of such finding in a publication of general circulation among attorneys licensed to practice in the Commonwealth. The Compensation Board shall make a study of the need to provide additional courtroom security and deputy court clerk staffing. This study shall be reported to the Courts of Justice Committees of the House of Delegates and the Senate, and to the Department of Planning and Budget.

A BILL to amend and reenact §§ 1-13.23:1, 3.1-358, 3.1-389, 8.01-2, 8.01-23, 8.01-33, 8.01-272, 8.01-282, 8.01-283, 8.01-331, 8.01-336, 8.01-426, 8.01-670, 9.1-406, 15.2-4119, 16.1-296, 17.1-124, 17.1-131, 17.1-213, 17.1-240, 17.1-249, 17.1-275, 17.1-278, as it is currently effective and as it may become effective, 17.1-279, 17.1-513, 17.1-520, 18.2-500, 18.2-507, 19.2-385, 19.2-386.13, 20-96, 26-21, 26-29, 31-8.1, 40.1-49.4, 43-62, 51.5-46, 53.1-70, 55-19, 55-277, 56-521, 56-522, 57-9, 57-16, 58.1-1727, 64.1-106 and 64.1-179 of the Code of Virginia, and to repeal §§ 8.01-270 and 8.01-284 of the Code of Virginia, relating to circuit court civil actions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 1-13.23:1, 3.1-358, 3.1-389, 8.01-2, 8.01-23, 8.01-33, 8.01-272, 8.01-282, 8.01-283, 8.01-331, 8.01-336, 8.01-426, 8.01-670, 9.1-406, 15.2-4119, 16.1-296, 17.1-124, 17.1-131, 17.1-213, 17.1-240, 17.1-249, 17.1-275, 17.1-278, as it is currently effective and as it may become effective, 17.1-279, 17.1-513, 17.1-520, 18.2-500, 18.2-507, 19.2-385, 19.2-386.13, 20-96, 26-21, 26-29, 31-8.1, 40.1-49.4, 43-62, 51.5-46, 53.1-70, 55-19, 55-277, 56-521, 56-522, 57-9, 57-16, 58.1-1727, 64.1-106 and 64.1-179 of the Code of Virginia are amended and reenacted as follows:

§ 1-13.23:1. Process.

The word "process" shall be construed to include subpoenas ~~in chancery~~, ~~notices to commence actions at law~~ the summons and complaint in a civil action, and process in statutory actions.

§ 3.1-358. Jurisdiction to enjoin unlawful use of Label.

Any court of record ~~having general chancery jurisdiction in this~~ the Commonwealth shall have jurisdiction to enjoin the use of the Virginia Quality Label or of such label with the shield of the United States or any imitation or counterfeit likeness thereof used in violation of this article.

§ 3.1-389. Injunctions to prevent violations; exceptions as to certain publications.

In addition to the remedies hereinafter provided the Commissioner is authorized to apply to any court of record ~~having general chancery jurisdiction in this~~ the Commonwealth for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of § 3.1-388, irrespective of whether or not there exists an adequate remedy at law. But whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals, (1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction.

§ 8.01-2. General definitions for this title.

As used in this title, unless the context otherwise requires, the term:

1. "Action" and "suit" may be used interchangeably and shall include all civil proceedings whether upon claims at law, in equity, or statutory in nature and whether in circuit courts or district courts;

2. "Decree" and "judgment" may be used interchangeably and shall include orders or awards;

3. "Fiduciary" shall include any one or more of the following:

a. guardian,

b. committee,

c. trustee,

d. executor,

e. administrator, and administrator with the will annexed,

f. curator of the will of any decedent, or

g. conservator;

4. "Rendition of a judgment" means the time at which the judgment is signed and dated;

5. "Person" shall include individuals, a trust, an estate, a partnership, an association, an order, a corporation, or any other legal or commercial entity;

6. "Person under a disability" shall include:

a. a person convicted of a felony during the period he is confined;

b. an infant;

c. a drug addict or an alcoholic as defined in § 37.1-1;

d. an incapacitated person as defined in § 37.1-134.6;

e. an incapacitated ex-service person under § 37.1-134.20; or

f. any other person who, upon motion to the court by any party to an action or suit or by any person in interest, is determined to be (i) incapable of taking proper care of his person, or (ii) incapable of properly handling and managing his estate, or (iii) otherwise unable to defend his property or legal rights either because of age or temporary or permanent impairment, whether physical, mental, or both;

7. "Sheriff" shall include deputy sheriffs and such other persons designated in § 15.2-1603;

8. "Summons" and "subpoena" may be used interchangeably and shall include a subpoena duces tecum for the production of documents and tangible things;

9. "Court of equity," "law and equity court," "law and chancery court," "chancery court," "corporation court," "the chancery side," "court exercising powers in chancery," "court with equitable jurisdiction," and "receivership court" shall mean the circuit court when entertaining equitable claims;

10. A "motion for judgment," "bill," "bill of complaint," or "bill in equity" shall mean a complaint in a civil action, as provided in the Rules of Supreme Court of Virginia ;

11. "Equity practice," "equity procedure," "chancery practice," and "chancery procedure" shall mean practice and procedure in a civil action as prescribed by this Code and the Rules of Supreme Court of Virginia.

§ 8.01-23. Decree in suit when number of parties exceeds 30 and one of them dies.

When, in any suit ~~in equity~~ involving a decedent's estate or a trust, the number of parties exceeds ~~thirty~~ 30, and any one of the parties jointly interested with others in any question arising therein, ~~shall die~~ dies, the court may, notwithstanding, if in its opinion all classes of interests are represented and no one will be prejudiced thereby, proceed to render a decree in such suit as if such party were alive; decreeing to the heirs, devisees, legatees, distributees, or personal representatives, as the case may be, such interest as the deceased person, if alive, would be entitled to. The provisions of § 8.01-322 shall apply to decrees entered hereunder.

§ 8.01-33. Equitable relief in certain cases.

A court ~~of equity~~ shall not ~~have jurisdiction of a suit~~ grant equitable relief upon a bond, note, or writing, by an assignee or holder thereof, unless it ~~appear~~ appears that the plaintiff had ~~not an~~ no adequate remedy thereon at law.

§ 8.01-272. Pleading several matters; joining tort and contract claims; separate trial in discretion of court; counterclaims.

In any civil action, a party may plead as many matters, whether of law or fact, as he shall think necessary. A party may join a claim in tort with one in contract provided that all claims so joined arise out of the same transaction or occurrence. The court, in its discretion, may order a separate trial for any claim. Any counterclaim ~~brought in an action under Part Three of the Rules of Court~~ shall be governed by ~~such~~ the Rules of Supreme Court of Virginia.

§ 8.01-282. Motion to strike evidence.

~~In any chancery cause when~~ When a defendant moves the court to strike out all of the evidence, upon any grounds, and such motion is overruled by the court, such defendant shall not thereafter be precluded from introducing evidence in his behalf~~, and the procedure thereon shall be the same and shall have the same effect as the motion to strike the evidence in an action at law~~.

§ 8.01-283. Answer in equity proceeding.

~~Unless a complainant in a suit in equity shall, in his bill, request an answer or answer under oath to certain specified interrogatories, the answer of the defendant, though under oath, shall not be evidence in his favor, unless the cause be heard upon bill and answer only; but may, nevertheless, be used as an affidavit with the same effect as heretofore upon a motion to grant or dissolve any injunction, or upon any other incidental motion in the cause; but this section shall not apply to either pure bills of discovery or what are known as mixed bills of discovery, and shall not prevent a defendant from testifying in his own behalf, where he would otherwise be a competent witness.~~ There shall be no requirement that a sworn answer in a proceeding on an equitable claim be rebutted by the testimony of two witnesses.

§ 8.01-331. Entry of cases on current dockets.

When any civil action is commenced in a circuit court, or any such action is removed to such court and the required writ tax and fees thereon paid, the clerk shall enter the same in the civil docket. ~~Law cases shall be entered separately from equity cases on the docket.~~ These dockets may be either (i) a substantial, well-bound loose-leaf book, (ii) a visible card index or (iii) automated data processing media. Each case shall be entered on the civil docket, on which shall be entered:

1. The short style of the suit or action,
2. The names of the attorneys,
3. The nature of the suit or action, and
4. The date filed and case file number.

In addition the docket may contain the following information applicable in an individual case as deemed appropriate:

1. The names of the parties,
2. The date of the issuance of process,
3. A memorandum of the service of process,
4. A memorandum of the orders and proceedings in the case, and
5. The hearing date(s) and type(s) of hearing(s) conducted on such date(s).

The clerk may enter the clerk's fees in the case on such docket instead of in the fee book ~~prescribed by § 14.1-168~~.

Cases appealed from the juvenile and domestic relations district courts shall be docketed as provided in this section and, to the extent inconsistent with this section, § 16.1-302.

§ 8.01-336. Jury trial of right; waiver of jury trial; court-ordered jury trial; trial by jury of plea in equity; equitable claim.

A. The right of trial by jury as declared in Article I, Section 11 of the Constitution of Virginia and by statutes thereof shall be preserved inviolate to the parties.

B. Waiver of jury trial. - In any action at law in which the recovery sought is greater than $100, exclusive of interest, unless one of the parties ~~demand~~ demands that the case or any issue thereof be tried by a jury, or in a criminal action in which trial by jury is dispensed with as provided by law, the whole matter of law and fact may be heard and judgment given by the court.

C. Court-ordered jury trial. - Notwithstanding any provision in this Code to the contrary, in any action asserting a claim at law in which there has been no demand for trial by jury by any party, a circuit court may on its own motion direct one or more issues, including an issue of damages, to be tried by a jury.

D. Trial by jury of plea in equity. - In any action in which a plea has been filed to an equitable claim, and the allegations of such plea are denied by the plaintiff, either party may have the issue tried by jury.

E. ~~Issue out of chancery~~ Suit on equitable claim. - In any suit ~~in equity~~ on an equitable claim, the court may, of its own motion or upon motion of any party, supported by such party's affidavit that the case will be rendered doubtful by conflicting evidence of another party, direct an issue to be tried by ~~a~~ before an advisory jury.

§ 8.01-426. "Judgment" includes decree.

A decree for land or specific personal property, and a decree or order requiring the payment of money, shall have the effect of a judgment for such land, property, or money, and be embraced by the word "judgment," where used in this chapter or in Chapters 18, 19 or 20 of this title or in Title 43; but a party may proceed to carry into execution a decree or order ~~in chancery~~ other than for the payment of money, as he might have done if this and the following section had not been enacted.

