

2008

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
2008 Report to the General Assembly and Supreme Court of Virginia
Supreme Court of Virginia, Office of the Executive Secretary
Richmond, Virginia
Published January 2009**



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SUPREME COURT OF VIRGINIA



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January 14, 2009

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

I am pleased to submit the 2008 report of the Judicial Council of Virginia as required by Code § 17.1-705. I am happy to advise that Virginia's judicial system remains vibrant and innovative as we seek to better serve the citizens of this great Commonwealth in this challenging economic environment.

In 2008, Virginia's second futures commission, Virginia's Courts in the 21st Century: To Benefit All, To Exclude None, made recommendations to the Judicial Council and the Supreme Court of Virginia. The Judicial Council approved 189 of the Commission's 198 recommendations. The Supreme Court is considering the Judicial Council's recommendations.

The Office of the Executive Secretary has developed a new strategic plan that will enhance our ability to serve the public. The Advisory Committee on Domestic Violence Issues in Virginia's Courts continues to provide guidance regarding the resolution of domestic violence cases in this Commonwealth. The Advisory Committee on Domestic Violence Issues also provides training for Virginia's judicial branch personnel. The Supreme Court is developing an electronic filing system that will make our courts more accessible to the lawyers and the public. The electronic filing system will also be of great help to our district courts, where approximately four million cases are filed each year.

In 2008, the Judicial Council recognized the need for additional judgeships in the Tenth, Fourteenth, Fifteenth, Twenty-Sixth, Twenty-Seventh and Thirtieth Judicial Circuits. Despite the strong need for these new judgeships, we will not seek authorization for the creation of new judgeships because of the Commonwealth's economic situation. In spite of our budget constraints, we will work hard to provide justice and improve service to our fellow Virginians.

Thank you very much for your confidence in and support of Virginia's judicial system.

Very truly yours,

A handwritten signature in cursive script that reads "Leroy Rountree Hassell, Sr." Below the signature is the printed name "Leroy Rountree Hassell, Sr.".

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 Walter S. Felton, Jr.	Chief Judge, Court of Appeals of Virginia
The Honorable Wilford Taylor, Jr.	Judge, Eighth Judicial Circuit
The Honorable William N. Alexander, II	Judge, Twenty-second Judicial Circuit
The Honorable Leslie M. Alden	Judge, Nineteenth Judicial Circuit
The Honorable Gary A. Hicks	Chief Judge, Fourteenth Judicial Circuit
The Honorable Alfreda Talton-Harris	Judge, Fifth Judicial District
The Honorable Randal J. Duncan	Judge, Twenty-Seventh Judicial District
The Honorable Teresa M. Chafin	Judge, Twenty-Ninth Judicial Circuit
The Honorable Henry L. Marsh	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 David B. Albo	Member, Virginia House of Delegates
The Honorable Kenneth R. Melvin*	Member, Virginia House of Delegates
Richard Cullen, Esquire	Attorney-at-law, Member of the Bar of the City of Richmond
Leisa K. Ciaffone, Esquire	Attorney-at-law, Member of the Bar of the City of Roanoke
Karl R. Hade	Executive Secretary, Supreme Court of Virginia Ex-officio Secretary

*By invitation of the Chief Justice of Virginia

Committees of the Judicial Council of Virginia

Executive Committee

The Honorable Leroy Rountree Hassell, Sr., Chief Justice
The Honorable Walter S. Felton, Jr., Chief Judge
The Honorable William N. Alexander, II, Judge

Information and Public Relations

The Honorable Walter S. Felton, Jr., Chief Judge, Chair
The Honorable William N. Alexander, II
Ex-Officio:
The Honorable D. Eugene Cheek, Judge, Chair
Information and Public Relations Committee,
Judicial Conference of Virginia for District Courts

Criminal Procedure Committee

The Honorable S. Bernard Goodwyn, Justice, Chair
The Honorable C. Randall Lowe, Judge
Ex-Officio:
The Honorable Kathleen H. MacKay, Judge, Chair
Probation 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

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The Honorable Walter S. Felton, Jr., Chief Judge
The Honorable Randal J. Duncan, Judge
Richard Cullen, Esquire
Ex-Officio:
The Honorable Daniel R. Bouton, Judge, Chair
Judicial Administration Committee
Judicial Conference of Virginia
The Honorable J. Martin Bass, Judge, Chair
Judicial Administration Committee
Judicial Conference of Virginia for District Courts

Judicial Compensation, Retirement and Insurance

The Honorable Walter S. Felton, Jr., Judge, Chair
The Honorable William N. Alexander, II, Judge
The Honorable Alfreda Talton-Harris, Judge
The Honorable Randal J. Duncan, Judge
Ex-Officio:
The Honorable Malfourd W. Trumbo, Judge, Chair
Judicial Compensation, Retirement and Insurance
Committee
Judicial Conference of Virginia
The Honorable Louis A. Sherman, Judge, Chair
Judicial Compensation, Retirement and Insurance
Committee
Judicial Conference of Virginia for District Courts

Judicial Conduct

The Honorable Leslie M. Alden, Judge, Chair
The Honorable Gary A. Hicks, Judge
Ex-Officio:
The Honorable J. Michael Gamble, Judge, Chair
Judicial Conduct Committee
Judicial Conference of Virginia
The Honorable Thomas L. Murphey, Judge, Chair
Judicial Conduct Committee
Judicial Conference of Virginia for District Courts

Judicial Education

The Honorable Leslie M. Alden, Judge
The Honorable Teresa M. Chafin, Judge
Ex-Officio:
The Honorable Richard D. Taylor, Chair
Judicial Education Committee
Judicial Conference of Virginia
The Honorable Lucretia A. Carrico, Judge, Chair
Judicial Education Committee
Judicial Conference of Virginia for District Courts

