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Press Release: January 23, 2018

ACCESS TO RECORDS OF THE JUDICIARY

Under the Constitution of Virginia, our government consists of three separate branches: the executive branch, the legislative branch and the judicial branch. Our Constitution expressly recognizes that “[t]he legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others ...” Va. Const. art. III, § 1. *See also* Va. Const. art. I, § 5. This is known as the separation of powers doctrine. The Supreme Court of Virginia is not an agency of the executive or legislative branches. It is responsible for operation of the judiciary, a separate and independent branch of government.

The Supreme Court supports reasonable and responsible transparency in accessing judicial records. That goal would be accomplished by establishing processes for accessing records other than those maintained by court clerks, while recognizing that the notes and records kept by individual judges, including their communications with law clerks and other court staff, are confidential. This confidentiality of communications among judges and court staff is necessary to ensure thorough and candid consideration of all relevant issues being considered by the judges. Court trials and hearings with few exceptions are public. The decisions ultimately issued are public; however, the deliberative process is not.

The proposal for the Supreme Court to develop rules is consistent with the approach taken in other states where the judiciary has developed court rules governing access to judicial records. It is also consistent with the Federal Freedom of Information Act, which specifically excludes the federal courts.

Under a court rule, accessibility to judicial records would be provided in a manner that is transparent and consistent with existing law and the Constitution of Virginia. Financial records and case statistics are currently made available to the public, with much of that information available online on the court system’s website, and these records will continue to be made available to the public. The Supreme Court will promulgate a Rule of Court concerning public access to records of the judiciary on or before December 1, 2018.

Additionally, the Supreme Court is committed to working with clerks, legislators, attorneys and other interested parties to develop statewide access to online case information by July 1, 2019.

About the Supreme Court of Virginia: The Supreme Court of Virginia possesses both original and appellate jurisdiction. The Court reviews decisions of lower courts, including the Court of Appeals, from which appeals have been allowed. Virginia does not allow an appeal to the Supreme Court as a matter of right except in cases involving the State Corporation Commission, certain disciplinary actions against an attorney, and review of the death penalty. The Court's original jurisdiction is limited to cases of habeas corpus, mandamus, prohibition, and actual innocence. The Supreme Court also has original jurisdiction in matters filed by the Judicial Inquiry and Review Commission relating to judicial censure and retirement, and removal of judges. The Chief Justice of the Supreme Court serves as the administrative head of Virginia's Judicial System. The Chief Justice is charged with overseeing the efficient and effective operation of the Judicial Branch.

Media Contact: Kristi S. Wright, Director of Legislative and Public Relations, Office of the Executive Secretary, Supreme Court of Virginia, (804) 786-6455.



SUPREME COURT OF VIRGINIA

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Supreme Court of Virginia Press Release

Media Contact: Patricia L. Harrington, Clerk

Release Date: October 19, 2018

THE SUPREME COURT OF VIRGINIA TO CONSIDER NEW RULES RELATED TO ACCESS TO JUDICIAL RECORDS

RICHMOND – In January 2018, the Supreme Court of Virginia announced through a press release that it would adopt Rules of Court regarding access to judicial records. The need for the Court to adopt such Rules became evident in light of confusion about access to court records, including electronic case information.

Under the Constitution of Virginia, the judicial branch is a separate, co-equal branch of government. The Supreme Court is not an agency of the executive or legislative branches. The Court recognizes its responsibility and role in making sure the public is informed about how to access the public records of the judiciary. Virginia is not unique in this approach. Similar rules and policies have been adopted by the judicial branches in other states and the federal judiciary.

The purpose of these Rules is to provide the public and the Virginia judiciary with a clear understanding of what records are publicly accessible and how to access them. Although these Rules are consistent with current practice, the publication of these Rules will contribute to transparency by providing an available reference regarding access to judicial records.

The public availability of case proceedings and records has always required a delicate balance between the public's interest in judicial records, the privacy and safety interests of parties, victims, and witnesses, and the need to preserve the confidentiality of the deliberative process so critical to the proper functioning of the judicial branch of government. The proposed Rules maintain the Commonwealth's traditional balance between these sometimes competing interests.

The Office of the Executive Secretary (OES) of the Supreme Court of Virginia provides administrative support to all courts and magistrates in the Commonwealth. OES publishes extensive information, including statistics, manuals, policies, court forms, court directories, and judicial branch expenditures, on its website. In addition, requests for aggregated, electronic case information are routinely filled by OES, as are requests for specific financial records. The availability of and access to these records is not changed under the proposed Rules.

The proposed Rules are consistent with current law and practice in the Commonwealth and track closely the access policies adopted by other state judiciaries and the federal courts. The Rules summarize the current law and practice in one place, making it easier for the public to know the records that are publicly accessible and the process for accessing them.

The Supreme Court is requesting comments on the proposed Rules. The comments must be **received** by **December 3, 2018** and must be forwarded to:

Patricia L. Harrington, Clerk
Supreme Court of Virginia
100 North Ninth Street, 5th Floor
Richmond, VA 23219

OR via email with the subject line "Comment on Access to Judicial Records" to:

scvclerk@vacourts.gov