§ 8.01-670. In what cases awarded.

A. Except as provided by § 17.1-405, any person may present a petition for an appeal to the Supreme Court if he believes himself aggrieved:

1. By any judgment in a controversy concerning:

a. The title to or boundaries of land,

b. The condemnation of property,

c. The probate of a will,

d. The appointment or qualification of a personal representative, guardian, conservator, committee, or curator,

e. A mill, roadway, ferry, wharf, or landing,

f. The right of the Commonwealth, or a county, or municipal corporation to levy tolls or taxes, or

g. The construction of any statute, ordinance, or county proceeding imposing taxes; or

2. By the order of a court refusing a writ of quo warranto or by the final judgment on any such writ; or

3. By a final judgment in any other civil case.

B. Except as provided by § 17.1-405, any party may present a petition for an appeal to the Supreme Court in any case ~~in chancery~~ on an equitable claim wherein there is an interlocutory decree or order:

1. Granting, dissolving or denying an injunction; or

2. Requiring money to be paid or the possession or title of property to be changed; or

3. Adjudicating the principles of a cause.

C. Except in cases where appeal from a final judgment lies in the Court of Appeals, as provided in § 17.1-405, any party may present a petition pursuant to § 8.01-670.1 for appeal to the Supreme Court.

§ 9.1-406. Appeals.

Appeals from judgments entered pursuant to this chapter shall be allowed as in ~~chancery matters~~ civil actions generally.

§ 15.2-4119. Effect on jurisdiction of courts.

Upon the effective date of the transition from city to town status, all criminal prosecutions then pending therein, whether by indictment, warrant or other complaint, and all suits, actions, motions, warrants, and other proceedings of a civil nature, ~~at law or chancery,~~ with all the records of the courts of the city, shall stand ipso facto removed to the courts of concurrent or like jurisdiction of the appropriate county. The circuit and other courts having courthouses and records in and jurisdiction over the city shall, at some convenient time, as closely preceding the period of removal as practicable, by formal orders entered of record, direct the removal of all such causes and proceedings, civil and criminal, ~~at law and in chancery,~~ to the court or courts of concurrent or like jurisdiction of the county. The clerk of the court or courts to which the causes and proceedings have been removed shall thereupon proceed as in other cases of removal or changes of venue and such matters shall be docketed and handled as though initially filed in such court or courts. At the same time such clerk or clerks shall also deliver to the proper clerk or clerks of the county all the deed books, order or minute books, execution dockets, judgment dockets and other records of his office, of whatever kind or nature. The clerk or clerks of the court or courts to which the records are removed shall take charge of and preserve the records for reference and use in the same manner and with the same effect as though they were original records of his office.

§ 16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within 10 days from the entry of a final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within 30 days from entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of 12 persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or § 16.1-273.

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a

disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

C2. Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8 and the juvenile is in a secure facility pending the appeal, the circuit court, when practicable, shall hold a hearing on the merits of the case within 45 days of the filing of the appeal. Upon receipt of the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order and a copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt of notice of an appeal. The time limitations shall be tolled during any period in which the juvenile has escaped from custody. A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within 90 days of the perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

F. In all other cases on appeal, proceedings in the circuit court shall ~~conform to the equity practice where evidence is heard ore tenus;~~be heard without a jury; however, hearing of an issue ~~out of chancery~~ by an advisory jury may be allowed, in the discretion of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court, except that the appeal to circuit court of any case in which a fee either was or could have been assessed pursuant to § 16.1-69.48:5 shall also be in accordance with § 16.1-296.2.

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal. An appeal will not be perfected unless such appeal bond as may be required is filed within 30 days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal.
This subsection shall not apply to release on bail pursuant to other subsections of this section or § 16.1-298.

I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter.

J. In any case which has been referred or transferred from a circuit court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had been referred or transferred.

§ 17.1-124. Order books.

Except as otherwise provided herein, each circuit court clerk shall keep ~~two~~ order books~~, to be known as the common law order book and the chancery order book. In the common law order book,~~ recording all proceedings, orders and judgments of the court in all matters~~ at common law shall be recorded. In the chancery order book~~, all decrees, and decretal orders of such court, in matters of equity~~ and all matters pertaining to trusts, the appointment and qualification of trustees, committees, administrators, executors, conservators and guardians shall be recorded, except when the same are appointed by the clerk of court, in which event the order appointing such administrators or executors, shall be made and entered in the clerk's order book. In any circuit court, the clerk may, with the approval of the chief judge of the court, by order entered of record, divide the ~~common law~~ order book into two sections, to be known as the civil ~~common law~~ order book and the criminal ~~common law~~ order book. All proceedings, orders and judgments of the court in all matters at civil ~~common~~ law shall be recorded in the civil ~~common law~~ order book, and all proceedings, orders and judgments of the court in all matters at criminal law shall be recorded in the criminal ~~common law~~ order book. ~~The action of any court which has established a separate criminal common law order book prior to July 1, 1973, is hereby validated.~~ In any proceeding brought for the condemnation of property, all proceedings, orders, judgments and decrees of the court shall be recorded in the ~~common law~~ civil order book of the court. The recordation prior to January 1, 1974, of all proceedings, orders, judgments and decrees in such cases, whether entered in the common-law order book or the chancery order book of any court, is hereby declared a valid and proper recordation of the same. Orders in cases appealed from the juvenile and domestic relations district courts shall be maintained as provided in this section and, to the extent inconsistent with this section, § 16.1-302.

§ 17.1-131. Jurisdiction to issue writs of mandamus in matters pertaining to action of service district commission.

The circuit court of a county or city having original and general jurisdiction of ~~suits in chancery and civil cases at law,~~ civil actions in which county or city is situated the seat of government of a service district, shall have original exclusive jurisdiction to issue writs of mandamus in all matters or proceedings arising from or pertaining to the action of the service district commission.

§ 17.1-213. Disposition of papers in ended cases.

A. All case files for cases ended prior to January 1, 1913, shall be permanently maintained in hardcopy form, either in the locality served by the circuit court where such files originated or in The Library of Virginia

in accordance with the provisions of §§ 42.1-83 and 42.1-86.

B. The following records for cases ending on or after January 1, 1913, may be destroyed in their entirety at the discretion of the clerk of each circuit court after having been retained for 10 years after conclusion:

1. Conditional sales contracts;

2. Concealed weapons permit applications;

3. Minister appointments;

4. Petitions for appointment of trustee;

5. Name changes;

6. Nolle prosequi cases;

7. ~~Law and chancery matters~~ Civil actions that are voluntarily dismissed, including nonsuits, cases that are dismissed as settled and agreed, cases that are dismissed with or without prejudice, cases that are discontinued or dismissed under § 8.01-335 and district court appeals dismissed under § 16.1-113 prior to 1988;

8. Misdemeanor and traffic cases, including those which were commenced on a felony charge but concluded as a misdemeanor;

9. Suits to enforce a lien;

10. Garnishments;

11. Executions except for those covered in § 8.01-484;

12. Miscellaneous oaths and qualifications, but only if the order or oath or qualification is spread in the appropriate order book; and

13. Civil cases pertaining to declarations of habitual offender status and full restoration of driving privileges.

C. All other records or cases ending on or after January 1, 1913, may be destroyed in their entirety at the discretion of the clerk of each circuit court subject to the following guidelines:

1. All civil ~~and chancery~~ case files to which subsection D does not pertain may be destroyed after 20 years from the court order date.

2. All criminal cases dismissed, including those not a true bill, acquittals and not guilty verdicts, may be destroyed after 10 years from the court order date.

3. All criminal case files involving a felony conviction may be destroyed (i) after 20 years from the sentencing date or (ii) when the sentence term ends, whichever comes later.

D. Under the provisions of subsections B and C, the entire file of any case deemed by the local clerk of court to have historical value, as defined in § 42.1-77, or genealogical or sensational significance shall be retained permanently as shall all cases in which the title to real estate is established, conveyed or condemned by an order or decree of the court. The final order for all cases in which the title to real estate is so affected shall include an appropriate notification thereof to the clerk.

E. Except as provided in subsection A, the clerk of a circuit court may cause (i) any or all ended records, papers, or documents pertaining to ~~law, chancery,~~ civil and criminal cases which have been ended for a period of three years or longer~~;~~; (ii) any unexecuted search warrants and affidavits for unexecuted search warrants, provided at least three years have passed since issued~~;~~; (iii) any abstracts of judgments~~;~~; and (iv) original wills, to be destroyed if such records, papers, documents, or wills no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed or converted to an electronic format. Such microfilm and microphotographic processes and equipment shall meet state archival microfilm standards pursuant to § 42.1-82, or such electronic format shall follow state electronic records guidelines, and such records, papers, or documents so converted shall be placed in conveniently accessible files and provisions made for examining and using same. The clerk shall further provide security negative copies of any such microfilmed materials for storage in The Library of Virginia.

§ 17.1-240. Recording by microphotographic or electronic process.

A procedural microphotographic process, digital reproduction, or any other micrographic process which stores images of documents in reduced size or in electronic format, may be used to accomplish the recording of writings otherwise required by any provision of law to be spread in a book or retained in the circuit court clerk's office, including, but not limited to, the ~~Common Law Order Book, the Chancery Order Book, the Clerk's Order Books~~civil and criminal order books, the Will Book and/or Fiduciary Account Book, the Juvenile Order Book, the Adoption Order Book, the Trust Fund Order Book, the Deed Book, the Plat Book, the Land Book, the Judgment Docket Book, the Partnership or Assumed Name Certificate Book, marriage records, and financing statements. Any such micrographic, microphotographic or electronic recording process shall meet archival standards as recommended by the The Library of Virginia.

§ 17.1-249. General indexes for clerks' offices; daily index.

A. There shall be kept in every clerk's office modern, family name or ledgerized alphabetical key-table general indexes to all deed books, miscellaneous liens, will books, judgment dockets and court order books. The clerk shall enter daily either in such general indexes or in the daily index to instruments admitted to record every deed, corrected or amended deed, deed of release, deed of trust, contract of sale, or any addendum or memorandum relating to any of these instruments, indexing each instrument in the names of all parties listed in the first clause of each instrument as required by §§ 55-48 and 55-58. Any clerk, deputy clerk, or employee of any clerk who so indexes any such instrument shall index any name appearing in the first clause of the original instrument.