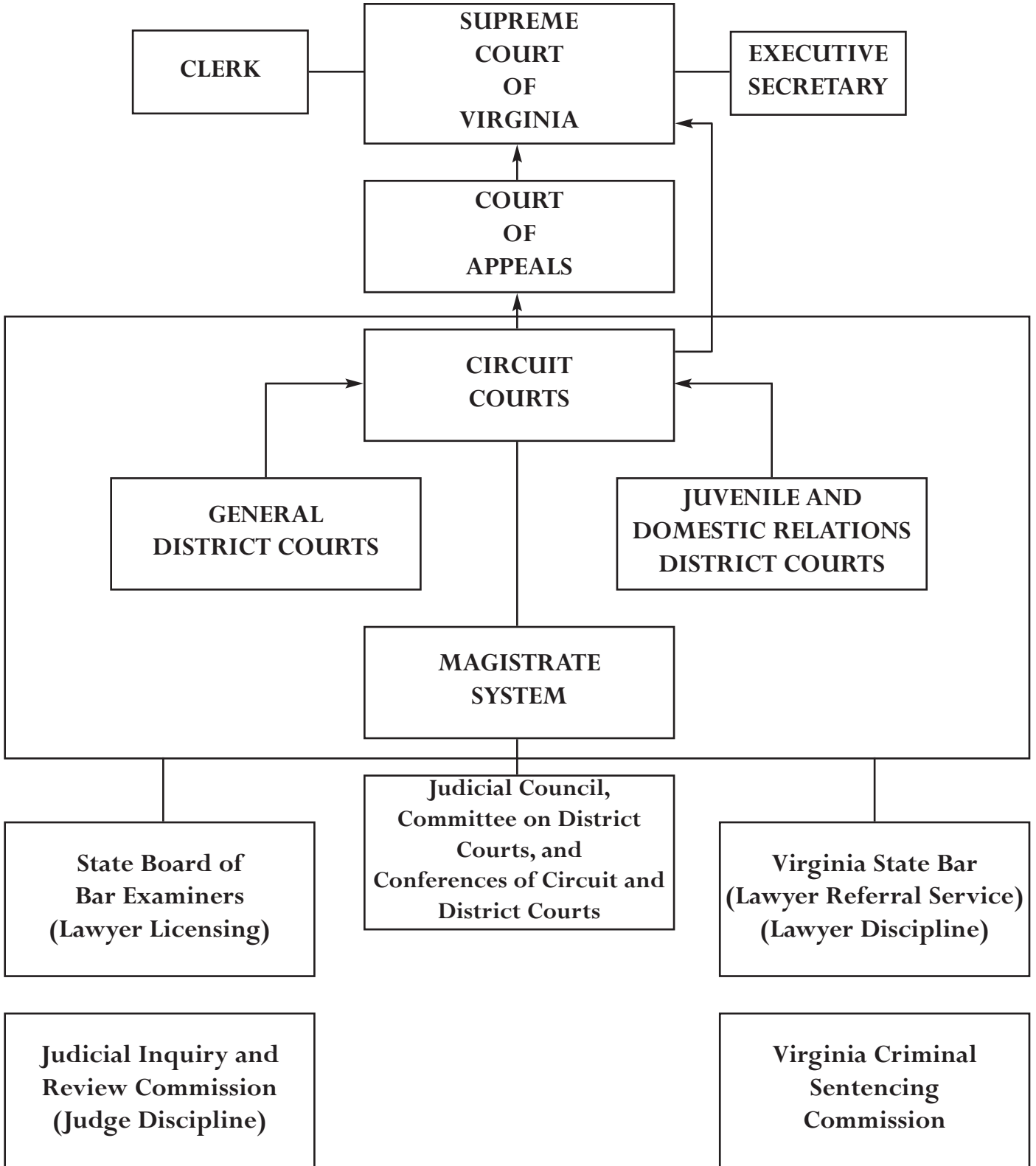
Law Revision

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The Honorable S. Bernard Goodwyn, Justice
The Honorable Alfreda Talton-Harris, Judge
The Honorable William J. Howell, Speaker, House of Delegates
Ex-Officio:
The Honorable A. Ellen White, Judge, Chair
Law Revision Committee
Judicial Conference of Virginia for District Courts

Advisory Committee on Rules of Court

Kent Sinclair, Professor of Law, Chair
The Honorable Arthur Kelsey, Judge
The Honorable Stanley P. Klein, Judge
The Honorable Nolan B. Dawkins, Judge
The Honorable Julian H. Raney, Jr., Judge
The Honorable Rossie D. Alston, Judge
The Honorable Melvin R. Hughes, Jr., Judge
The Honorable David A. Bell, Clerk
Hamilton Bryson, Professor of Law
Elizabeth M. Allen, Esquire
Craig S. Cooley, Esquire
William D. Dolan, III, Esquire
William B. Poff, Esquire
Hunter W. Sims, Jr., Esquire
Joan Ziglar, Esquire
John Charles Thomas, Esquire
Edward B. Lowry, Esquire

VIRGINIA JUDICIAL BRANCH



← Route of Appeal

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, procedures, 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, including the Office of the Executive Secretary and individual courts. The preparation and publication of the court system's comprehensive plan is central to meeting these responsibilities.

During 2008, the Office of the Executive Secretary developed a new strategic plan for the Judiciary, *Virginia's Courts in the 21st Century: To Benefit All, To Exclude None*. Once the plan is adopted by the Supreme Court of Virginia, most of the tasks necessary to implement the plan will be the direct responsibility of the Judicial Council or the Office of the Executive Secretary (OES), while others will directly involve local courts. Among the chapters of this report, the Judicial Council presents status reports of activities related to the operation of the comprehensive planning process, the implementation of the Magistrate System reforms, the recommendations of the Second Futures Commission, the Advisory Committee on Domestic Violence Issues in Virginia's Courts, and the Judicial Performance Evaluation program. This information is provided 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 2009 Session of the General Assembly.

