SUPREME COURT OF VIRGINIA

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Dear members of the judiciary of the Commonwealth of Virginia:

As I promised, the State of the Judiciary Address this year is mostly contained in this letter.

Funding and Staffing for Circuit and District Courts

As I reported to you in my 2017 State of the Judiciary Address, the General Assembly asked the Court to submit an updated weighted caseload report to them prior to the 2018 session. The 2014 Weighted Caseload study had recommended 429 judgeships. In fiscal year 2018, we had 407 funded judgeships. A new weighted caseload study was conducted by the National Center for State Courts, and the *Virginia Judicial Workload Assessment Final Report* was submitted to the General Assembly in November, 2017. It recommended that Virginia should have 435 circuit court, general district court, and juvenile and domestic relations district court judgeships. I am pleased to report that the General Assembly has authorized 435 judgeships and the budget passed on May 30, 2018, fully funds all of these positions in fiscal year 2019/2020.

Despite over $3.5 million that was appropriated last year for pay increases for district court clerks and deputy clerks, inadequate staffing continues to present challenges for the district courts. In March, 2018, the district courts were understaffed by 271 full-time positions. We had 54 district courts staffed below 80% of their demonstrated need, and 6 of those district courts were staffed below 60% of their demonstrated need.

There is also a need for more trained and certified foreign language interpreters. The *Virginia Judicial Workload Assessment Final Report* indicated that cases with interpreters take 1.5 times longer in circuit courts, 2.25 times longer in general district courts, and 1.5 times longer in JDR courts. OES has 27 interpreter staff positions around the state. Most of them are Spanish language interpreters. For other languages, there are over 3,000 non-staff interpreters around the state, but many are not certified. In our increasingly multilingual society, the need for certified interpreters far exceeds the supply.

Suspension of Driving Privileges for Nonpayment of Fines and Costs

Many people with limited financial resources have difficulty paying court costs and fines that have been imposed. Their privilege to operate a motor vehicle may be suspended as a result.

You will recall that Supreme Court Rule 1:24 became effective on February 1, 2017. This Rule is intended to facilitate collection of fines and costs, and to enable defendants to have their driver's licenses restored. Courts are required to provide deferred and installment payment plans. During the 2017 session, the General Assembly adopted Va. Code § 19.2-354.1, which codified most of Rule 1:24.

In January, 2018, the Legal Aid Justice Center released a report indicating that there were almost 1 million people in Virginia whose driver's licenses were suspended due in part to court debt. Nearly two-thirds (638,003) were suspended solely because of nonpayment of court debt. These figures are based on statistics as of December 2, 2017 that were provided by the Commissioner of the Virginia Department of Motor Vehicles to Delegate David Toscano.

Selected Legislation from the 2018 General Assembly Session

- Under SB 939, retired circuit court judges who are recalled to judicial service must be found qualified every three years by the Senate and House Committees for Courts of Justice before I may call upon them to sit as recall judges. The bill has a delayed effective date of July 1, 2019. I am grateful for all of the retired judges who sit in recall. In calendar year 2017, retired judges served 5,111 recall days in circuit courts (including settlement conferences), and 4,929 recall days in district courts. The service of retired judges is vitally important to the efficient operation of the courts in the Commonwealth.

- It is clear that the General Assembly wants judges to enforce existing guardian ad litem guidelines. Under HB 278, courts may adjust the fees for guardian ad litem's services for good cause shown or upon the failure of the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem.

- In my 2017 State of the Judiciary Address, I told you that it was highly probable that judges could face questions at reelection hearings regarding their failure to complete statutorily-required written explanations for their departure from criminal sentencing guidelines. House Bill 1055 amends the Judicial Performance Evaluation ("JPE") statute, Va. Code § 17.1-100, and provides that the end-of-term JPE reports will include data to be provided by the Virginia Criminal Sentencing Commission ("VCSC") on the number of cases in which a judge deviated from the sentencing guidelines without providing a written explanation for the deviation.