B. A deed made to one or more trustees to secure the payment of an indebtedness, and any certificate of satisfaction or certificate of partial satisfaction, assignment, loan modification agreement, substitution of trustees or similar instrument subsequently recorded with respect to such deed, shall be sufficiently indexed if the clerk enters in the appropriate places in the general index to deeds provided for in subsection A the names of the grantor and the name of the beneficiary or, in lieu of the name of the beneficiary, the first listed trustee as grantee. The beneficiary need not be named in the first clause of the deed as a condition of recordation.

C. A deed made by a person in a representative capacity, or by devisees or coparceners, shall be indexed in the names of the grantors and grantees and the name of the former record title owner listed in the first clause of the instrument.

D. The general indexes of ~~law and chancery~~ civil causes shall be sufficiently kept if the clerk indexes such causes under the short style or title thereof, except that in multiple suits brought under § 58.1-3968, the names of all of the defendants disclosed by the pleadings shall be entered in the general index or book.

E. Every deed of conveyance of real estate in which a vendor's lien is reserved shall be double indexed so as to show not only the conveyance from the grantor to the grantee in the instrument, but also the reservation of the lien as if it were a grant of the same from the grantee to the grantor by a separate instrument and the fact of the lien shall be noted in the index.

F. All deed books, miscellaneous liens, will books, judgment dockets, and court order books shall be numbered or otherwise adequately designated and the clerk upon the delivery of any writing to him for record required by law to be recorded shall duly index it upon the general index in the manner hereinbefore required. When the writing has been actually transcribed on the book, the clerk shall add to the general index the number of the book in which, and the page on which, the writing is recorded.

G. The clerk on receipt of any such writing for record may immediately index it in a book to be known as the "daily index of instruments admitted to record" and within ~~ninety~~ 90 days after its admission to record the clerk shall index all such writings indexed in the daily index in the appropriate general index as hereinbe-

fore provided. The daily index book shall, at all times, be kept in the office of the clerk and conveniently available for examination by the public. During the period permitted for transfer from the daily index to the general index, indexing in the daily index shall be a sufficient compliance with the requirements of this section as to indexing.

H. The judge of any circuit court may make such orders as he deems advisable as to the time and method of indexing the order books in the clerk's office of the court and may dispense with a general index for order books of the court.

I. The clerk may maintain his indexes on computer, word processor, microfilm, microfiche, or other micrographic medium and, in addition, may maintain his grantor and grantee indexes on paper.

§ 17.1-275. Fees collected by clerks of circuit courts; generally.

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, $16 for an instrument or document consisting of ~~ten~~ 10 or fewer pages or sheets; $30 for an instrument or document consisting of 11 to 30 pages or sheets; and $50 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of $15 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. One dollar and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, $20 for estates not exceeding $50,000, $25 for estates not exceeding $100,000 and $30 for estates exceeding $100,000. No fee shall be charged for estates of $5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, $10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, $10.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, $3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be $15 in cases not exceeding $500 and $25 in all other cases.

8. For making out a copy of any paper or record to go out of the office, which is not otherwise specifically provided for, a fee of $.50 for each page. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge $2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional $.50.

10. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee of

$150 for each felony conviction and each felony disposition under § 18.2-251 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund.

11. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251, which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund as provided in § 17.1-275.8.

12. Upon the defendant's being required to successfully complete traffic school or a driver improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as if he had been convicted.

13. In all civil actions ~~at law~~ that include one or more claims for the award of monetary damages the clerk's fee chargeable to the plaintiff shall be $50 in cases seeking recovery not exceeding $50,000, $100 in cases seeking recovery not exceeding $100,000, and $150 in cases seeking recovery exceeding $100,000~~; and in condemnation cases, a~~ A fee of $25~~, to~~ shall be paid by the plaintiff at the time of instituting ~~the action, this fee to be~~ a condemnation case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

13a. For the filing of any petition seeking court approval of a settlement where no action has yet been filed, the clerk's fee, chargeable to the petitioner, shall be $50, to be paid by the petitioner at the time of filing the petition.

14. In addition to the fees chargeable for civil actions ~~at law~~, for the costs of proceedings for judgments by confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or certified mail~~;~~; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the amount of the confessed judgment~~;~~; (iii) for the sheriff for serving each copy of the order entering judgment, $12~~;~~; and (iv) for docketing the judgment and issuing executions thereon, the same fees as prescribed in subdivision A 17.

15. For qualifying notaries public, including the making out of the bond and any copies thereof, administering the necessary oaths, and entering the order, $10.

16. For each habeas corpus proceeding, the clerk shall receive $10 for all services required thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

17. For docketing and indexing a judgment from any other court of this Commonwealth, for docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment pursuant to § 8.01-452, a fee of $5; and for issuing an abstract of any recorded judgment, when proper to do so, a fee of $5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee of $20.

18. For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge ~~ten dollars~~$10, to be paid by the party filing said papers at the time of filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the entry of a decree of divorce from the bond of matrimony.

19., 20. [Repealed.]

21. For making the endorsements on a forthcoming bond and recording the matters relating to such bond pursuant to the provisions of § 8.01-529, $1.

22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or § 57-15, $10.

23. For preparation and issuance of a subpoena duces tecum, $5.

24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name, $20; however, this subdivision shall not be applicable in cases where the change of name is incident to a divorce.

25. For providing court records or documents on microfilm, per frame, $.10.

26. In all ~~chancery causes~~ divorce and separate maintenance proceedings, and all civil actions that do not include one or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be $50 to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged for the filing of a ~~cross bill~~ cross-claim or setoff in any pending suit. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit cards in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect a service charge of four percent of the amount paid.

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit card issuer that payment will not be made for any reason, the clerk shall collect, if allowed by the court, a fee of $20 or 10 percent of the amount to be paid, whichever is greater, in accordance with § 19.2-353.3.

29. For all services rendered, except in cases in which costs are assessed pursuant to §§ 17.1-275.1, 17.1-275.2, 17.1-275.3, or § 17.1-275.4, in an adoption proceeding, a fee of $20, in addition to the fee imposed under § 63.2-1246, to be paid by the petitioner or petitioners.

30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ 33.1-124, 33.1-125 and 33.1-129, a fee of $5 to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.1-122, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

32. For making up, certifying and transmitting original record pursuant to the Rules of ~~the~~ Supreme Court, including all papers necessary to be copied and other services rendered, except in cases in which costs are assessed pursuant to §§ 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or § 17.1-275.9, a fee of $20.

33. For issuance of hunting and trapping permits in accordance with § 10.1-1154, $.25.

34. For filings, etc., under the Uniform Federal Lien Registration Act (§ 55-142.1 et seq.), the fees shall be as prescribed in that Act.

35. For filing the appointment of a resident agent for a nonresident property owner in accordance with § 55-218.1, a fee of $1.

36. [Repealed.]

37. For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of $10.

38. For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

39. For lodging, indexing and preserving a will in accordance with § 64.1-56, a fee of $2.

40. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed under § 8.9A-525.

41. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed under § 8.9A-525.

42. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as prescribed under § 8.9A-525.

43. For filing a petition as provided in §§ 37.1-134.7 and 37.1-134.17, the fee shall be $10.

44. For issuing any execution, and recording the return thereof, a fee of $1.50.

45. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee of $5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an additional fee of $1.50, in accordance with subdivision A 44.

B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for courthouse construction, renovation or maintenance.

C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for public law libraries.

E. The provisions of this section shall control the fees charged by clerks of circuit courts for the services above described.

§ 17.1-278. (Expires July 1, 2006) Additional fees in certain courts; use by Virginia State Bar.

In addition to the fees prescribed by § 16.1-69.48:2 and subdivision A 13 of § 17.1-275 and to be collected by the clerk of the circuit or general district court upon the filing of papers for the commencement of civil actions in such courts, the following additional fees shall be collected in all cities and counties in which civil legal representation is provided for the poor, without charge, by a nonprofit legal aid program organized under the auspices of the Virginia State Bar: (i) upon commencement of ~~an~~ a civil action ~~whether at law or in chancery~~ in such circuit court, an additional fee of $5 and (ii) upon commencement of a civil action in such general district court, an additional fee of $5.

The additional fees prescribed by this action shall be collected by the clerk at the time of the filing. The amounts so collected shall be paid by the clerk to the state treasury and credited as follows: (i) $4 to a special fund within the Virginia State Bar fund to be designated the Legal Aid Services Fund, and (ii) $1 to the general fund for funding of the district courts of the Commonwealth. Such amount for the district courts shall be used to assist indigent litigants. Such amounts credited to the Legal Aid Services Fund shall be disbursed by the Virginia State Bar by check from the State Treasurer upon a warrant of the Comptroller to nonprofit legal aid programs organized under the auspices of the Virginia State Bar through the Legal Services Corporation of Virginia to assist in defraying the costs of such programs. However, the additional fees prescribed by this section shall not be collected in actions initiated by any local government or by the Commonwealth.

§ 17.1-278. (Effective July 1, 2006) Additional fees in certain courts; use by Virginia State Bar.

In addition to the fees prescribed by §§ 16.1-69.48:2 and 17.1-275 A 13 and to be collected by the clerk of the circuit or general district court upon the filing of papers for the commencement of civil actions in such courts, the following additional fees shall be collected in all cities and counties in which civil legal representation is provided for the poor, without charge, by a nonprofit legal aid program organized under the auspices of the Virginia State Bar: (i) upon commencement of ~~an~~ a civil action ~~whether at law or in chancery~~ in

such circuit court, an additional fee of ~~four dollars~~ $4 and (ii) upon commencement of a civil action in such general district court, an additional fee of ~~four dollars~~$4.

The additional fees prescribed by this action shall be collected by the clerk at the time of the filing. The amounts so collected shall be paid by the clerk to the state treasury and credited as follows: (i) ~~three dollars~~ $3 to a special fund within the Virginia State Bar fund to be designated the Legal Aid Services Fund, and (ii) ~~one dollar~~ $1 to the general fund for funding of the district courts of the Commonwealth. Such amount for the district courts shall be used to assist indigent litigants. Such amounts credited to the Legal Aid Services Fund shall be disbursed by the Virginia State Bar by check from the State Treasurer upon a warrant of the Comptroller to nonprofit legal aid programs organized under the auspices of the Virginia State Bar through the Legal Services Corporation of Virginia to assist in defraying the costs of such programs. However, the additional fees prescribed by this section shall not be collected in actions initiated by any local government or by the Commonwealth.

