

## **The Court of Appeals of Virginia**

The Court of Appeals of Virginia was established January 1, 1985. It is an intermediate appellate court created to increase the appellate capacity of the court system and expedite appellate review. Its administrative headquarters are in the Supreme Court Building in Richmond, Virginia.

### **History**

The need for expanded appellate capacity was first identified in 1971. The Virginia Court System Study Commission, composed of legislators and members of the bench and bar, recommended a reorganization plan for a unified court system. The Commission, chaired by former Chief Justice Lawrence W. I'Anson, determined that an intermediate appellate court was needed in Virginia to review most of the appeals from circuit courts. At the same time, the Commission recommended preserving the Supreme Court as a single body concentrating on the development of the law.

After further study, in 1982, the Judicial Council of Virginia proposed legislation for a twelve-judge intermediate appellate court. Finally, in 1983, the General Assembly created the Court of Appeals of Virginia, initially with ten judges, effective January 1, 1985. As established, the Court had limited appellate jurisdiction. The General Assembly added an eleventh judge in 2000.

In 2020, the General Assembly adopted a resolution requesting that the Judicial Council of Virginia examine the organization of the Court and make recommendations on implementing an appeal of right in all cases and advising on the necessary resources to do so. The Judicial Council and Supreme Court of Virginia recommended expanding the Court's jurisdiction to permit appeals of right to the Court of Appeals in most cases and provided information on the statutory changes and resources needed to implement the expansion. In 2021, the General Assembly enacted legislation to expand the Court's jurisdiction to hear appeals of right in most cases. To accommodate the increased caseload, the General Assembly added six judges to the Court, bringing the total number of judges to seventeen.

### **Judges**

Effective, July 1, 2021, the Court of Appeals consists of seventeen judges who are elected for eight-year terms by a majority of the members of each house of the General Assembly. If a vacancy occurs while the General Assembly is not in session, the Governor may appoint a successor to serve until thirty days after the commencement of the next session of the legislature. In addition to the seventeen active judges, the Court of Appeals may designate seven retired judges of the Court to serve as senior judges.

The judges of the Court of Appeals elect the chief judge by majority vote to serve a four-year term. A master schedule approved by the chief judge designates where the Court of Appeals will sit for oral arguments to provide convenient local access to the public. The Court sits in locations throughout the Commonwealth.

## Panels

The Court of Appeals decides cases through three-judge panels that hear oral argument throughout the Commonwealth. Judges are assigned to panels and rotated through regional panels.

The Court of Appeals sits en banc (as a whole) in the following circumstances:

- where there is a dissent in a panel to which a case was originally assigned, and an aggrieved party requests an en banc hearing and at least six judges of the Court vote in favor of such a hearing;
- if a judge of a panel certifies that a decision of that panel conflicts with a previous decision of the Court or of any panel and five other judges agree; or
- any case where, on the petition of any party or upon its own motion, a majority of the Court determines it is appropriate to sit en banc.

When sitting en banc the Court reconsiders the case. The en banc Court may overrule any previous decision of a panel or the full Court. No fewer than thirteen judges may be present when the Court of Appeals sits en banc.

## Jurisdiction

The Court of Appeals reviews decisions of lower courts, although certain cases go directly to the Supreme Court of Virginia. The Supreme Court of Virginia possesses original jurisdiction over matters involving appeals from the State Corporation Commission, the Judicial Inquiry and Review Commission, attorney disciplinary proceedings, habeas corpus, and actual innocence claims based on biological testing.

The Court of Appeals has authority to hear appeals as a matter of right from:

- any final judgment, order, or decree of a circuit court;
- any final order of conviction in a traffic or a criminal matter;
- any final decision of the Virginia Workers' Compensation Commission;
- any final decision of a circuit court on appeal from a decision of an administrative agency or a grievance hearing decision;
- any final decision of a circuit court on an application for a concealed weapon permit;
- any final order of a circuit court involving involuntary medical or mental health treatment of prisoners; and
- any final order for declaratory or injunctive relief addressing whether a person's free exercise of religion has been burdened by the Commonwealth or local government.

The Court of Appeals has authority to consider petitions for appeal from:

- certain preliminary rulings in felony cases when requested by the Commonwealth;
- certain interlocutory orders; and
- any order of consolidation or joinder in a case brought under the Multiple Claimants Litigation Act.

The Court of Appeals has original jurisdiction to issue writs of mandamus, prohibition, and habeas corpus in any case over which the Court would have appellate jurisdiction.

In addition, the Court of Appeals has original jurisdiction to issue writs of actual innocence based on non-biological evidence upon petition of a person who has been convicted of a felony.

## **Procedure**

The clerk of the Court of Appeals receives, processes, and maintains permanent records of appeals and other official documents filed with the Court.

Most appeals are heard as a matter of right. Appeals of right are cases that an appellate court must review as required by statute. These cases do not go through the petition process. The parties in each case file their respective briefs and the clerk of the Court refers the case to a panel of three judges for consideration. Oral argument is permitted but may be waived.

Other appeals are brought before the Court of Appeals through a petition process requiring a formal written application to the Court requesting judicial action on a certain matter. Petitions are required for any Commonwealth's pre-trial appeal of a criminal case pursuant to Code § 17.1-406(A), interlocutory appeals, and certain other cases.

Each petition for appeal is referred to a three-judge panel of the Court of Appeals. The panel may grant the petition based on the record, without oral argument. In a pre-trial appeal of a criminal case, the Commonwealth may provide a panel of judges with the reasons why an appeal should be granted. If the judges of the panel agree the petition should *not* be granted, the order denying the appeal will state the reasons for denial and the case ends. If the panel grants the petition for appeal, the case proceeds in the same manner as an appeal of right case.

The Court of Appeals issues decisions by written opinion or order.

A party may petition for rehearing of a final decision or order disposing of a case. The petition may request rehearing by a panel or en banc. If a petition requesting rehearing by a panel is granted it will be heard, where practicable, by the same panel that rendered the final decision in the case.

## **Certification**

In any case in which an appeal has been taken to the Court of Appeals, the Supreme Court may certify the case for review by the Supreme Court before it has been decided by the Court of Appeals. A certification transfers jurisdiction over the case to the Supreme Court for all purposes. These certifications occur only when the case is of such public importance that it requires a prompt decision by the Supreme Court or when the docket of the Court of Appeals is congested, and expeditious administration of justice requires the transfer.

## **Finality of Decisions**

When the Court of Appeals has rejected a petition for appeal, dismissed an appeal, or decided an appeal, its decision is final, without appeal to the Supreme Court in the following cases:

- Appeals in criminal cases pursuant to subsections A or E of Code § 19.2-398 and § 19.2-401. But the finality of the Court of Appeals' pre-trial decision does not preclude a defendant, if he or she is convicted, from requesting the Court of Appeals to reconsider the issue on direct appeal;
- Appeals involving involuntary treatment of prisoners pursuant to Code § 53.1-40.1 or § 53.1-133.04; or
- Appeals involving denial of a concealed handgun permit pursuant to Code § 18.2-308.08.

## **Review by the Supreme Court**

Except where the decisions of the Court of Appeals are final, any party aggrieved by a final decision of the Court of Appeals may petition the Supreme Court for an appeal.