Judicial Performance Evaluation Program

There have been a number of important developments in the JPE program during the past year.

The pilot appellate JPE took place in 2017. Justice Powell, Court of Appeals Judge Chafin, and I were the first three appellate judges to be evaluated. Three Court of Appeals judges will have interim evaluations in 2018.

There are 166 trial court judges scheduled for evaluation during 2018. Of those, 57 judges will complete end-of-term evaluations for re-election during the 2019 session of the General Assembly. All judges receiving end-of-term evaluations are expected to receive their reports by September 1, 2018.

In 2017, 47 end-of-term reports were furnished to the General Assembly. One judge retired and did not seek re-election, one judge passed away, and one judge was not nominated for re-election. The remaining judges were re-elected.

Beginning in 2018, court reporters have been added to the JPE program as a new respondent group. Clerks in circuit and district courts are asked to collect names of court reporters who have worked in the courtroom where the evaluated judge sits. The clerks have been very helpful in collecting the names, and the court reporters have had a very good response rate. In fact, court reporters have provided a higher response rate than attorneys.

The Canons of Judicial Conduct and Judicial Ethics

Judges must adhere to the high standards of the Canons of Judicial Conduct for the Commonwealth of Virginia. From time to time, many judges will face situations in which they are uncertain about what is permitted or prohibited under the Canons. This uncertainty is one of the reasons why I re-established the Judicial Ethics Advisory Committee in October, 2015, as a service to the judiciary. The committee is authorized to provide formal written advisory opinions to judges concerning their responsibilities under the Canons of Judicial Conduct. The opinions are reviewed and approved by the Supreme Court before they are issued. The identity of the requesting judge is not revealed. I urge judges to make use of this service. In the process, a body of advisory opinions will be built up that will be available to all of you as guidance on the questions asked and answered.

Developments and Improvements in Judicial Information Technology

Technology within the judiciary is continuing to evolve from traditional paper filings to electronic filings and electronic access to case files. The Judicial Imaging System, or JIS, is the software that many circuit court judges in the Commonwealth use to view the files maintained by circuit court clerks. Last year, I established the Judicial Imaging System Advisory Committee, chaired by Judge Bradley Cavedo, and comprised of six additional circuit court judges and key

staff from the OES's Records Management Services team. This committee was established to provide judges direct input on how the JIS software could be improved.

A few highlights of the system are a detailed index of pleadings and other documents with coordinated access to the actual documents on the same screen. I encourage those judges who are not using JIS to try out this resource.

There have been a number of other positive developments in technology used in the judicial system:

- All users of the court email system have been migrated to Office 365.

- Updating case management systems for the judiciary has been a priority for the last several years. The final case management system to update is the one used by our general district courts. This work will be completed in 2018.

- The Supreme Court and the Court of Appeals now offer a free subscription service that allows interested parties to subscribe to emails notifying them of certain court events, such as the issuance of new opinions, posting of oral argument recordings, court argument schedules, or updates to court calendars. In addition, subscribers can choose to be notified when the Supreme Court issues rule changes and press releases. This free service is provided in order to keep the bar and the public informed of important events in a timely fashion. The subscription process can be accessed on Virginia's Judicial System website home page and is simple to navigate. Over 1,300 people have subscribed to this service.

- Imaging and document management systems are now installed in 93 circuit courts, 118 general district courts, and all JDR courts. Thirty-four of these courts now use electronic files exclusively – including on the bench.

- Online payments of pre-court and post-court fines and costs in general district courts are now averaging 51,000 transactions and $7.9 million each month. These payments represent over 36% of total general district court collections. In July of 2017, we began offering online payments for circuit and JDR courts. Currently, 38 circuit courts take advantage of this process. All JDR courts now offer online payments as well.