§ 17.1-279. Additional fee to be assessed by circuit court clerks for information technology.

A. In addition to the fees otherwise authorized by this chapter, the clerk of each circuit court shall assess a $5 fee, known as the "Technology Trust Fund Fee," in each ~~law and chancery~~ civil action, upon each instrument to be recorded in the deed books, and upon each judgment to be docketed in the judgment lien docket book. Such fee shall be deposited by the State Treasurer into a trust fund. The State Treasurer shall maintain a record of such deposits.

B. Four dollars of every $5 fee shall be allocated by the Compensation Board from the trust fund for the purposes of: (i) developing and updating individual land records automation plans for individual circuit court clerks' offices; (ii) implementing automation plans to modernize land records in individual circuit court clerks' offices and provide secure remote access to land records throughout the Commonwealth; (iii) obtaining and updating office automation and information technology equipment including software and conversion services; (iv) preserving, maintaining and enhancing court records, including, but not limited to, the costs of repairs, maintenance, service contracts and system upgrades; and (v) improving public access to court records. The Compensation Board in consultation with circuit court clerks and other users of court records shall develop and update policies governing the allocation of funds for these purposes. However, such funds shall not be used for personnel costs within the circuit court clerks' offices. The Compensation Board policies governing the allocation of funds shall require that a clerk submit to the Compensation Board a written certification that the clerk's proposed technology improvements of his land records will accommodate secure remote access to those land records on a statewide basis.

The annual budget submitted by each circuit court clerk pursuant to § 15.2-1636.7 may include a request for technology improvements in the upcoming fiscal year to be allocated by the Compensation Board from the trust fund. Such request shall not exceed the deposits into the trust fund credited to that locality. The Compensation Board shall allocate the funds requested by the clerks in an amount not to exceed the deposits into the trust fund credited to their respective localities.

C. The remaining $1 of each such fee may be allocated by the Compensation Board from the trust fund (i) for the purposes of funding studies to develop and update individual land-records automation plans for individual circuit court clerks' offices, at the request of and in consultation with the individual circuit court clerk's offices, and (ii) for the purposes enumerated in subsection B to implement the plan to modernize land records in individual circuit court clerks' offices and provide secure remote access to land records throughout the Commonwealth. The allocations pursuant to this subsection may give priority to those individual clerks' offices whose deposits into the trust fund would not be sufficient to implement its modernization plan. The Compensation Board policies governing the allocation of funds shall require that a clerk submit to the

Compensation Board a written certification that the clerk's proposed technology improvements of his land records will accommodate secure remote access to those land records on a statewide basis.

D. Secure remote access to land records shall be by paid subscription service through individual circuit court clerk's offices pursuant to § 17.1-276, or through designated application service providers. Compliance with security standards developed by the Virginia Information Technologies Agency pursuant to § 2.2-3808.2 shall be certified by the individual circuit court clerks' offices to the Virginia Information Technologies Agency and the Compensation Board. The individual circuit court clerk's office or its designated application service provider shall certify compliance with such security standards. Nothing in this section shall prohibit the Compensation Board from allocating trust fund money to individual circuit court clerks' offices for the purpose of complying with such security standards.

E. Such fee shall not be assessed to any instrument to be recorded in the deed books nor any judgment to be docketed in the judgment lien docket books tendered by any federal, state or local government.

F. If a circuit court clerk has implemented an automation plan for his land records that will accommodate secure remote access on a statewide basis, then that clerk may apply to the Compensation Board for an allocation from the Technology Trust Fund for automation and technology improvements in the ~~law and chancery~~ civil divisions, or the criminal division, of his office. Such request shall not exceed the deposits into the trust fund credited to that locality. The Compensation Board in approval of such application shall consider what local funds have been spent by the jurisdiction to accelerate the implementation of the technology plan approved by the Virginia Information Technologies Agency in each circuit court clerk's office.

G. Information regarding the technology programs adopted by the circuit court clerks shall be shared with the Virginia Information Technologies Agency, The Library of Virginia, and the Office of the Executive Secretary of the Supreme Court.

H. Nothing in this section shall be construed to diminish the duty of local governing bodies to furnish supplies and equipment to the clerks of the circuit courts pursuant to § 15.2-1656. Revenue raised as a result of this section shall in no way supplant current funding to circuit court clerks' offices by local governing bodies.

I. It is the intent of the General Assembly that all circuit court clerks provide secure remote access to land records on or before July 1, 2006.

§ 17.1-513. Jurisdiction of circuit courts.

The circuit courts shall have jurisdiction of proceedings by quo warranto or information in the nature of quo warranto and to issue writs of mandamus, prohibition and certiorari to all inferior tribunals created or existing under the laws of this Commonwealth, and to issue writs of mandamus in all matters of proceedings arising from or pertaining to the action of the boards of supervisors or other governing bodies of the several counties for which such courts are respectively held or in other cases in which it may be necessary to prevent the failure of justice and in which mandamus may issue according to the principles of common law. They shall have appellate jurisdiction in all cases, civil and criminal, in which an appeal may, as provided by law, be taken from the judgment or proceedings of any inferior tribunal.

They shall have original and general jurisdiction of all ~~cases in chancery and~~ civil cases ~~at law~~, except cases ~~at law~~ upon claims to recover personal property or money not of greater value than $100, exclusive of interest, and except such cases as are assigned to some other tribunal; also in all cases for the recovery of fees in excess of $100; penalties or cases involving the right to levy and collect toll or taxes or the validity of an ordinance or bylaw of any corporation; and also, of all cases, civil or criminal, in which an appeal may be had to the Supreme Court. They shall also have original jurisdiction of all indictments for felonies and of presentments, informations and indictments for misdemeanors.

They shall have appellate jurisdiction of all cases, civil and criminal, in which an appeal, writ of error or supersedeas may, as provided by law, be taken to or allowed by such courts, or the judges thereof, from or to the judgment or proceedings of any inferior tribunal. They shall also have jurisdiction of all other matters, civil and criminal, made cognizable therein by law and when a motion to recover money is allowed in such tribunals, they may hear and determine the same, although it is to recover less than $100.

§ 17.1-520. What tried at a special term.

At any such special term:

1. Any civil case may be tried which could lawfully have been but was not tried at the last preceding term that was or should have been held;

2. Any motion ~~for a judgment or other motion~~ cognizable by such court may be heard and determined, whether it was pending at the preceding term or not;

3. Any criminal case may be tried at such special term as if it were a regular term, although at the preceding regular term the same may not have been pending in the court or may have been continued; and

4. Any cause or matter of controversy, ~~at law or in chancery,~~ then ready for hearing or which may be made ready by consent of parties, may, with the consent of the parties to such cause or controversy, be heard and determined, although it could not lawfully have been heard at the preceding term that was or should have been held.

§ 18.2-500. Same; civil relief; damages and counsel fees; injunctions.

A. Any person who shall be injured in his reputation, trade, business or profession by reason of a violation of § 18.2-499, may sue therefor and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel, and without limiting the generality of the term, "damages" shall include loss of profits.

B. Whenever a person shall duly file a ~~bill in chancery~~ civil action in the circuit court of any county or city against any person alleging violations of the provisions of § 18.2-499 and praying that such party defendant be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to complainants' and defendants' counsel.

§ 18.2-507. Injunctions against violation of § 18.2-505.

Whenever a college, university or other institution of higher learning in this Commonwealth shall duly file a ~~bill in chancery~~ civil action in the circuit court of any county or city against any person alleging violations of the provisions of § 18.2-505, and praying that such party defendant be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to complainants' counsel.

§ 19.2-385. Writ of error and supersedeas.

For the purpose of review on a writ of error or supersedeas, a final judgment or order in the cause shall be deemed a final judgment or order ~~in a civil case (not in chancery)~~ within the meaning of subsection A of § 8.01-670.

§ 19.2-386.13. Writ of error and supersedeas.

For the purpose of review on a writ of error or supersedeas, a final judgment or order in the cause

shall be deemed a final judgment or order in a civil case (not in chancery) within the meaning of subsection A of § 8.01-670.

§ 20-96. Jurisdiction of suits for annulment, affirmance or divorce.

The circuit court~~, on the chancery side,~~ shall have jurisdiction of suits for annulling or affirming marriage and for divorces, and claims for separate maintenance, and such suits shall be heard by the judge as equitable claims.

§ 26-21. Certification and recording of accounts settled in a judicial proceeding.

When the account of any fiduciary is settled in a ~~chancery cause~~judicial proceeding, it shall be the duty of the clerk of the court in which such cause is, as soon as may be after a final order or decree therein, to certify to the clerk of the court wherein the fiduciary qualified, a copy of such account so far as the same has been confirmed, with a memorandum at the foot thereof stating the style of the suit and the date of such final order or decree. The account and memorandum so certified shall be recorded by the clerk to whom it is certified, in the book in which accounts of fiduciaries are required to be recorded under § 26-35, and if in a proceeding subsequent to such final order or decree, by appeal or otherwise, the account shall be reformed or altered, a copy of such reformed or altered account shall in like manner be certified and recorded, together with a memorandum stating the style of the suit and the date of the order or decree of confirmation. When the clerk of the court in which the cause may be is also clerk of the court in which or before whom the fiduciary qualified, he shall make the memoranda and recordations required by this section, and shall for such purpose use the original papers. For making any copy under this section, the clerk shall be entitled to the fees prescribed in like cases, and for recording such account of the fiduciary he shall be entitled to the fees allowed for recording accounts settled ex parte. The fees for copying and recording shall be paid as the court, in which the cause may be, or the judge thereof, shall direct.

§ 26-29. Who may insist or object before commissioner.

Any person who is interested, or appears as next friend for another interested in any such account, may, before the commissioner, insist upon or object to anything which could be insisted upon or objected to by him, or for such other, if the commissioner were acting under an order of a circuit court ~~of chancery~~ for the settlement thereof, made in a suit to which he or such other was a party.

§ 31-8.1. Parental duty of support.

A. Notwithstanding the provisions of § 31-8, a guardian of a minor's estate shall not make any distribution of income or corpus to or for the benefit of a ward who has a living parent, whether or not the guardian is such parent, except to the extent that the distribution is authorized by (i) the deed, will or other instrument under which the estate is derived, or (ii) the court, upon a finding that (a) the parent is unable to completely fulfill the parental duty of supporting the child, (b) the parent cannot for some reason be required to provide such support, or (c) a proposed distribution is beyond the scope of parental duty of support in the circumstances of a specific case. The existence of a parent-child relationship shall be determined in accordance with the provisions of § 64.1-5.1. The court's authorization may be contained in the order appointing the guardian or it may be obtained at any time prior to the disbursement in question; however, in extenuating circumstances where the interests of equity so require, the court's authorization may be obtained after the disbursement in question.

