


2011


Judicial Council of Virginia



Report to the General Assembly and Supreme Court of Virginia



The Judicial Council of Virginia
2011 Report to the General Assembly and Supreme Court of Virginia
Supreme Court of Virginia, Office of the Executive Secretary
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January 23, 2012

Members of the Virginia General Assembly

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I am pleased to submit the 2011 Report of the Judicial Council of Virginia as required by Code § 17.1-705. In my State of the Judiciary message to the Judicial Conference of Virginia for District Court Judges last August, I reported on a number of developments within the Judiciary, notably in technology, that will enable the Judiciary to better serve the citizens of the Commonwealth of Virginia. Among those developments were upgrades to computers and their operating systems and the creation of a case imaging system that electronically stores images of all case papers. These are necessary precursors to further technology improvements. This report provides an update on the implementation of the court system's first e-Filing system and the installation of new case management systems in the Circuit and Juvenile and Domestic Relations District Courts.

As I complete my first year as Chief Justice of the Supreme Court of Virginia, I appreciate the opportunity to share with you a few of the accomplishments of the Judiciary during the past year. I look forward to communicating even greater achievements in future years.

Very truly yours,

A handwritten signature in cursive script, reading "Cynthia D. Kinser".

Cynthia D. Kinser

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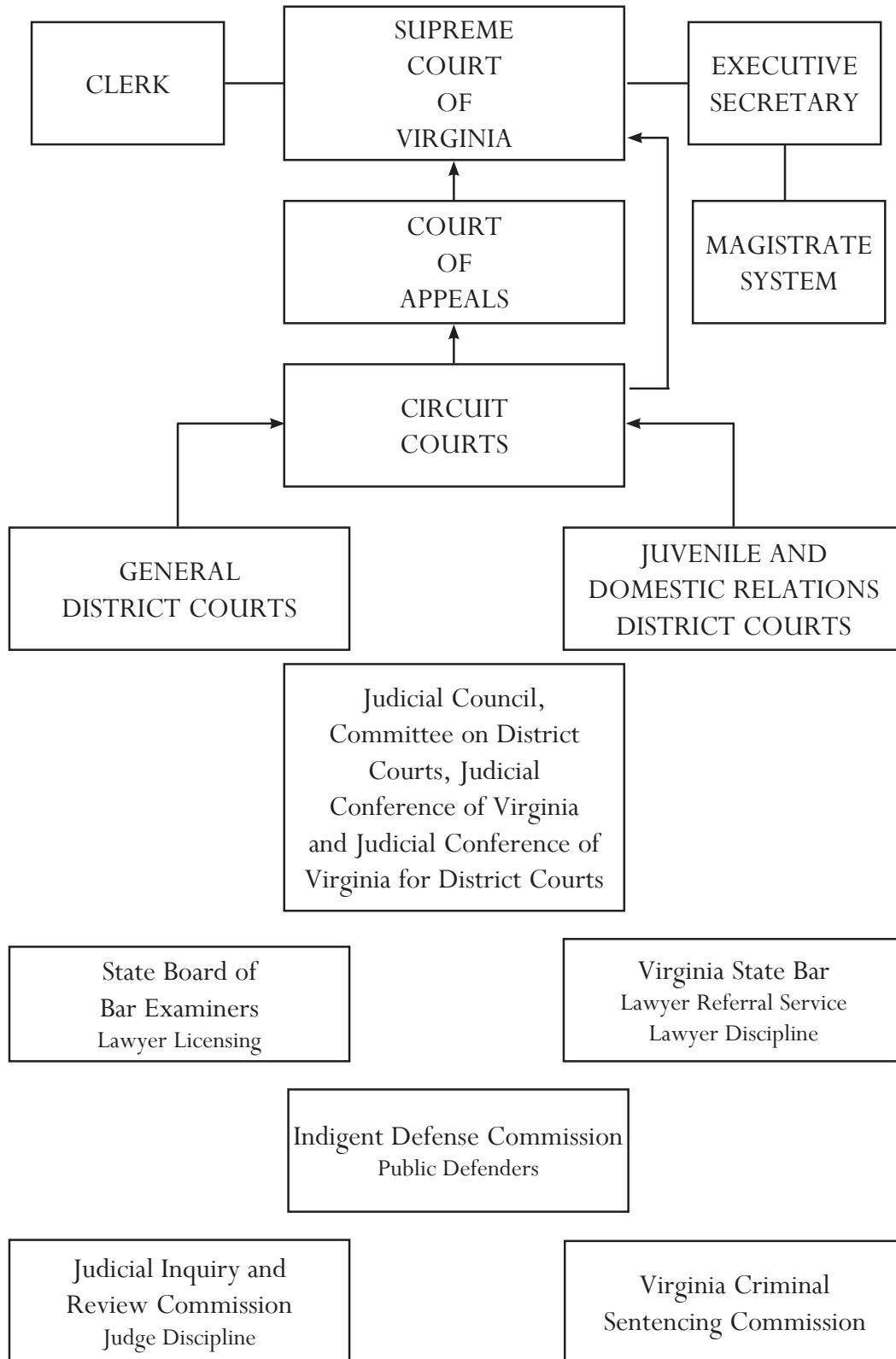
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*By Invitation of the Chief Justice