Among the chapters of this report, the Judicial Council presents status reports of activities related to the operation of the comprehensive planning process, the implementation of the Magistrate System reforms, the recommendations of the Second Futures Commission, the Advisory Committee on Domestic Violence Issues in Virginia's Courts, and the Judicial Performance Evaluation program.

LEGISLATIVE PROPOSALS FOR THE 2009 SESSION OF THE GENERAL ASSEMBLY

Proposal to Increase the Retirement Age for Judges

The Judicial Council of Virginia recommends a proposal to increase the mandatory retirement age for judges from 70 to 75.

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PROCEEDINGS OF THE JUDICIAL COUNCIL

Advisory Committee on Rules of Court

The Advisory Committee on Rules of Court presented a number of recommendations to the Judicial Council in 2008. The most significant of these were proposals for an official compilation of the evidentiary rules that apply in Virginia, a set of rules governing privacy and access to court records, and draft rules addressing discovery and subpoenas for electronically stored information. The proposed Rules of Evidence build upon more than 13 years' work by the Boyd-Graves Conference and its Evidence Task Force and four years of work in study, research, and drafting by the Advisory Committee on Rules of Court. The draft Rules distill and restate existing Virginia evidence principles and do not modify or overturn any existing case law precedent or statutory provisions. Judicial Council approved the Rules of Evidence and requested that the Supreme Court consider and promulgate them, and, thereafter, submit them to the Code Commission for presentation to the General Assembly. The Rules and revisions are under review by the Supreme Court of Virginia.

The proposed Rules for Public Access to Court Records were developed by the Chief Justice's Committee to Study Privacy and Access to Court Records. The rules balance the demands for unfettered access on one hand and the widely recognized and very real risks of invasion of privacy and abuse of financial information on the other. The Judicial Council unanimously recommended that the Supreme Court adopt the proposed rules; the Council's recommendation adopts, with very few modifications, the recommendations presented to Council by the Advisory Committee. Additional information about these and Council's other recommended changes to rules of court may be found in Chapter 7.

All the members of the Advisory Committee agreed that rules should be put in place to regulate the discovery of electronically stored information in civil cases. The draft rules that the Committee recommended to Council make express provision for treating discovery of such information under existing discovery mechanisms.

Among the significant issues addressed in the “e-discovery” rules is a procedure to handle situations in which a party turns over a document but later comes to believe that it contains privileged or confidential information. The rule changes also address the issue of where the burdens lie in asserting a duty of production or a right to protections from discovery. Judicial Council approved all but one of the proposed rule changes. The Supreme Court of Virginia adopted Council’s recommendations in October with the rule changes to become effective January 1, 2009.

Training Standards and Appointment Guidelines for Special Justices

During 2008, the Judicial Council of Virginia adopted *Training Standards and Appointment Guidelines* for special justices who conduct adult civil commitment hearings and special justices who conduct juvenile civil commitment hearings. The General Assembly has authorized special justices to conduct adult civil commitment hearings in accordance with § 37.2-800 et seq., § 37.2-1100 et seq., and §§ 16.1-69.28, 19.2-169.6, 19.2-174.1, 19.2-177.1, 19.2-182.9, 53.1-40.1, 53.1-40.2 and 53.1-40.9. The 2007 Session of the General Assembly authorized special justices to conduct commitment hearings for juveniles in accordance with §§ 16.1- 335 through 16.1-348. The goal of the standards and guidelines is to foster effective and competent handling of adult and juvenile civil commitment hearings by special justices.

The authority to conduct civil commitment hearings is contingent upon the attorney being appointed as a special justice by the chief judge of the judicial circuit in which such hearings will be conducted. Such appointments by the circuit court must be made from a list of attorneys who have “completed a training program prescribed by the Office of the Executive Secretary of the Supreme Court” and may be made for periods of up to six years.

With the adoption of the *Training Standards and Appointment Guidelines*, attorneys requesting appointment as a special justice to conduct either adult or juvenile civil commitment hearings must submit certain information to the chief judge of the judicial circuit in which the attorney wishes to serve. Additionally, special justices are required to complete six hours of approved continuing education every two years on any topic related to the handling of adult or juvenile civil commitment hearings, whichever is applicable to the attorney’s appointment as a special justice.

With the adoption of the *Training Standards and Appointment Guidelines*, attorneys requesting appointment as a special justice to conduct either adult or juvenile civil commitment hearings must submit certain information to the chief judge of the judicial circuit in which the attorney wishes to serve.

Revisions to Standards Governing the Appointment of Guardians Ad Litem

At the request of the Office of the Executive Secretary, the Judicial Council reviewed policy revisions to the *Standards to Govern the Appointment of Guardians Ad Litem for Children* and the *Standards to Govern the Appointment of Guardians Ad Litem for Incapacitated Persons*. The revisions addressed open issues related to the removal and reinstatement of attorneys from the lists of qualified guardians ad litem.

An attorney's name may be removed from the list of qualified guardians ad litem upon request by an attorney that his/her name be removed or for failure to complete the biennial continuing education requirement. However, Section A of the *Standards to Govern the Appointment of Guardians Ad Litem for Children* and of the *Standards to Govern the Appointment of Guardians Ad Litem for Incapacitated Persons* requires that an attorney requesting inclusion on the list of guardians ad litem be "an active member in good standing with the Virginia State Bar." Previously, the *Standards* did not address the consequences of an attorney's license to practice law being suspended or revoked by the Bar at some point after initial qualification as a guardian ad litem. If an attorney's license to practice law was suspended or revoked subsequent to initial qualification, the attorney was expected to notify the Office of the Executive Secretary of such license suspension or revocation. This rarely, if ever, occurred. Therefore, a policy revision was recommended to and adopted by the Judicial Council authorizing the Office of the Executive Secretary to remove an attorney from the list of qualified guardians ad litem upon notification that the attorney's license to practice law in the Commonwealth has been suspended or revoked subsequent to initial qualification as a guardian ad litem.