B. A guardian who desires to make any distribution specified in subsection A when neither (i) an existing court order nor (ii) the deed, will or other instrument under which the estate is derived authorizes it, shall

file a petition in the court wherein his accounts may be settled, naming the ward as a defendant and setting forth the reasons why such distribution is appropriate. The court or clerk shall appoint an attorney-at-law as guardian ad litem to represent the ward. Proceedings on the petition shall otherwise conform in all respects to ~~a bill in chancery, except that~~ the procedures governing a civil action; the evidence may be taken orally and the petition may be filed in court upon five days' notice to the ward, unless it is shown that he is under the age of ~~fourteen~~14. No attorney~~'~~s' fees shall be taxed in the costs, nor shall there be any writ tax upon the petition. The court may fix reasonable attorney~~'~~s' fees for services in connection with the filing of the petition, and the court shall fix the guardian ad litem's fee. Such fees shall be paid out of the estate unless the court directs that they be paid by the petitioner. The clerk shall receive a fee as provided in subdivision A 18 of § 17.1-275 for all services rendered thereon, to be paid by the guardian, out of the estate. Any notice required to be served under this section may be served by any person other than the guardian. Notwithstanding the preceding provisions of this subsection, if the court determines that an emergency exists, an order authorizing a distribution may be entered without the appointment of a guardian ad litem, with the court making such further provisions in its order for the protection of the ward's estate as it may deem proper in each case.

§ 40.1-49.4. Enforcement of this title and standards, rules or regulations for safety and health; orders of Commissioner; proceedings in circuit court; injunctions; penalties.

A. 1. If the Commissioner has reasonable cause to believe that an employer has violated any safety or health provision of Title 40.1 or any standard, rule or regulation adopted pursuant thereto, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation or violations, including a reference to the provision of this title or the appropriate standards, rules or regulations adopted pursuant thereto, and shall include an order of abatement fixing a reasonable time for abatement of each violation.

2. The Commissioner may prescribe procedures for calling to the employer's attention de minimis violations which have no direct or immediate relationship to safety and health.

3. No citation may be issued under this section after the expiration of six months following the occurrence of any alleged violation.

4. (a) The Commissioner shall have the authority to propose civil penalties for cited violations in accordance with subsections G, H, I, and J of this section. In determining the amount of any proposed penalty he shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations. In addition, the Commissioner shall have authority to assess interest on all past-due penalties and administrative costs incurred in the collection of penalties for such violations consistent with § 2.2-4805.

(b) After, or concurrent with, the issuance of a citation and order of abatement, and within a reasonable time after the termination of an inspection or investigation, the Commissioner shall notify the employer by certified mail or by personal service of the proposed penalty or that no penalty is being proposed. The proposed penalty shall be deemed to be the final order of the Commissioner and not subject to review by any court or agency unless, within ~~fifteen~~ 15 working days from the date of receipt of such notice, the employer notifies the Commissioner in writing that he intends to contest the citation, order of abatement or the proposed penalty or the employee or representative of employees has filed a notice in accordance with subsection B of this section and any such notice of proposed penalty, citation or order of abatement shall so state.

B. Any employee or representative of employees of an employer to whom a citation and order of abatement has been issued may, within ~~fifteen~~ 15 working days from the time of the receipt of the citation and

order of abatement by the employer, notify the Commissioner, in writing, that they wish to contest the abatement time before the circuit court.

C. If the Commissioner has reasonable cause to believe that an employer has failed to abate a violation for which a citation has been issued within the time period permitted for its abatement, which time shall not begin to run until the entry of a final order in the case of any contest as provided in subsection E of this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, a citation for failure to abate will be issued to the employer in the same manner as prescribed by subsection A of this section. In addition, the Commissioner shall notify the employer by certified mail or by personal service of such failure and of the penalty proposed to be assessed by reason of such failure. If, within ~~fifteen~~ 15 working days from the date of receipt of the notice of the proposed penalty, the employer fails to notify the Commissioner that he intends to contest the citation or proposed assessment of penalty, the citation and assessment as proposed shall be deemed a final order of the Commissioner and not subject to review by any court or agency.

D. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the Treasurer of the Commonwealth. The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties which are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

Final orders of the Commissioner or the circuit courts may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner or the court as appropriate.

E. Upon receipt of a notice of contest of a citation, proposed penalty, order of abatement or abatement time pursuant to subdivision A 4 (b), subsection B or C of this section, the Commissioner shall immediately notify the attorney for the Commonwealth for the jurisdiction wherein the violation is alleged to have occurred and shall file a civil action with the circuit court ~~a bill of complaint~~. Upon issuance and service of ~~a subpoena in chancery~~process, the circuit court shall promptly set the matter for hearing without a jury. The circuit court shall thereafter issue a written order, based on findings of fact and conclusions of law, affirming, modifying or vacating the Commissioner's citation or proposed penalty, or directing other appropriate relief, and such order shall become final ~~twenty-one~~ 21 days after its issuance. The circuit court shall provide affected employees or their representatives and employers an opportunity to participate as parties to hearings under this subsection.

F. 1. In addition to the remedies set forth above, the Commissioner may file a ~~bill of complaint~~ civil action with the clerk of the circuit court having equity jurisdiction over the employer or the place of employment involved asking the court to temporarily or permanently enjoin any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this title. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. No order issued without prior notice to the employer shall be effective for more than five working days. Whenever and as soon as the Commissioner concludes that conditions or practices described in this subsection exist in any place of employment and that judicial relief shall be sought, he shall immediately inform the affected employer and employees of such proposed course of action.

2. Any court described in this section shall also have jurisdiction, upon petition of the Commissioner or his authorized representative, to enjoin any violations of this title or the standards, rules or regulations promulgated thereunder.

3. If the Commissioner arbitrarily or capriciously fails to seek relief under subdivision 1 of this subsection, any employee who may be injured by reason of such failure, or the representative of such employee, may bring an action against the Commissioner in a circuit court of competent jurisdiction for a writ of mandamus to compel the Commissioner to seek such an order and for such further relief as may be appropriate.

G. Any employer who has received a citation for a violation of any safety or health provision of this title or any standard, rule or regulation promulgated pursuant thereto and such violation is specifically determined not to be of a serious nature may be assessed a civil penalty of up to $7,000 for each such violation.

H. Any employer who has received a citation for a violation of any safety or health provision of this title or any standard, rule or regulation promulgated pursuant thereto and such violation is determined to be a serious violation shall be assessed a civil penalty of up to $7,000 for each such violation.

I. Any employer who fails to abate a violation for which a citation has been issued within the period permitted for its abatement (which period shall not begin to run until the entry of the final order of the circuit court) may be assessed a civil penalty of not more than $7,000 for each day during which such violation continues.

J. Any employer who willfully or repeatedly violates any safety or health provision of this title or any standard, rule or regulation promulgated pursuant thereto may be assessed a civil penalty of not more than $70,000 for each such violation.

K. Any employer who willfully violates any safety or health provisions of this title or standards, rules or regulations adopted pursuant thereto, and that violation causes death to any employee, shall, upon conviction, be punished by a fine of not more than $70,000 or by imprisonment for not more than six months, or by both such fine and imprisonment. If the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than $140,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

L. In any proceeding before a judge of a circuit court parties may obtain discovery by the methods provided for in the Rules of ~~the~~ Supreme Court of Virginia.

M. No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of the complaint, pleadings, or other papers in any action authorized by this section or § 40.1-49.5.

N. Every official act of the circuit court shall be entered of record and all hearings and records shall be open to the public, except any information subject to protection under the provisions of § 40.1-51.4:1.

O. The provisions of Chapter 30 (§ 59.1-406 et seq.) of Title 59.1 shall be considered safety and health standards of the Commonwealth and enforced as to employers pursuant to this section by the Commissioner of Labor and Industry.

§ 43-62. Lien for farm products consigned to commission merchant.

Whenever any farm products shall have been consigned to any commission merchant for sale, and he shall have made sale thereof and become insolvent or die before paying over the proceeds of the sale thereof to, or on account of, the consignor or owner of the farm products, the claim of such consignor or owner, when legally proved, shall be a lien on the estate of the commission merchant subject only to such liens as were created on the estate and recorded prior to his insolvency or death.

The benefit of this section shall not accrue to any consignor or owner who, without requesting payment, shall allow such proceeds to remain with such commission merchant at interest, nor to any consignor or owner who, without requesting payment, shall allow such proceeds to remain in the hands of such commission

merchant more than ~~thirty~~ *30* days after becoming informed of such sale.

Jurisdiction is hereby given to ~~courts exercising~~ circuit ~~court powers in chancery~~ courts to enforce the provisions of this section.

§ 51.5-46. Remedies.

A. Any circuit court having ~~chancery~~ jurisdiction and venue pursuant to Title 8.01, on the petition of any person with a disability, shall have the right to enjoin the abridgement of rights set forth in this chapter and to order such affirmative equitable relief as is appropriate and to award compensatory damages and to award to a prevailing party reasonable attorneys' fees, except that a defendant shall not be entitled to an award of attorneys' fees unless the court finds that the claim was frivolous, unreasonable or groundless, or brought in bad faith. Compensatory damages shall not include damages for pain and suffering. Punitive or exemplary damages shall not be awarded.

B. An action may be commenced pursuant to this section any time within one year of the occurrence of any violation of rights under this chapter. However, such action shall be forever barred unless such claimant or his agent, attorney or representative has commenced such action or has filed by registered mail a written statement of the nature of the claim with the potential defendant or defendants within 180 days of the occurrence of the alleged violation. Any liability for back pay shall not accrue from a date more than 180 days prior to the filing of the notice or ~~bill of complaint~~ the initial pleading in such civil action and shall be limited to a total of 180 days, reduced by the amount of other earnings over the same period. The petitioner shall have a duty to mitigate damages.

C. The relief available for violations of this chapter shall be limited to the relief set forth in this section.

D. In any action in which the petitioner is represented by the Virginia Office for Protection and Advocacy, no attorneys' fees shall be awarded, nor shall the Virginia Office for Protection and Advocacy have the authority to institute any class action under this chapter.

§ 53.1-70. Jurisdiction of court to enforce orders of Board; proceedings.