- Digital case file usage within the judiciary continues to expand, as clerks, judges and interfacing agencies are relying more on digital case documents and files in lieu of the typical paper case files. Last year, general district courts began electronically filing appeals and certified cases with circuit courts. As a result of recently passed legislation, this will expand to the JDR courts as well.

- The On-line Jury Questionnaire Project is underway. This project is designed to allow recipients of jury questionnaires sent from courts using the OES VAJury

System to respond to the on-line questionnaire located on a secure server. Once the recipient has successfully completed the on-line questionnaire, they will be sent a confirmation e-mail. It will save court employees the time-consuming effort of manually entering questionnaire data into the VAJury System.

- The Sentencing Worksheet Interactive File Transfer ("SWIFT!") is a web-based application used by the VCSC to reformat sentencing guidelines into digital format. SWIFT! is a collaborative effort of the VCSC and OES to automate the creation, transmission, and data collection of sentencing guidelines in the Commonwealth. It allows attorneys for the Commonwealth and probation and parole staff to complete documents electronically, and to share them with defense counsel. Paper documents must still be provided to the court. Later this year programming for Phase II of the initiative will begin, which will allow circuit court clerks' staff to electronically transmit the guidelines and associated sentencing orders to the VCSC. This will eliminate the need for court staff to copy and mail these documents. Developing the third phase of the project is scheduled for 2019 and will allow judges the option of reviewing, modifying and signing the sentencing guideline forms electronically.

VCSC Probation Guidelines Revision Project and Survey

In the near future, you will be asked to respond to a survey as part of the VCSC Probation Guidelines Revision Project. A little background may be useful. In 2003, the General Assembly directed the VCSC to develop discretionary sentencing guidelines for felony offenders who are found to have violated their probation supervision for reasons other than a new criminal conviction. The violation guidelines are based on an examination of historical judicial sanctioning patterns in revocation hearings.

The VCSC developed historically-based sentencing guidelines applicable to these offenders which took effect on July 1, 2004, and were refined in 2007. Judicial compliance with the supervised probation violation guidelines has remained significantly lower than the overall compliance rate with the sentencing guidelines for felony offenses. The VCSC recently approved a new study of probation violations that will provide the foundation needed to revise the guidelines used in revocation cases. The VCSC will use a survey to obtain input and guidance from circuit court judges. Your responses will provide valuable information that will be used to improve the usefulness of the guidelines for Virginia's judges. I encourage you to respond to the VCSC's survey when you receive it.

Access to Justice

There have been a number of important developments in efforts to provide greater access to justice for our low income citizens.

Rule 6.1 of the Rules of Professional Conduct sets an aspirational standard that a lawyer should render at least two percent per year of the lawyer's professional time to pro bono public

legal services. On February 27, 2018, the Supreme Court amended the Rules of Court so that lawyers will be asked to voluntarily report the number of hours they devoted to pro bono service, or the amount of their direct financial support of programs that provide direct delivery of pro bono legal services. Beginning in 2019, this opportunity will be provided annually when lawyers renew their membership with the Virginia State Bar ("VSB"). It is hoped that there will be sufficient responses to give the VSB a reasonably accurate calculation of whether lawyers are meeting the aspirational goal.

Effective March 1, 2018, the "emeritus rule" (Supreme Court Rule Part 6, § IV, Para. 3) has been amended. Those lawyers who qualify as emeritus members of the VSB will be allowed to provide pro bono legal services without being under the direct supervision of a supervising attorney, so long as the emeritus member certifies annually his or her affiliation with a qualified legal services provider.

The Virginia Access to Justice Commission supported the Virginia Law Foundation in its January 2018 launch of a new Pro Bono Portal through which Virginia-licensed attorneys can access over 350 of Virginia CLE's on-demand online seminars and accompanying written materials at no charge to support their provision of pro bono legal services to Virginia residents. The majority of lawyers accessing the materials have indicated that they intend to contribute 40 hours or more of pro bono service per year.