VIRGINIA JUDICIAL BRANCH



I. Proceedings of the Judicial Council of Virginia

INTRODUCTION

The Judicial Council of Virginia was established by statute in 1930. Pursuant to Va. Code § 17.1-703, it is charged with making a continuous study of the organization and the rules and methods of procedure and practice of the Judicial System of the Commonwealth of Virginia, including examining the work accomplished and results produced by the Judicial System. Providing guidance to the court system's comprehensive planning process is a central component of these responsibilities.

During 2011, the Judiciary advanced a number of initiatives aimed at improving the administration of justice in Virginia. The courts continued their long-term efforts to develop an upgraded electronic filing system for civil cases in the circuit courts. The newly developed and upgraded case management systems for the circuit and juvenile and domestic relations district courts were installed, and the development of the upgraded general district case management system began. The Judicial Council also approved revisions to the guidelines and procedures for certified mediators. A judicial boundary realignment study was conducted at the request of the Senate Courts of Justice Committee. This report also sets forth the legislative recommendation of the Judicial Council for the 2012 Session of the General Assembly.

PROCEEDINGS OF THE JUDICIAL COUNCIL

Amendments to Mediation Governing Documents

The Division of Dispute Resolution Services (DRS) of the Department of Judicial Services serves as a centralized alternative dispute resolution resource office within the judicial branch. DRS oversees the certification of mediators and of mediation training programs in Virginia, and administers standards of ethics and training guidelines for certified mediators. DRS promotes and monitors court-referred mediation programs statewide.

In 2007, the Judicial Council approved the creation of an Ethics Committee to address the need for improvements in the handling of mediator complaints and ethical issues. Although the initial aim was to revise the existing Guidelines for the Training and Certification of Court-Referred Mediators and the Standards of Ethics for Certified Mediators, early work by DRS and the Ethics Committee indicated that revisions to the Guidelines for the Certification of Mediation Training Programs, the Mentorship Guidelines, and the Complaint Procedures for Mediators Certified to

Receive Court-Referred Cases would also be necessary in order for the documents to function cohesively as governing documents for Virginia's certified mediators. From 2008 through 2010, these documents went through initial revisions, a period for comments, and further revisions. The final draft of the documents were presented to and approved by the Judicial Council in 2011 with minor amendments.

The Honorable Harry L. Carrico Outstanding Career Service Award

In 2004, the Judicial Council of Virginia created the Outstanding Career Service Award in honor of the Honorable Harry L. Carrico, retired Chief Justice of Virginia. This award is presented annually to one who, over an extended career, has demonstrated exceptional leadership in the administration of the courts while exhibiting the traits of integrity, courtesy, impartiality, wisdom, and humility. The 2011 Harry L. Carrico Outstanding Career Service Award was bestowed posthumously on the Honorable Leroy Rountree Hassell, Sr., former Chief Justice of the Supreme Court of Virginia.

Judicial Boundary Realignment Study

At the conclusion of the 2011 General Assembly Session, Senator Henry L. Marsh, III, Chair of the Senate Courts of Justice Committee, wrote a letter requesting that the Supreme Court of Virginia review the judicial circuits and districts proposed in bills that had been introduced during the Session and provide its recommendations for changes to the judicial boundary lines, including the number of judges designated to serve in each judicial circuit and district, by November 1, 2011. This review of the regional organization of the local trial courts into various circuits and districts was most significant for the management and allocation of judicial resources. In response to Senator Marsh's letter, the Chief Justice appointed the Judicial Boundary Realignment Study Committee. The Committee worked with staff from the Office of the Executive Secretary (OES) to gather and analyze data and develop recommendations. The Committee presented draft recommendations to a special joint meeting of the Judicial Council and the Committee on District Courts in September for comment. Following approval by the Court, the recommendations were presented in a report to Senator Marsh and the Senate Courts of Justice Committee.