Additionally, once removed from a list of qualified guardians ad litem, the *Standards* had provided no specific steps for an attorney to follow to be re-instated as a guardian ad litem. Thus, the new re-instatement requirements based on the length of time an attorney is off the list of qualified guardians ad litem were proposed and adopted by the Judicial Council. At least one of the requirements provided must be fulfilled prior to re-instatement.

The Council unanimously recommended the adoption of the revisions to the *Standards*.

An attorney's name may be removed from the list of qualified guardians ad litem upon request by an attorney that his/her name be removed or for failure to complete the biennial continuing education requirement.

Consideration of New Judgeships

During 2008, the Judicial Council considered requests from six Judicial Circuits for an additional judgeship. These were the same circuits whose requests Council had considered and approved in 2007. After another review of the caseloads and judicial workloads of these circuits, as well as input from judges and members of the Bar in these circuits, the Council found the continued need for an additional judgeship in the Tenth, Fourteenth, Fifteenth, Twenty-sixth, Twenty-seventh, and Thirtieth Judicial Circuits. Despite the documented need for these new judgeships, the Chief Justice is aware of the significant economic difficulties facing the Commonwealth. For this reason, the Chief Justice does not intend to seek authorization of these new judgeships during the 2009 Session of the General Assembly.

The Honorable Harry L. Carrico Outstanding Career Service Award

In 2004, the Judicial Council of Virginia created an 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, demonstrates exceptional leadership in the administration of the courts while exhibiting the traits of integrity, courtesy, impartiality, wisdom, and humility. The 2008 recipient of this award was the Honorable Thomas S. Shadrick.

Judge Shadrick served over eighteen years on the Virginia Beach Circuit Court until his retirement in March 2008. In addition to his notable legal credentials, Judge Shadrick served the community as a director of Big Brothers Big Sisters of Hampton Roads and of the Norfolk Forum. He was a founder and mentor of the Seatack Elementary School Mentoring Program. He is a past president of the Virginia Beach Bar Association, as well as a former member of the Executive Committee of the Judicial Conference of Virginia, the Judicial Conduct Committee, and the Second District Ethics Committee, Virginia State Bar. In 2007, Judge Shadrick chaired the Chief Justice's Magistrate Study Group.

Despite the documented need for these new judgeships..., the Chief Justice does not intend to seek authorization of these new judgeships during the 2009 Session of the General Assembly.



Chapter 2

Update on the Comprehensive Planning Process

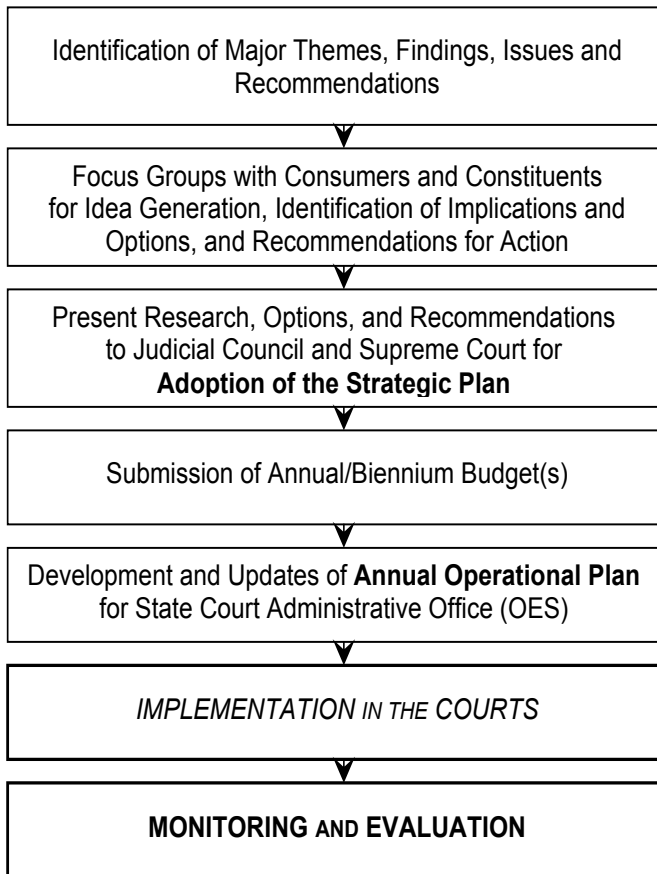
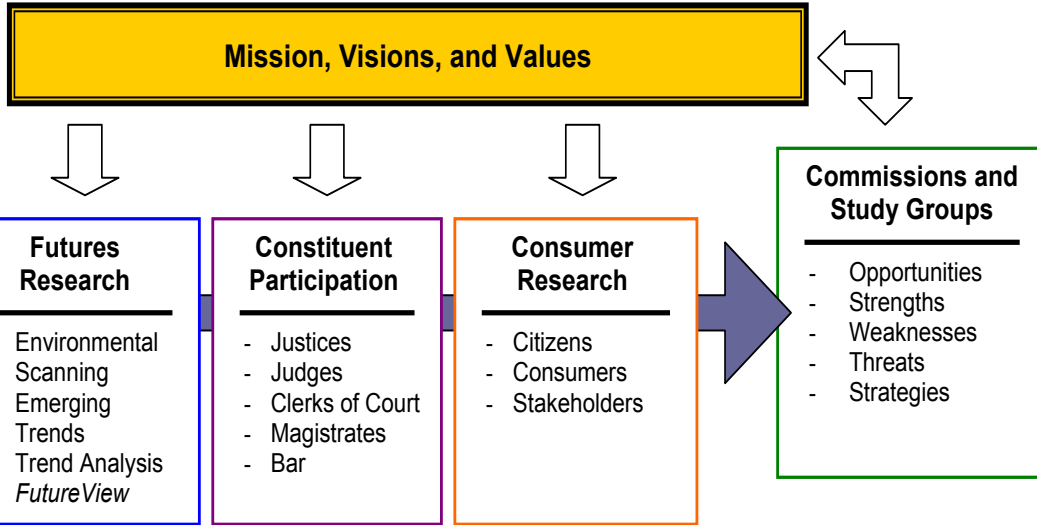
In Virginia's courts, the comprehensive planning process produces both a long-term strategic plan for the entire court system and a shorter-term operational plan that guides the internal workings of the Office of the Executive Secretary (OES) of the Supreme Court of Virginia. The strategic plan details the guiding values for the courts and the means by which those values can be realized and the mission fulfilled. The last strategic plan, *Bringing the Future to Justice: Charting the Course in the New Dominion*, was adopted and approved by the Judicial Council and Supreme Court in 2003 and 2004. Work under that Plan is essentially complete. A series of periodically updated operational plans within OES helped to implement the Strategic Plan.