Any circuit court in any county or city which maintains and operates any local correctional facility or lock-up, or in any county in which is situated any town which maintains and operates any local correctional facility or lock-up, affected by any such order of the Board, shall have jurisdiction to enforce such order by an injunction or other appropriate remedy at the suit of the Board. In the City of Richmond such jurisdiction shall be vested in the Circuit Court, Division I. Such proceeding shall be commenced by a petition of the Board in the name of the Commonwealth and shall, insofar as possible, conform to rules of procedure applicable to ~~chancery practice~~ a civil action. The governing body of each county, city or town which maintains and operates any local correctional facility or lock-up affected by the order of the Board, and the officer in charge of each such facility, shall be made parties defendant. In every such proceeding the court shall hear all relevant evidence, including evidence with regard to the condition of the local correctional facility or lock-up and any other evidence bearing upon the propriety of the Board's action. The court may refuse to grant the injunction if it appears that the action of the Board was not warranted.

§ 55-19. Estates in trust subject to debts of beneficiaries; exception for certain trusts.

A. Except as otherwise provided in this section, all trust estates shall be subject to the debts and charges of the persons who are beneficiaries of such trusts as if those persons owned a similar interest in the trust estate.

B. Any trust estate may be held in trust upon condition that the trust corpus and income, or either of them, shall in the case of a simple trust or, in the case of a complex trust, may in the discretion of the fiduci-

ary be paid to or applied by the fiduciary for the benefit of the beneficiaries without being subject to their liabilities or to alienation by them. However, no such trust shall operate to the prejudice of any existing creditor of the creator of such trust. The exception for spendthrift trusts shall not apply to an interest in a trust, contract, or other fund maintained in conjunction with an employee benefit plan, as defined in § 1002 (3) of Title 29 of the United States Code, or a similar plan or arrangement regardless of whether the beneficiary may claim the exemption provided under § 34-34. In addition, as to any claim first accruing on or after the effective date of the 1990 amendments to this section, and subject to the limitation of subsection D, no such trust condition shall operate to the prejudice of the United States or this Commonwealth or any county, city or town. As to any claim for child support, no such condition shall operate to the prejudice of a judgment against a beneficiary for the support of the beneficiary's child.

C. If the creator of a trust is also a beneficiary of the trust and the creator's interest is held upon condition that it is not subject to the creator's liabilities or to alienation by the creator, such condition is invalid against creditors and transferees of the creator, but shall not otherwise affect the validity of the trust. A transferee or creditor of the creator may, in addition to amounts required to be paid to or for the benefit of the creator, also reach the maximum amount that the trustee, in the exercise of discretion, could pay to or for the benefit of the creator under the trust instrument, which shall not exceed the amount of the creator's proportionate contribution to the trust. When a trust is funded by amounts attributable to any claim possessed by a beneficiary, whether paid pursuant to a structured settlement or otherwise, the beneficiary shall be considered a creator of the trust to the extent so funded.

D. Notwithstanding any contrary condition in the trust instrument, if a statute or regulation of the United States or the Commonwealth makes a beneficiary liable for reimbursement to the Commonwealth or any agency or instrumentality thereof, for public assistance, including medical assistance, furnished or to be furnished to the beneficiary, the Attorney General or the head of the state agency having responsibility for the program may file a petition ~~in chancery~~ in an appropriate circuit court having jurisdiction over the trustee seeking reimbursement without first obtaining a judgment. The beneficiary, or his guardian, conservator or committee, if any, shall be made a party. Following its review of the circumstances of the case, the court may:

1. Order the trustee to satisfy all or part of the liability out of all or part of the amounts to which the beneficiary is entitled, whether presently or in the future, to the extent the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary. A duty in the trustee under the instrument to make disbursements in a manner or in amounts that do not cause the beneficiary to suffer a loss of eligibility for public assistance to which the beneficiary might otherwise be entitled shall not be considered a right possessed by the beneficiary to compel such payments.

2. Whether or not the beneficiary has the right to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of the future payments, if any, that the trustee chooses to make to or for the benefit of the beneficiary in the exercise of discretion granted under the trust.

No order shall be made pursuant to this subsection D if the beneficiary is an individual who has a medically determined physical or mental disability that substantially impairs his ability to provide for his care or custody and constitutes a substantial handicap.

§ 55-277. Commutation of certain life estates.

Whenever a party as tenant for life or in any other manner, has a life interest in an estate which has been sold under a suit for partition or has been reduced to money, stocks, bonds or notes, susceptible of division and when the total cost of holding such money, stocks, bonds or notes intact amounts to more than eight percent of the gross annual income, and when the party owning such life estate is willing to accept a lump

sum in lieu of such annual income, upon the application of such person entitled to such annual income to any court of record having ~~general chancery jurisdiction and having~~ jurisdiction over the subject matter, the court may, in the discretion of the court, decree that such party or parties having charge of such money, stocks, bonds or notes shall pay to the party having the right to receive such annual income a lump sum in accordance with § 55-269.1. This section shall not affect any spendthrift trust, heretofore or hereafter created.

§ 56-521. Restoring possession to utility.

Whenever the authorized representatives of any such utility shall notify the Governor, in writing, stating that the utility is in position to and can and will resume operations and render normal public service, and shall satisfy the Governor, or his designated agent of the correctness of such statement, the Governor, or such agent, upon the request of the utility management, shall restore to the possession of the utility its properties and facilities. In the event that the Governor or such agent for any reason refuses such restoration of possession, the utility shall have the right to have a rule issued by ~~any court of general chancery jurisdiction~~ the circuit court in the City of Richmond, or the judge thereof in vacation, to show cause why such possession should not be restored. The rule shall provide for ~~ten~~ 10 days' notice to the Governor or such agent before cause is required to be shown. The decision of such court, or the judge thereof in vacation, on such question shall be final as to conditions then existing, but shall not be a bar to subsequent requests by the utility for restoration of possession. Nothing in this section shall be construed as denying to the Governor the right to restore possession at any time when, in his judgment, the public interest so requires.

§ 56-522. Compensation to utility.

The utility shall be entitled to receive reasonable, proper and lawful compensation for the use of its business, facilities and properties by the Commonwealth. In the event the parties in interest are unable to agree upon the amount of such compensation either party may file a petition in the court rendering judgment requiring delivery of possession of the utility, or in the event no such judgment was rendered, in any court mentioned in § 56-516, for the purpose of having the same judicially determined. The court shall, without a jury, hear such evidence and argument of counsel as may be deemed appropriate and render judgment thereon or may refer to a commissioner such questions as are considered proper and act upon the commissioner's report as ~~in ordinary chancery~~ permitted in the statutes and rules governing commissioners' proceedings. An appeal shall be to the Supreme Court from any final judgment of the court rendered under this section. If the amount of compensation so determined shall be less than the sum paid to the utility under the provisions of § 56-520 the utility shall return the excess by paying the same to the State Treasurer to be credited as the Governor may direct in accordance with the provisions of § 56-518.

§ 57-9. How property rights determined on division of church or society.

If a division has heretofore occurred or shall hereafter occur in a church or religious society, to which any such congregation is attached, the communicants, pewholders, and pewowners of such congregation, over ~~eighteen~~ 18 years of age, may, by a vote of a majority of the whole number, determine to which branch of the church or society such congregation shall thereafter belong. Such determination shall be reported to the circuit court of the county~~,~~ or ~~circuit or corporation court of the~~ city, wherein the property held in trust for such congregation or the greater part thereof is; and if the determination be approved by the court, it shall be so entered in ~~its chancery~~ the court's civil order book, and shall be conclusive as to the title to and control of any property held in trust for such congregation, and be respected and enforced accordingly in all of the courts of ~~this~~ the Commonwealth. If a division has heretofore occurred or shall hereafter occur in a congregation, which in its organization and government is a church or society entirely independent of any other church or general

society, a majority of the members of such congregation, entitled to vote by its constitution as existing at the time of the division, or where it has no written constitution, entitled to vote by its ordinary practice of custom, may decide the right, title and control of all property held in trust for such congregation. Their decision shall be reported to such court, and if approved by it, shall be so entered as aforesaid, and shall be final as to such right of property so held.

§ 57-16. Property held, etc., by ecclesiastical officers.

(1) How property acquired, held, transferred, etc. - Whenever the laws, rules or ecclesiastic polity of any church or religious sect, society or denomination commits to its duly elected or appointed bishop, minister or other ecclesiastical officer, authority to administer its affairs, such duly elected or appointed bishop, minister or other ecclesiastical officer shall have power to acquire by deed, devise, gift, purchase or otherwise, any real or personal property, for any purpose authorized and permitted by its laws, rules or ecclesiastic polity, and not prohibited by the laws of Virginia, and the power to hold, improve, mortgage, sell and convey the same in accordance with such laws, rules and ecclesiastic polity, and in accordance with the laws of Virginia.

(2) Transfer, removal, resignation or death of ecclesiastical officer. - In the event of the transfer, removal, resignation or death of any such bishop, minister, or other ecclesiastical officer, the title and all rights with respect to any such property shall pass to and become vested in his duly elected or appointed successor immediately upon election or appointment, and pending election or appointment of such successor, such title and rights shall be vested in such person or persons as shall be designated by the laws, rules, or ecclesiastical polity of such church or religious sect, society or denomination.

(3) Validation of deeds, etc. - All deeds, deeds of trust, mortgages, wills or other instruments made prior to March 18, 1942, to or by a duly elected or appointed bishop, minister or other ecclesiastical officer, who at the time of the making of any such deed, deed of trust, mortgage, will or other instrument, or thereafter, had authority to administer the affairs of any church or religious sect, society or denomination under its laws, rules or ecclesiastic polity, transferring property, real or personal, of any such church or religious sect, society or denomination, are hereby ratified and declared valid. All transfers of title and rights with respect to property, prior to such date from a predecessor bishop, minister or other ecclesiastical officer who has resigned or died, or has been transferred or removed, to his duly elected or appointed successor, by the laws, rules or ecclesiastic polity of any such church or religious sect, society or denomination, either by written instruments or solely by virtue of the election or appointment of such successor, are also hereby ratified and declared valid.