At my request, in 2017 the chief judges in the 25th Judicial Circuit and District met with each of the local bar associations to encourage their pro bono involvement, followed by a recruiting drive by the legal aid society serving that region. This recruiting drive concluded in December 2017, with excellent results. Over 84% of the practicing attorneys in the 25th Judicial Circuit and District have agreed to participate in the local pro bono referral program. This pilot project demonstrates that the judiciary can play a powerful role in encouraging pro bono representation on a local level.

My appreciation is extended to the Virginia Access to Justice Commission, and particularly to its co-chairs Justice Bernard Goodwyn and John Whitfield, for all of their efforts, innovation, and leadership in improving access to the legal system for low income citizens.

The Judiciary Responds to Ongoing Public Health Issues

As we have discussed in the past, the Commonwealth continues to experience public health issues related to drug addiction and drug overdose deaths, mental health problems, and the problems encountered by our military veterans. The judges of the Commonwealth are meeting the challenges and making a difference. Drug courts, behavioral/mental health dockets, and veterans dockets continue to provide meaningful alternatives for defendants who are accepted into those programs. There are now 45 drug courts operating in the Commonwealth, as well as 10 behavioral/mental health dockets and 5 veterans dockets.

These dockets provide the opportunity for participants to redirect the course of their lives and become productive citizens.

Our Aging Population

The judiciary is also working to improve services and protection for our vulnerable aging population. Over the last year, the Virginia Working Interdisciplinary Networks of Guardianship Stakeholders ("WINGS") working group has focused on several initiatives to improve protection for incapacitated adults in the Commonwealth:

- WINGS proposed legislation for the development of a third-party review of the physical and mental condition of incapacitated adults. This review would occur independently of the annual reports that must be filed by guardians under statutory requirements. The proposed legislation was not passed by the General Assembly, but we may hear more on this issue next year.

- WINGS has been working to develop a tutorial for use in the training of guardians and conservators for incapacitated adults.

- WINGS is also working to identify how to collect data related to the qualification of, and annual reporting by, guardians and conservators for incapacitated adults.

Judges need to be proactive in assuring that all available legal protection for seniors and incapacitated adults is provided, and all standards are enforced. These people are depending on the judiciary's assistance and protection.

Committee on Lawyer Well-Being

On August 24, 2017 the National Task Force on Lawyer Well-Being released a report entitled, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* ("the Report"), which contains 44 recommendations for stakeholders, including recommendations for judges, regulators, legal employers, law schools, bar associations, and lawyer professional liability carriers. The thesis statement in the Report is that "to be a good lawyer, one has to be a healthy lawyer." I would add that "to be a good judge, one has to be a healthy judge." Part of the impetus for the Report was a 2016 study conducted by the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation. That study of nearly 13,000 practicing lawyers found that between 21% and 36% of the respondents qualified as problem drinkers. Approximately 28% were struggling with some level of depression; 19% with anxiety; 23% with stress. Additionally, a 2016 study of over 3,300 law students found similar issues with depression, anxiety, and suicidal thoughts.

The Conference of Chief Justices adopted a resolution supporting the goals of reducing impairment and addictive behavior, and improving the well-being of lawyers, and recommended that each jurisdiction consider the Report's recommendations. In response, last fall I formed a Committee on Lawyer Well-Being which is led by Justice William Mims and made up of judges, bar leaders, and law professors from around the Commonwealth. This Committee is studying the issue and will make recommendations that we hope will improve the wellness and quality of professional and personal life for lawyers and judges in the Commonwealth.

Conclusion

I am now serving my fourth year as Chief Justice of the Supreme Court of Virginia. Each day, I feel just as honored to serve as when I was first invested with the role and its responsibilities. It is a great privilege to work with all of the distinguished justices and judges in the Commonwealth. I am confident that together we will improve the law and the administration of justice in our Commonwealth. Because of you, the state of our judiciary is strong. Thank you for your service.

Sincerely,

Donald W. Lemons