The comprehensive strategic and operational planning process for Virginia's courts (see the diagram on page 8) largely evolved following the 1989 Commission on the Future of Virginia's Judicial System. What was once a biennial cycle driven by budgetary timetables now spans approximately five years, a period more appropriate to long-term planning. The process involves many stages of information gathering, analysis, recommendation-generation, and review. After a plan is adopted, the planning process includes continuous monitoring and evaluation to ensure that tasks are implemented in a timely and effective manner and to assess whether strategies are actually successful in meeting their intended objectives. This operational feedback then becomes part of the planning information cycle.

Four types of special resources inform the planning process. The foremost information resource for the planning process is the body of findings and recommendations provided by expert commissions and study groups, most notably the Judiciary's two Futures Commissions. The court system's continuing mission plus the visions and original

After a plan is adopted, the planning process includes continuous monitoring and evaluation to ensure that tasks are implemented in a timely and effective manner and to assess whether strategies are actually successful in meeting their intended objectives.

THE COMPREHENSIVE STRATEGIC AND OPERATIONAL PLANNING SYSTEM FOR VIRGINIA COURTS



Operational Feedback

Continuous Activity

objectives of past Strategic Plans were developed from the work of the first commission in 1989. That commission strongly influenced the values and strategies that were manifested in the succession of multi-year plans that the Judicial Council and Supreme Court of Virginia adopted over the past two decades. After adoption by the Supreme Court of Virginia, the recommendations of the second Futures Commission, *Virginia Courts in the 21st Century: To Benefit All, To Exclude None* (2006), will similarly inform the ensuing cycles of the comprehensive planning process. [See Chapter 3.]

Another information resource for the planning process is ongoing futures research that the judicial branch conducts to help identify and understand developments that could shape the future. The judicial branch employs a number of different techniques, including environmental scanning, the identification and analysis of trends, and the solicitation of expert opinions through focus groups, to gain information about the choices that are available to address various opportunities and challenges and what the consequences of those choices may be. The information generated by these techniques guides the development and implementation of appropriate strategies within the planning process.

The remaining sources of information driving the planning process are consumer research and constituent participation. The Supreme Court of Virginia conducts surveys periodically to assess citizen perceptions of the Virginia courts; the most recent such survey was carried out in 2007. The Executive Secretary of the Supreme Court also solicits feedback from individuals involved in the judicial process, including judges, clerks, and attorneys. The latest such survey was administered in the spring of 2008. These efforts clarify perceptions of the strengths and weaknesses of the court system and of the opportunities for improvement. These surveys also help identify possible strategies and tasks for the court system and provide feedback regarding their merits.

Since 2005, the judicial branch has taken the information from these information sources through the many steps of the planning process. From these efforts, a new strategic plan has been drafted that the Judicial Council and Supreme Court of Virginia will consider, beginning in fiscal year 2009. After the Supreme Court has formally adopted the new plan, its values and strategies will influence the Judiciary's budget requests and the development of specific operational tasks by which to implement the strategies over the next several years. The new Strategic Plan, *Virginia's Courts in the 21st Century: To Benefit All, To*

[A] new strategic plan has been drafted that the Judicial Council and Supreme Court of Virginia will consider, beginning in fiscal year 2009.

Ideally, the planning process will raise the awareness of judges, clerks, and others so they will come to think and act more consciously with respect to the courts' mission and what they can do to fulfill it.

Exclude None, will become available during calendar year 2009.

Maintaining the courts as a core component of our democratic form of government is critically important. Courts must be prepared to carry out the basic functions of the justice system as well as to address special circumstances and needs, such as security and continuity of court services in the event of natural or man-made disaster. Both the governmental functions and basic operations of the justice system must be able to adapt to societal changes—the opportunities and threats they present and the expectations they create. To ensure that the court system performs its governmental role—its *mission*—effectively, the courts maintain an ongoing, comprehensive planning process that identifies the preferred course for meeting responsibilities and monitors progress toward identified ends. Ideally, the planning process will raise the awareness of judges, clerks, and others so they will come to think and act more consciously with respect to the courts' mission and what they can do to fulfill it.

Chapter 3

Adoption of the Recommendations of the Second Futures Commission

On October 6, 2005, the Judiciary's second Futures Commission, *Virginia Courts In The 21st Century: To Benefit All, To Exclude None*, began its work. The Commission submitted its final report on January 26, 2007. During 2007, the Judicial Council of Virginia heard a presentation about the Commission's work, then reviewed and discussed the Commission's 198 recommendations to determine which should be approved for consideration by the Supreme Court. The Council approved 189 recommendations as they were submitted by the Commission and five with revisions. [See the recommendations on the following pages. Notations have been made to those that were not approved as submitted.]