LEGISLATIVE PROPOSAL FOR THE 2012 SESSION OF THE GENERAL ASSEMBLY

Mandatory Retirement Age for Judges

The Judicial Council of Virginia recommends a proposal to increase the mandatory retirement age for judges from 70 to 73.

A BILL to amend and reenact § 51.1-305 of the Code of Virginia, relating to mandatory judicial retirement.

Be it enacted by the General Assembly of Virginia:

1. That § 51.1-305 of the Code of Virginia is amended and reenacted as follows:

§ 51.1-305. Service retirement generally.

A. Normal retirement. - Any member in service at his normal retirement date with five or more years of creditable service may retire upon written notification to the Board setting forth the date the retirement is to become effective.

B. Early retirement. - Any member in service who has either (i) attained his fifty-fifth birthday with five or more years of creditable service or (ii) in the case of a member of any of the previous systems immediately prior to July 1, 1970, complied with the requirements for retirement set forth under the provisions of such previous system as in effect immediately prior to July 1, 1970, may retire upon written notification to the Board setting forth the date the retirement is to become effective.

B1. Mandatory retirement. - Any member who attains ~~70~~ 73 years of age shall be retired 20 days after the convening of the next regular session of the General Assembly. ~~However, if the mandatory retirement provisions of this subdivision would require a member of the State Corporation Commission to be retired before the end of his elected term and such retirement would occur during a session of the General Assembly in which the General Assembly is required, pursuant to § 12.1-6, to elect another member or members of the State Corporation Commission to serve either a regular term or a portion of a regular term, such member who otherwise would be subject to the mandatory retirement provisions of this subdivision shall be retired upon the first to occur of (i) the expiration of the term to which he was elected or (ii) 20 days after the commencing of the regular session of the General Assembly that immediately follows the date such member attains 72 years of age. The provisions of this subsection shall apply only to those members who are elected or appointed to an original or subsequent term commencing after July 1, 1993 following his seventy-third birthday.~~

C. Deferred retirement for members terminating service. - Any member who terminates service after five or more years of creditable service may retire under the provisions of subsection A or B of this section, if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five or more years of creditable service for which his employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any require-

ments as to the member being in service shall not apply. No member shall be entitled to the benefits of this subsection if his appointing authority certifies that his service was terminated because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

D. Effective date of retirement. - The effective date of retirement shall be after the last day of service of the member, but shall not be more than 90 days prior to the filing of the notice of retirement.

E. Notification of retirement. - In addition to the notice to the Board required by this section, the same notice shall be given by the member to his appointing authority. If a member is physically or mentally unable to submit written notification of his intention to retire, the member's appointing authority may submit notification to the Board on his behalf.

II. Court Technology Advances

Technology is a critical component of modern organizations. Within the Virginia Judiciary, technological systems are an important aspect of the court system's operational infrastructure, and technology-related strategies are recognized as necessary for effective management practices and, ultimately, the delivery of expeditious, economical, and fair dispute resolution. Beyond the details of the Judiciary's Strategic Plan, the Department of Judicial Information Technology in the Office of the Executive Secretary (OES), Supreme Court of Virginia, maintains a technology strategic plan to guide its work. The department is responsible for providing statewide technical support for the entire court system, including the development, deployment, and maintenance of software applications such as the courts' case management systems, the Financial Management System, video conferencing, and the e-Magistrate System; the installation, relocation, and support services for computers and related equipment; the development, maintenance, and support for multiple local area networks and the judicial network; and the development, maintenance, and support for network-based applications and services such as the Records Management System, Case Imaging System, the Virginia Judicial System's internet and intranet websites, and human resource applications.

Given the challenges and rapid pace of technological advances and growing service expectations among the public, the Judiciary is engaged in an ongoing effort to keep its equipment up-to-date and employ the most effective software programs so that it can effectively handle the millions of cases and financial transactions for which it is responsible each year and provide long-term protection for and access to the records that are entrusted to it. Two major initiatives are part of the Judiciary's ongoing technology-improvement efforts. One is the development of an electronic filing capability among the trial and appellate courts. The other is an upgrade/replacement of the case management systems (CMS) that are employed by the circuit and district courts.

2011 Update on Electronic Filing

The implementation of e-Filing in Virginia's courts would allow the remote submission of documents required to initiate a case in an electronic format, without the creation of paper documents. An e-Filing System would be expected to provide numerous benefits and cost savings to the courts, litigants, attorneys, state agencies, and businesses that file in Virginia courts.