(4) Insufficient designation of beneficiaries or objects of trust. - No gift, grant, bequest or devise made on or after March 18, 1942, to any such church or religious sect, society or denomination or the duly elected or appointed bishop, minister or other ecclesiastical officer authorized to administer its affairs, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such gift, grant, bequest or devise; but such gift, grant, bequest or devise shall be valid; provided, that whenever the objects of any such trust shall be undefined, or so uncertain as not to admit of specific enforcement by the ~~chancery~~ courts of the Commonwealth, such gift, grant, bequest or devise shall be held, managed, and the principal or income appropriated, for the religious and benevolent uses of such church or religious sect, society or denomination by its duly elected or appointed bishop, minister or other ecclesiastical officer authorized to administer its affairs.

(5) Limitation on amount of land to be held. - This section shall not be construed, however, so as to authorize any parish or congregation of such church to hold more land, money, securities or other personal estate than authorized under the provisions of § 57-12, as amended from time to time.

(6) Rights and remedies cumulative. - The rights created and the remedies provided in this section

shall be construed as cumulative and not exclusive.

(7) No implied repeal of other provisions. - This section shall not be so construed as to effect an implied repeal of any other provisions of this chapter.

§ 58.1-1727. Taxes on suits or writ taxes generally.

A tax of ~~five dollars~~ $5 is hereby imposed upon (i) the commencement of every civil action~~, in law or chancery,~~ in a court of record, whether commenced by petition or notice, ejectment or attachment, other than a summons to answer a suggestion;; (ii) the removal or appeal of a cause of action from a district court to a court of record;; (iii) the appeal from the decision of the governing body of a county, city or town to a court of record, including the appeal of any decision of a board of zoning appeals;; (iv) an attachment returnable to a court of record;; and (v) a writ of mandamus sued out of any court, except the Supreme Court of Virginia. However, when the debt or demand for damages exceeds $50,000 but does not exceed $100,000, the tax shall be $15; and when the debt or demand for damages exceeds $100,000, the tax shall be $25.
This section shall not be applicable to any original jurisdiction proceeding filed in the Supreme Court of Virginia.

§ 64.1-106. Distribution of fund when presumption of death not applicable.

If in any ~~chancery cause~~ civil action wherein any estate or fund is to be distributed the interest of any person therein depends upon his having been alive at a particular time and it is not known and cannot be shown by the exercise of reasonable diligence whether such person was alive at that time and the case is one in which the legal presumption of death does not apply, the court may, if it sees no cause to the contrary, enter its decree distributing the estate or fund among those who would be entitled thereto if it were shown that such person above referred to were dead at such particular time. However, a proper refunding bond shall be given, with condition to account for the estate or fund to any person who may establish title thereto adverse to that of the distributees, or to the heirs, personal representatives or assigns of such person.
No motion shall be made hereunder except after reasonable notice to all parties upon whom service may be had. Nothing in this section shall be construed to affect in any way any requirement of law as to service or publication of process.

§ 64.1-179. Order to creditors to show cause against distribution of estate to legatees or distributees; their liability to refund.

When a report of the accounts of any personal representative and of the debts and demands against his decedent's estate has been filed in the office of a clerk of a court, whether under §§ 64.1-171 and 64.1-172 or in a ~~suit in chancery~~ civil action, the court, after six months from the qualification of the personal representative, may, on motion of the personal representative, or a successor or substitute personal representative, or on motion of a legatee or distributee of his decedent, make an order for the creditors and all other persons interested in the estate of the decedent to show cause on some day to be named in the order against the payment and delivery of the estate of the decedent to his legatees or distributees. A copy of the order shall be published once a week for two successive weeks, in one or more newspapers, as the court directs. On or after the day named in the order, the court may order the payment and delivery to the legatees or distributees of the whole or a part of the money and other estate not before distributed, with or without a refunding bond, as it prescribes. However, every legatee or distributee to whom any such payment or delivery is made, and his representatives, may, in a suit brought against him within five years afterward, be adjudged to refund a due proportion of any claims enforceable against the decedent or his estate which have been finally allowed by the commissioner of accounts or the court, or which were not presented to the commissioner of accounts, and the

costs attending their recovery. In the event any claim shall become known to the fiduciary after the notice for debts and demands but prior to the entry of an order of distribution, the claimant, if the claim is disputed, shall be given notice in the form provided in § 64.1-171 and the order of distribution shall not be entered until after expiration of ~~ten~~ 10 days from the giving of such notice. If the claimant shall, within such ~~ten-day~~ 10-day period, indicate his desire to pursue the claim, the commissioner shall schedule a date for hearing the claim and for reporting thereon if action thereon is contemplated under § 64.1-171.

Any such personal representative who has in good faith complied with the provisions of this section and has, in compliance with or, as subsequently approved by, the order of the court, paid and delivered the money or other estate in his hands to whomsoever the court has adjudged entitled thereto shall be fully protected against the demands of creditors and all other persons.

Any such personal representative who has in good faith complied with the provisions of this section and has, in compliance with, or as subsequently approved by, the order of the court, paid and delivered the money or other estate in his hands to whomsoever the court has adjudged entitled thereto, even if such distribution shall be prior to the expiration of the period of one year provided in §§ 64.1-13, 64.1-89, 64.1-96 or § 64.1-151.5, shall be fully protected against the demands of spouses, persons seeking to impeach the will or establish another will, or purchasers of real estate from the personal representative, provided that the personal representative shall have contacted any surviving spouse known to it having rights of renunciation and ascertained that he had no plan to renounce the will, such intent to be stated in writing in the case of renunciation under § 64.1-13, and that the personal representative shall not have been notified in writing of any person's intent to impeach the will or establish a later will in the case of persons claiming under § 64.1-89 or § 64.1-96 or under a later will.

In the case of such distribution prior to the expiration of such one-year period, the personal representative shall take refunding bonds, without surety, to the next of kin or legatees to whom distribution is made, to protect against the contingencies specified in this and the preceding paragraphs. The cost of such publication shall be paid by the petitioner or applicant.

2. That §§ 8.01-270 and 8.01-284 of the Code of Virginia are repealed.
3. That the provisions of this act shall become effective on January 1, 2006.

A BILL to amend and reenact §§ 8.01-607, 25.1-241, 56-522 and 58.1-3969 of the Code of Virginia, relating to commissioners in chancery.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-607, 25.1-241, 56-522 and 58.1-3969 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-607. Appointment and removal.

A. Each circuit court shall, from time to time, appoint such commissioners in chancery as may be deemed necessary for the convenient dispatch of the business of such court. Such commissioners shall be removable at pleasure.

B. The use of commissioners in chancery in cases filed in circuit court is limited as follows:

1. Commissioners in chancery shall not be used in uncontested divorce cases; and

2. Commissioners in chancery may be used only when: (i) there is agreement by the parties with the concurrence of the court or (ii) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case.

§ 25.1-241. Hearing on controversy among claimants to money paid into court.

A. If it appears to the court that there exists a controversy among claimants to the fund and any interest accrued thereon, or to the ownership of the property subject to the condemnation, the court shall enter an order setting a time for hearing the case and determining the rights and claims of all persons entitled to the fund or to any interest or share therein.

B. In order to enable the court to determine the proper disposition of the fund and any interest accrued thereon, the court may, for good cause shown, appoint a commissioner in chancery to take evidence upon the conflicting claims. If the fund, exclusive of interest, is $500 or more, the costs incident to or arising out of a trial or a determination of such issues or out of a determination of the ownership of the fund and any interest accrued thereon or the distribution thereof shall not be taxed against the petitioner. If the fund, exclusive of interest, is less than $500, such costs shall be taxed against the petitioner.

C. Upon a determination by the court of the rights and claims of the persons entitled to the fund and any interest accrued thereon, an order shall be entered directing the disbursement among the persons entitled thereto or to whomsoever they may by writing direct. Any party aggrieved thereby may apply for an appeal as provided in subsection B of § 25.1-239.

§ 56-522. Compensation to utility.

The utility shall be entitled to receive reasonable, proper and lawful compensation for the use of its business, facilities and properties by the Commonwealth. In the event the parties in interest are unable to agree upon the amount of such compensation either party may file a petition in the court rendering judgment requiring delivery of possession of the utility, or in the event no such judgment was rendered, in any court mentioned in § 56-516, for the purpose of having the same judicially determined. The court shall, without a jury, hear such evidence and argument of counsel as may be deemed appropriate and render judgment thereon or may, subject to the provisions of § 8.01-607, refer to a commissioner such questions as are considered proper and act upon the commissioner's

report as in ordinary chancery proceedings. An appeal shall be to the Supreme Court from any final judgment of the court rendered under this section. If the amount of compensation so determined shall be less than the sum paid to the utility under the provisions of § 56-520 the utility shall return the excess by paying the same to the State Treasurer to be credited as the Governor may direct in accordance with the provisions of § 56-518.

§ 58.1-3969. Order of reference; appointment of special commissioner to make sale; costs; attorney's fee.

The court shall have the option, for good cause shown, to refer the case to a commissioner in chancery for hearing and report, in which case, the order of reference shall be to a commissioner in chancery or special master other than the attorney (or any attorney practicing in the same firm as the attorney) employed to subject the real estate to the lien of any taxes. Upon (i) receipt of proper service of process on all parties defendant, a written real estate title certificate and the deposition of a licensed real estate appraiser where there is no dispute as to title or value or (ii) the receipt of the report of the commissioner in chancery, the court may appoint a special commissioner to sell the properties and execute the necessary deeds when a sale is found necessary or advisable and in doing so the appointee may be the attorney employed by the governing body of the county, city or town to bring the suit. However, if the property is deemed abandoned in accordance with § 58.1-3965, the court shall not be required to refer the case to the commissioner in chancery.

The sale price achieved at a public auction shall be prima facie, but rebuttable, evidence of the value of the property for purposes of the approval of the sale. If the attorney employed by the governing body of the county, city, district or town be appointed a special commissioner to sell the land and execute the deed and he has already given the bond hereinabove mentioned, no additional bond shall be required of him as special commissioner unless the court regards the bond already given as insufficient in amount. No fee or commission shall be allowed or paid to any attorney for acting under the order of reference or as special commissioner, except as hereinafter provided, and the compensation contracted to be paid any such attorney by the governing body, whether the employment was on a salary, commission or other basis, shall be in full for all services rendered by him. The court shall allow as part of the costs, to be paid into the treasury of the county, city or town, a reasonable sum to defray the cost of its attorneys and the expenses of publication and appraisal necessary for the purpose of instituting such suit and such fees and commissions, including fees for preparing and executing deeds, as would be allowed if the suit were an ordinary lien creditor's suit. When the special commissioner is other than the attorney employed by the county, city or town the court may allow him reasonable fees for selling the land and executing the deed, payable out of the proceeds of sale.