During 2008, the Supreme Court of Virginia began reviewing the recommendations that were approved by Judicial Council, considering which to adopt. Following adoption by the Supreme Court, the recommendations will become the basis for future strategic planning within Virginia's courts. As part of the Strategic Plan, many of the recommendations will come before the Judicial Council again so that it may consider practical aspects of their implementation.

Access to Affordable and Efficient Legal Representation.

Virginia should provide more affordable and efficient legal representation by

Vision One

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

1.1.

Authorizing the Virginia State Bar, with the assistance of the voluntary bar associations, to create a statewide voluntary program in which lawyers would provide defined legal services for financially qualified individuals for a reduced fee.

1.2.

Increasing and expanding tax credits for lawyers who participate in the voluntary reduced-fee program.

1.3.

Permitting the unbundling of legal services.

1.4.

Expanding the areas in which foreign legal consultants (non-U.S. attorneys) may practice law.

1.5.

Creating compacts with bordering jurisdictions to permit those licensed in a compact jurisdiction to practice in any other compact jurisdiction.

1.6.

Promoting the formation of a larger pool of active lawyers by removing the requirement that those entering practice on motion must intend to practice full-time from a Virginia office.

Legal Aid.

Virginia should strive to remove economic barriers to legal representation for low-income individuals by

1.7.

Increasing funding for legal aid and considering funding other non-profit agencies that provide free legal services to low-income individuals.

1.8.

Encouraging increased pro bono representation by the private bar.

Indigent Defense.

Virginia should provide access to and resources for effective representation of indigent criminal defendants by

1.9.

Expanding the Public Defender system to create a statewide system that is fully staffed and funded. New Public defender offices should be established in every jurisdiction, except those where the low number of cases or geographical considerations make it impractical or not economically feasible.

1.10.

Providing for funding of Public Defender offices at a level comparable to the funding provided to Commonwealth Attorneys' offices.

1.11.

Reforming the current system of compensation of court appointed attorneys by removing the fee caps.

1.12.

Developing maximum caseload standards for attorneys working in Public Defender offices and attorneys serving as court appointed counsel. Compliance with the caseload standards should be closely monitored to ensure that attorneys can meet their ethical responsibility of providing competent, effective representation to their clients. Public Defender offices should be adequately staffed to allow attorneys to handle all cases, except those presenting a conflict of interest, without exceeding caseload standards.

1.13.

Providing the Indigent Defense Commission authority to compile and qualify a roster of attorneys to be appointed by the Courts to handle cases that cannot be handled by Public Defenders.

Fee Waivers.

Virginia should ensure filing fees are not economic barriers to access to its courts by

1.14.

Assisting qualified individuals to file petitions for leave to proceed *in forma pauperis* by posting forms for petitions in clerk's offices, at local law libraries and public libraries and on the Supreme Court of Virginia's website. Virginia should authorize the clerk of the court, in addition to the court, to grant waiver of the filing fee to initiate an action upon proof of indigency.

1.15.

Allowing judges broad discretion to waive service of process fees in domestic relations cases.

Non-Attorney Representatives.

Virginia should reduce the costs of litigation in courts not of record by

1.16.

Expanding the purposes for which business entities may be represented by non-attorney company representatives in courts not of record.

Proof of Damages by Affidavit..

Virginia should improve the efficiency and reduce the cost of litigation by

1.17.

Expanding the use of affidavit testimony to prove property damages under procedures that provide notice and opportunity to show why affidavits should not be allowed.

Court Hours.

Virginia should eliminate time barriers to access to its courts by

1.18.

Providing funding and support for expanded court hours, including nights and weekends.

Virginia should prepare for disasters by

1.19.

Maintaining a volunteer corps of attorneys trained to provide fundamental legal services to Virginians during large-scale emergency situations. The volunteer corps should be coordinated with federal and state disaster preparedness agencies. Virginia should enact legislation to protect such volunteer attorneys from malpractice claims.

1.20.

Establishing a plan for the judicial branch's response to disasters.

1.21.

Establishing a plan for each court's response to disasters.

General Public Assistance in Court Facilities.

Virginia should provide a courthouse experience for all members of the public that promotes understanding and respect for the court system by

Vision Two

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

2.1.

Training all personnel in court facilities to be helpful and proactive, and to identify those who may need special assistance.

2.2.

Conducting performance evaluations of all personnel in court facilities that include an assessment of their helpfulness and efforts to assist court users, to solve problems and to treat all court users with respect.

2.3.

Developing, in consultation with affected populations, a set of “Best Practices” addressing “way finding,” signage, and clear communication about where to find services in court facilities.

2.4.

Implementing as appropriate “self-help centers” and facilitators’ offices in court facilities, information “kiosks” in public buildings and interactive tutorials on the judicial system website.

2.5.

Developing a comprehensive diversity training program for all court personnel.

2.6.

Continuing to promote recruitment and retention of a diverse workforce in the judicial system.

2.7.

Developing a uniform assessment instrument to gather and tabulate information from trial participants and other court users regarding their courthouse experience.

2.8.

Ensuring that all District Court Clerk’s Offices have coverage by at least one employee whenever Courts are open.

2.9.

Ensuring that only current court-approved forms are available in and accepted by the courts.

2.10.

Ensuring that court forms are written in plain language and are easily comprehensible.

2.11.

Ensuring that all clerk's offices are appropriately staffed.

Self Represented Litigants.

Virginia should address self representation in litigation by

2.12.

Adopting standard protocols for judges to use in cases involving self-represented litigants. Such protocols should be included in the bench book, made available to the bar and the general public and provide judges guidance during the trial of cases.

2.13.