In 2007, Chief Justice Leroy R. Hassell, Sr., established the Electronic Filing Study

Group, which is comprised of judges, attorneys, clerks of court, and staff members of the OES, to guide the Judicial System's e-Filing initiative. The Honorable Junius P. Fulton, III, judge of the Norfolk Circuit Court, was appointed chair of the Study Group. Since that time, the Judicial System has been making meaningful progress toward the establishment of e-Filing capabilities, with the intention of first developing a pilot program for civil cases in the Norfolk Circuit Court. It is anticipated that the courts will see a significant reduction in data entry currently associated with opening new cases, as well as a significant reduction in the number of telephone calls and courthouse visits. Over time, the courts should also see a dramatic reduction in paper filing and the need for physical storage space for paper case files. Attorneys will be able to submit initial and subsequent filings from any computer with Internet access, with filing hours extended until midnight on any business day. With the e-Filing System, court users will no longer be required to print and deliver documents to the court, thereby saving time, paper, and printing costs.

In 2010 the statewide electronic filing system project made major progress with the development and review of the e-Filing system prototype. The e-Filing system prototype let the project manager show the look, feel, and functions of the system to several groups to confirm the design and solicit additional feedback. This proved to be a very valuable step in the development of the system, as significant feedback was received.

The state-wide electronic filing system project continued in 2011 with an evaluation of the feedback received from the Electronic Filing Study Group, the Statewide Bar Advisory Commission, and the Tidewater Regional Advisory Committee.¹ The issues identified that might require significant changes to the e-Filing system were then reviewed by the appropriate subcommittee of the Study Group, and their recommendations were presented to the full Study Group at its June 2011 meeting. The recommendations presented during the June 2011 meeting fell into three categories: new functionality not covered by the prototype, clarification of functionality presented in the prototype, and adjustments to functionality represented in the prototype.

The requirements for the pilot version of the e-Filing system, which will incorporate changes adopted at the June meeting, are expected to be completed by the project team during the first quarter of 2012. Some of the accepted recommendations require updates to Rule 1:17 and other rules, which were drafted by the Rules of Court Subcommittee and are currently posted on the Virginia State Bar website for review and comment. Additional recommendations for changes to the Rules are anticipated.

¹ The Statewide Bar Advisory Commission is a separate entity that was created at the invitation of then-Chief Justice Hassell. The Tidewater Regional Advisory Committee is an *ad hoc* body assembled by Judge Fulton to assist the pilot program. Both the Advisory Commission and the Advisory Committee are composed primarily of practicing attorneys.

The other major activity in 2011 was the development of interfaces for the e-Filing system with existing court software systems. The e-Filing system will be integrated with the Case Management, Financial Management, and Case Imaging Systems, which will create significant efficiencies for the Courts. The clerk will have the ability to review all filings submitted through the e-Filing system and then transfer all of the case and payment information as well as all filed documents.

The prototype review and modifications to the system based on the feedback received was a critical step in ensuring that the e-Filing system effectively serves the courts

Upgrading Case Management Systems

In the mid-1980's, the Office of the Executive Secretary developed case management systems for all levels of Virginia's courts. These systems were developed as centralized systems whereby the applications and data resided on two mainframes, one in Richmond and one in Roanoke. Users accessed these systems via "dumb" terminals located in courts and offices around the state. Initially, the purpose of these systems was to collect and store statewide case information; however, over time, they evolved into systems to automate court processes. Since their inception, the original systems were continually updated to include legislative changes, new enhancements, user change requests, and performance gains. At the time the systems were created, mainframe COBOL applications and dumb terminals were the current technologies. Subsequently, technologies evolved, and changes to the case management systems were needed to take advantage of these newer technologies. Until recently, however, the financial resources required to make these changes were insufficient.

In 2006, the General Assembly passed legislation that created the Courts Technology Fund. Among other things, this fund allowed the OES to begin rewriting the case management systems (CMS). After discussions with key business partners such as IBM, a technology architecture road map was developed. This architecture includes the use of Java as the programming language, supported by virtualized Linux servers and IBM's DB2 database. The OES formed user groups comprised of representatives from various clerks' offices around the state to provide input and feedback on the rewrites. Since 2006, the Department of Judicial Services and the Department of Judicial Information Technology, along with key business partners, have been actively working on these rewrites.

In 2010, rewrites for both Circuit CMS (CCMS) and Juvenile and Domestic Relations CMS (JCMS) were completed and installed in pilot courts. In January of 2010, OES staff installed CCMS in the Tazewell Circuit Court, and, in December, OES installed JCMS in Roanoke County J&DR District Court. In 2011, all remaining Circuit and J&DR District Courts (with the exception of Fairfax J&DR) were

converted to the new case management systems. While the initial work to convert these systems has been completed, enhancements are continually added as users request increased functionality. For CCMS, these enhancements include a scheduling component, a probate component, and integration of CAISForms—an application that automatically pulls data from CMS to populate fields on PDF versions of court forms.