In any case in which the attorney representing the county, city or town and the governing body thereof have failed to reach an agreement as to a salary or commission or other basis as compensation for the services of such attorney, the court in which any proceedings are brought under this article may allow from the proceeds of the sale of any such real estate such fee as the court shall deem reasonable and proper to the attorney representing any such county, city or town in such proceeding.

EXERCISE OF APPOINTIVE POWERS OF CIRCUIT JUDGES

A BILL to amend and reenact § 17.1-501 of the Code of Virginia, relating to exercise of appointive powers.

Be it enacted by the General Assembly of Virginia:

1. That § 17.1-501 of the Code of Virginia is amended and reenacted as follows:

§ 17.1-501. Judges of circuit courts; selection, powers and duties of chief judges; exercise of appointive powers.

A. There shall be as many judges of the circuit courts as may be fixed by the General Assembly. The judges of each circuit shall select from their number by majority vote a chief judge of the circuit, who shall serve for the term of two years. In the event such judges cannot agree as to who shall be chief judge, the Chief Justice of the Supreme Court shall act as tie breaker.

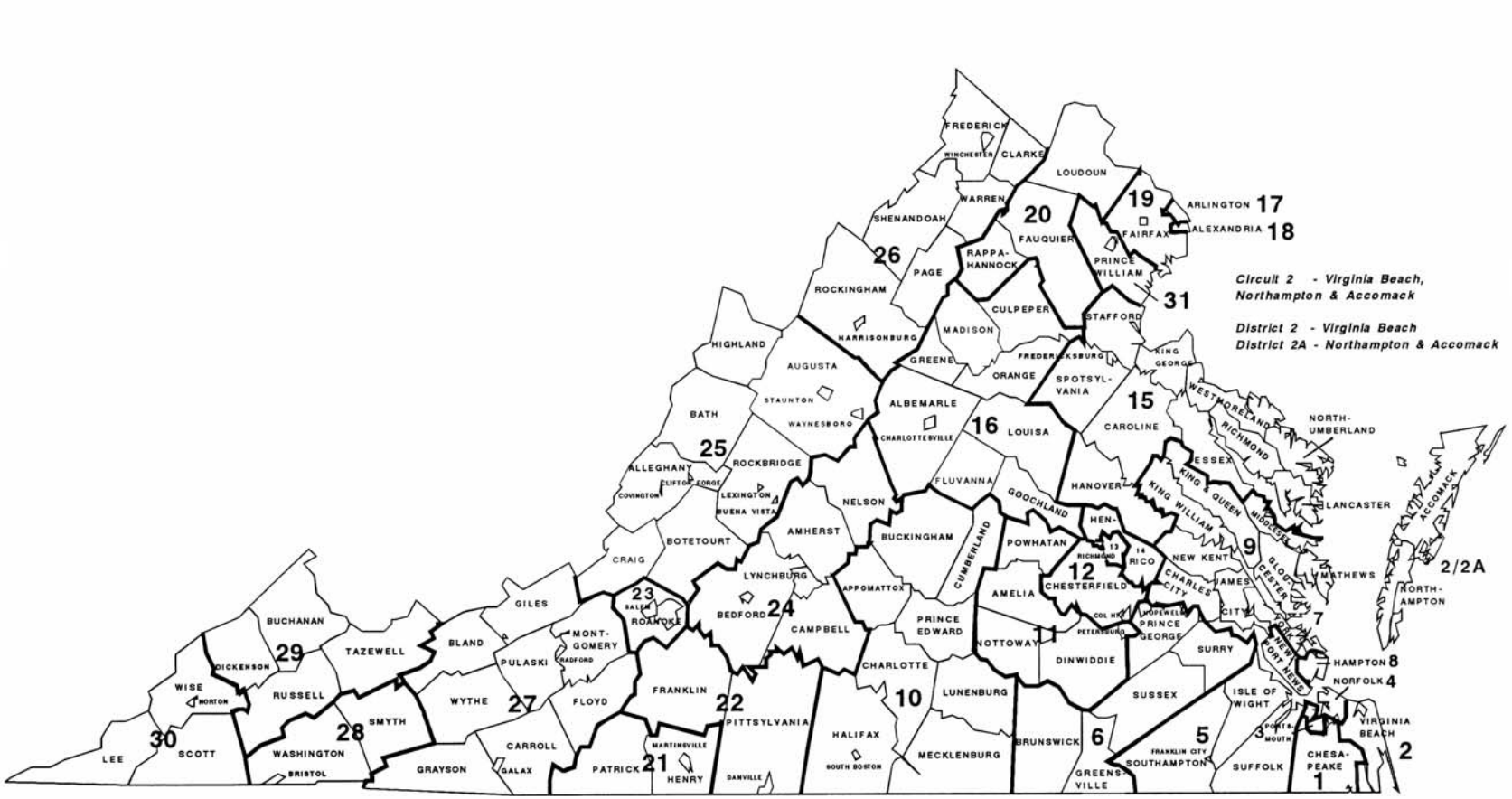
B. The chief judge of the circuit shall ensure that the system of justice in his circuit operates smoothly and efficiently. He shall have authority to assign the work of the circuit among the judges, and in doing so he may consider the nature and categories of the cases to be assigned.

C. Unless otherwise provided by law, powers of appointment within a circuit shall be exercised by a majority of the judges of the circuit; however, the order of appointment may be signed by the chief judge or that judge's designee on behalf of the other judges. In case of a tie, the Chief Justice of the Supreme Court shall appoint a circuit judge from another circuit who shall act as tie breaker. Where the power of appointment is to be exercised by a majority of the judges of the Second Judicial Circuit and such appointment is to a local post, board or commission in Accomack or Northampton County, the resident judge or judges of the County of Accomack or Northampton shall exercise such appointment power as if he or they comprise the majority of the judges of the circuit.

D. No person shall be appointed or reappointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search. No person with a criminal conviction for a felony shall be appointed as a judge.

Map of The judicial Circuits and Districts

Judicial Circuits and Districts of Virginia



Prepared in the Office of the Executive Secretary,
Supreme Court of Virginia - December 2004

Virginia Localities by Judicial Circuit/District

Accomack	2/2A
Albemarle	16
Alexandria	18
Alleghany	25
Amelia	11
Amherst	24
Appomattox	10
Arlington	17
Augusta	25
Bath	25
Bedford County	24
Bland	27
Botetourt	25
Bristol	28
Brunswick	6
Buchanan	29
Buckingham	10
Buena Vista	25
Campbell	24
Caroline	15
Carroll	27
Charles City	9
Charlotte	10
Charlottesville	16
Chesapeake	1
Chesterfield	12
Clarke	26
Colonial Heights	12
Covington	25
Craig	25
Culpeper	16
Cumberland	10
Danville	22
Dickenson	29
Dinwiddie	11
Emporia	6
Essex	15
Fairfax County	19
Fairfax City	19
Falls Church	17
Fauquier	20
Floyd	27
Fluvanna	16
Franklin County	22
Franklin City	5
Frederick	26
Fredericksburg	15
Galax	27
Giles	27
Gloucester	9
Goochland	16
Grayson	27
Greene	16
Greensville	6
Halifax	10
Hampton	8
Hanover	15
Harrisonburg	26
Henrico	14
Henry	21
Highland	25
Hopewell	6
Isle of Wight	5
James City	9
King and Queen	9
King George	15
King William	9
Lancaster	15
Lee	30
Lexington	25
Loudoun	20
Louisa	16
Lunenburg	10
Lynchburg	24
Madison	16
Manassas	31
Manassas Park	31
Martinsville	21
Mathews	9
Mecklenburg	10
Middlesex	9
Montgomery	27
Nelson	24
New Kent	9
Newport News	7
Norfolk	4
Northampton	2/2A
Northumberland	15
Norton	30
Nottoway	11
Orange	16
Page	26
Patrick	21
Petersburg	11
Pittsylvania	22
Portsmouth	3
Powhatan	11
Prince Edward	10
Prince George	6
Prince William	31
Pulaski	27
Radford	27
Rappahannock	20
Richmond County	15
Richmond City	13
Roanoke County	23
Roanoke City	23
Rockbridge	25
Rockingham	26
Russell	29
Salem	23
Scott	30
Shenandoah	26
Smyth	28
Southampton	5
South Boston	10
Spotsylvania	15
Stafford	15
Staunton	25
Suffolk	5
Surry	6
Sussex	6
Tazewell	29
Virginia Beach	2
Warren	26
Washington	28
Waynesboro	25
Westmoreland	15
Williamsburg	9
Winchester	26
Wise	30
Wythe	27
York	9

Note

Circuit 2	Virginia Beach Accomack Northampton
District 2	Virginia Beach
District 2A	Accomack Northampton

Virginia Judicial Circuits and Districts

1	Chesapeake
2	Virginia Beach
2A	Accomack Northampton
3	Portsmouth
4	Norfolk
5	Franklin City Isle of Wight Southampton Suffolk
6	Brunswick Emporia Greensville Hopewell Prince George Surry Sussex
7	Newport News
8	Hampton
9	Charles City Gloucester James City King & Queen King William Mathews Middlesex New Kent Poquoson Williamsburg York
10	Appomattox Buckingham Charlotte Cumberland Halifax Lunenburg Mecklenburg Prince Edward
11	Amelia Dinwiddie Nottoway Petersburg Powhatan
12	Chesterfield Colonial Heights
13	Richmond
14	Henrico
15	Caroline Essex Fredericksburg Hanover King George Lancaster Northumberland Richmond Spotsylvania Stafford Westmoreland
16	Albemarle Charlottesville Culpeper Fluvanna Goochland Greene Louisa Madiso Orange
17	Arlington Falls Church
18	Alexandria
19	Fairfax County Fairfax City
20	Fauquier Loudoun Rappahannock
21	Henry Martinsville Patrick
22	Danville Franklin County Pittsylvania
23	Roanoke City Roanoke County Salem
24	Amherst Bedford City Bedford County Campbell Lynchburg Nelson
25	Alleghany Augusta Bath Botetourt Buena Vista Covington Craig Highland Lexington Rockbridge Staunton Waynesboro
26	Clarke Frederick Page Rockingham Harrisonburg Shenandoah Warren Winchester
27	Bland Carroll Floyd Galax Giles Grayson Montgomery Pulaski Radford Wythe
28	Bristol Smyth Washington
29	Buchanan Dickenson Russell Tazewell
30	Lee Norton Scott Wise
31	Manassas Manassas Park Prince William