Developing a training program for judges and substitute judges to provide them guidance and direction on the effective handling and management of cases involving self-represented litigants. This training should be presented during the pre-bench orientation program for newly elected judges, as part of the continuing educational curriculum at the voluntary and mandatory judicial conferences and as an on-line tutorial.

2.14.

Developing a plain-language brochure that outlines for self-represented litigants in a step-by-step "how-to" format, the various general procedures that they must follow in order to prepare for and present their case properly and thoroughly. The brochure should be available at clerks' offices, law libraries and other public libraries and on the judicial system's website.

2.15.

Developing plain-language checklists for particular types of cases to enable self-represented litigants to review and understand, in advance of going to court, the specific information they will be required to present during the course of their legal proceeding. These checklists should be available at clerks' offices, public law libraries and other public libraries and on the judicial system's website.

2.16.

Developing written guidelines on appellate procedures and deadlines that are understandable to self-represented litigants. These guidelines should be made available at clerks' offices, public law libraries and other public libraries and on the judicial system's website.

Court Users Whose First Language is not English.

Virginia should address the needs of Non-English speaking court users and cultivate their respect for the rule of law by

2.17.

Increasing efforts to recruit, train and certify foreign language interpreters for criminal and civil cases.

2.18.

Evaluating salary supplements for court personnel who offer skills such as fluency in a foreign language or sign language proficiency.

2.19.

Providing court forms and instructional materials in languages other than English.

(NOT APPROVED)

2.20.

Posting a court website that is ~~multi-lingual~~ and user friendly with understandable information for the general public and court users, including jurors and witnesses.

(APPROVED AS REVISED)

2.21.

Providing that court facilities contain clear and legible signs and instructions ~~in English and Spanish~~. Signs and instructions should be understandable by persons with a fifth grade education. ~~In jurisdictions with a significant population of non-English and non-Spanish speakers, instructions should also be made available in additional languages upon request.~~ Signage and instructions should be addressed to lay users, not lawyers or those with experience with the special language of the courts (e.g., signs should say “file your papers over there,” “pay your fines over here,” or “check in as a juror on the second floor”). All written instructions should be available in LARGE PRINT. (This recommendation also addresses the needs of court users who need special accommodations.)

(APPROVED AS REVISED)

2.22.

Providing interactive kiosks and electronic information centers to the public, ~~including non-English speakers~~, with information on judicial procedures and court cases, e.g., directions to courtrooms, daily dockets, daily case dispositions, information for self-represented litigants, access to magistrates and “help desk” materials. (This recommendation also addresses the needs of court users who need special accommodations.)

(APPROVED AS REVISED)

2.23.

Recruiting a significant number of interpreters for as many languages as possible.

2.24.

Developing certification programs for interpreters in as many languages as possible.

2.25.

Encouraging the MCLE Board to grant credit for courses aimed at the representation of clients whose first language is not English, including courses exploring cultural patterns and practices.

Court Users Who Need Special Accommodations.

Virginia should address the needs of court users with who need special accommodations and cultivate their respect for the rule of law by

2.26.

Encouraging litigants and other court users to provide notice to the court at the earliest opportunity of any disability that may require accommodation to permit court personnel to accommodate their needs.

2.27.

Providing prospective jurors the opportunity to disclose in the uniform background document any disability that may require accommodation to permit court personnel to accommodate their needs.

2.28.

Training all court personnel to assist court users with disabilities and the needs associated with aging.

2.29.

Establishing a centralized reporting procedure for persons who feel they have been denied service in a court facility because of a disability or who feel they have not been reasonably accommodated.

2.30.

Providing equipment to accommodate vision and hearing impairments in court facilities.

2.31.

Adopting assistive technology to accommodate the hearing, visual and mobility impairments and functional illiteracy of participants in the legal process and to provide assistance in the examination of court records.

2.32.

Employing technology in the development of webpages that includes access devices which enlarge and read aloud text information for the benefit of novice users, seniors, impaired vision and impaired hearing users and functionally illiterate users.

2.33.

Providing court facilities that are accessible to all. Alternative accommodations should be available for those with special needs in all public areas, including court rooms, jury rooms, mediation facilities and clerk's offices.

2.34.

Conducting an inventory and assessment of all court facilities and procedures for compliance with the Americans with Disabilities Act and develop a statewide plan to achieve compliance.

2.35.

Supporting courts with respect to Americans with Disabilities Act compliance, reasonable accommodation, adaptive technology, courthouse design, and services for persons with disabilities, including sensory impairment.

2.36.

Developing, in consultation with affected populations, a set of "Best Practices" for court facilities addressing compliance with Americans with Disabilities Act, reasonable accommodation, adaptive technology, courthouse design and services for persons with disabilities, including sensory impairment.

2.37.

Undertaking to make all new or significantly-modified court facilities compliant with the Americans with Disabilities Act.

2.38.

Including input from responsible stakeholder groups at the earliest possible stages of planning for construction of new court facilities and retrofitting of existing court facilities.

Availability of Information about Alternative Dispute Resolution.

Virginia should promote the availability of information about alternative dispute resolution services by

3.1.

Increasing information provided to the public regarding alternative dispute resolution through an Office of Public Education.

Vision Three

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

Voluntary Alternative Dispute Resolution.

Virginia should foster increased voluntary alternative dispute resolution by

3.2.

Encouraging the fullest use of alternative dispute resolution through complementary activities in the public and private sectors, including providing publicly funded alternative dispute resolution services for financially qualified parties.

3.3.

Promoting and funding the development of community mediation centers to increase access for all Virginians, particularly those who are low income and self-represented, to voluntary participation in mediation and other collaborative processes.

3.4.

Supporting voluntary participation in alternative dispute resolution without mandating participation by statute, rule, order or otherwise.

Alternative Dispute Resolution Orientation.