In 2011, work began on the new, Java-based case management system for General District Courts (GDCMS). As with the other systems, the Department of Judicial Services, the Department of Judicial Information Technology, and key business partners are gathering requirements for the new system, incorporating business functions of the existing system, and adding additional functionality where appropriate.

Conclusion

In the current financial downturn, the Virginia Judiciary has been challenged to preserve the effectiveness of its vital technological systems; however, by attention to long-term planning, careful management of resources, and the leveraging of income from the Courts Technology Fund, the courts are moving forward with two significant programs that will improve performance throughout the state. The development of the e-Filing system and the replacement of case management systems will offer better service to the public and greater functionality and efficiencies for those within the court system.

III.

Recommended Changes to Rules of Court

BACKGROUND

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

In 1974, the Judicial Council of Virginia established the Advisory Committee on Rules of Court to provide members of the Virginia Bar and other interested participants a means of more easily proposing Rule changes to the Council for recommendation to the Supreme Court. The duties of this committee include: (a) evaluating suggestions for modification of the Rules made by the Bench, Bar, and public, and recommending proposed changes to the Judicial Council for its consideration; (b) keeping the Rules up-to-date in light of procedural changes; (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.

The Judicial Council itself is called upon to continually study and make recommendations to the Supreme Court regarding Rules of Court. Va. Code § 17.1-703. Rules recommended by the Council and subsequently adopted by the Supreme Court are published in Volume 11 of the Code of Virginia. All orders of the Supreme Court amending the Rules, along with an updated version of the Rules that incorporates the amendments as they become effective, are posted on Virginia's Judicial System website at www.courts.state.va.us/courts/scv/rules.html#prior.

**RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL IN 2010
AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2011**

Rule 1:8	Amendments
Rule 3:16	New Parties
Rule 3A:10	Trial Together of More Than One Accused or More Than One Offense
Rule 3A:14.1	Confidentiality of Juror Personal Information
Rule 4:11	Requests for Admission
Part Five	Rules of the Supreme Court (numerous revisions and clarifications of the recently rewritten Part)
Part Five-A	Rules of the Court of Appeals (numerous revisions and clarifications of the recently rewritten Part)
Rule 8:5	Court-Ordered Reports (conforming change)
Rule 8:21	Violation of Court Orders (deletion of rule)

Revisions to Parts One through Four & Parts Seven-A through Eight
(Incorporation of e-Filing Provisions)

Rule 1:1	Finality of Judgments, Orders and Decrees
Rule 1:4	General Provisions as to Pleadings
Rule 1:5	Counsel
Rule 1:10	Verification
Rule 1:12	Service of Papers after Initial Process
Rule 1:13	Endorsements
Rule 1:16	Filing Format and Procedure
Rule 1:17	Electronic Filing and Service
Part One Appendix of Forms	
Form 2	Instructions (Rule 1:15(c))
Part One-A Appendix of Forms	
Form 1	Application to Appear <i>Pro Hac Vice</i> Before A Virginia Tribunal
Rule 2A:3	Record on Appeal
Rule 2A:4	Petition for Appeal
Rule 3:3	Riling of Pleadings; Return of Certain Writs
Rule 3:4	Copies of Complaint
Rule 3:18	General Provisions as to Pleadings
Rule 3:21	Jury Trial of Right
Rule 3:23	Use of Proceedings Before a Commissioner in Chancery
Rule 3A:2	Purpose and Interpretation; Definitions
Rule 3A:9	Pleadings and Motions for Trial; Defenses and Objections
Rule 3A:21	Service and Filing of Papers

Rule 3A:23	Electronic Filing
Rule 4:5	Depositions Upon Oral Examination
Rule 4:6	Depositions Upon Written Questions
Rule 4:7	Use of Depositions in Court Proceedings
Rule 4:8	Interrogatories to Parties
Rule 4:10	Physical and Mental Examination of Persons
Rule 4:11	Requests for Admission
Rule 4:13	Pretrial Procedure; Formulating Issues
Rule 4:15	Motions Practice
Rule 7A:7	Filing Format and Procedure
Rule 7A:11	Endorsements
Rule 7B:6	Verification
Rule 7B:11	Motions to Transfer
Rule 7C:7	Service and Filing
Rule 8:7	Format for Filing
Rule 8:8	Pleadings and Filing
Rule 8:19	Endorsements of Orders