Virginia should provide alternative dispute resolution orientation to as many parties to litigation as possible by

3.5.

Increasing the number of cases referred to alternative dispute resolution orientation by the revitalized use of existing legislation and by providing the services of one or more alternative dispute resolution coordinators in each jurisdiction.

3.6.

Adopting legislation which requires certain litigants to attend an orientation session which explains the nature of the alternative dispute resolution process and provides information on the availability of public and private alternative dispute resolution services. With the exception of cases involving domestic violence or child abuse, and subject to the discretion of the Court, orientation sessions should be mandated in the following types of cases:

- (1) All contested civil litigation in which both parties are unrepresented by counsel.
- (2) All custody, child support and visitation disputes, including divorce actions, where such matters are in dispute.
- (3) All contested civil cases seeking money damages where the amount in controversy is \$15,000.00 or less.

Facilities for Alternative Dispute Resolution.

Virginia should make alternative dispute resolution services more accessible and efficient by

3.7.

Providing rooms suitable and available for counseling, mediation and settlement discussions in or near court facilities.

3.8.

Exploring the use of technology-enabled alternative dispute resolution as a means of inexpensively and efficiently resolving some civil cases.

Diversity in Alternative Dispute Resolution.

Virginia should accommodate diversity in alternative dispute resolution services by

3.9.

Expanding the availability of alternative dispute resolution services to users of the court system whose first language is not English and offer incentives to recruit, train and mentor bilingual and culturally diverse professional to seek certification as court-referred mediators.

3.10.

Requiring diversity training for all certified mediators, provide access to translators in the mediation process and develop materials that explain dispute resolution options such as mediation in languages other than English.

3.11.

Establishing a roster of certified mediators as diverse as the general population of the Commonwealth.

Trial Courts.

Virginia should improve the administration of justice at the trial level by

4.1.

Establishing a single tier trial court with divisions and providing that the Circuit Court may appoint a trial court administrator where needed to assist the judges in effectively managing the caseload and staff.

4.2.

Establishing a Family Court as a court of record as either a separate court or as a division of the Circuit Court.

4.3.

Expanding the Drug Treatment Court case management system to include all circuits.

4.4.

Reconfiguring the jurisdictional boundaries of the trial courts to assure an efficient use of judicial resources.

4.5.

Devising a system by which traffic tickets can be input directly into court records to facilitate the prompt payment of uncontested violations and near real-time caseload information.

4.6.

Adopting Rules of Evidence for civil and criminal proceedings.

4.7.

Providing administrative proceedings for infractions and small claims matters.

4.8.

Discontinuing the practice of obtaining a grand jury indictment after a finding of probable cause at a preliminary hearing.

(NOT APPROVED)

Vision Four

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

4.9.

Expanding the rules of discovery in criminal cases to promote meaningful defense preparation and the fair and expeditious resolution of criminal cases including greater discovery rights for the litigants.

Court of Appeals of Virginia.

Virginia should enhance the impact of the Court of Appeals of Virginia by

4.10.

Streamlining the Court of Appeals two-stage discretionary appeals process by providing an appeal of right in all cases with appropriate summary processes to screen less meritorious appeals.

4.11.

Expanding the civil appellate jurisdiction of the Court of Appeals to include all appeals from circuit courts and administrative agencies with the exception of the State Corporation Commission and appeals involving attorney disciplinary matters and allocate resources to the Court of Appeals to ensure accessible, responsive, effectively administered appellate review.

4.12.

Streamlining the appellate process by exploring means to limit en banc review in the Court of Appeals.

(NOT APPROVED)

4.13.

Reducing procedural defaults in appeals by

- (1) simplifying appellate rules and making them more flexible;
- (2) harmonizing the rules of Virginia's two appellate courts.

4.14.

Providing that the Court of Appeals, with consent of the parties, may refer any civil case before it to mediation and provide for extensions of time for filing deadlines as necessary and appropriate.

4.15.

Using emerging technologies to reduce costs and delays resulting from transcript preparation, transmission of the record and other “up front” steps in the appellate process. Specifically, Virginia should

- (1) provide for near real-time electronic transcripts of trials and other proceedings and electronic records of all court documents;
- (2) provide for immediate and automatic transmission of the electronic trial record to the Court of Appeals as soon as a notice of appeal is filed;
- (3) simplify the preparation of the appellate appendix by relying on designations linked to a searchable electronic record.

4.16.

Providing separate space for the Court of Appeals.

Supreme Court of Virginia.

Virginia should assure an efficient court system by

4.17.

Periodically examining the relationships of all entities reporting to the Supreme Court to ensure an effective span of control and appropriate organization.

4.18.

Amending the rules of appellate procedure to allow the opportunity to show good cause for missing a deadline.

Probate System.

Virginia should improve the probate system by

4.19.

Providing consistent, complete and easy to read information to the public regarding the probate system.

4.20.

Making information regarding the probate system and the Manual for Commissioners of Accounts available to the public through the judicial system’s website.

4.21.

Ensuring that all offices in the probate system comply with the Americans with Disabilities Act as well as providing access to telephone interpreters and sign language interpreters.

4.22.

Encouraging interstate compacts to exchange relevant probate information among courts to ensure that when parties leave the original jurisdiction probate matters are properly handled.

4.23.

Providing a roster of state-wide public fiduciaries who can serve in situations where there is no family member or other representative available to serve.

4.24.

Conducting a comprehensive review of its system of supervising fiduciaries (executors, administrators, curators, trustees, guardians and conservators) to determine how much supervision is appropriate and who should be charged with their supervision, including the role of the Commissioner of Accounts.

4.25.

Providing specialized continuing legal education for all personnel with the probate system, including Commissioners of Accounts and their staff, clerks' office staff and the judiciary.

4.26.

Connecting all personnel within the Probate System electronically with each other and with all other personnel within the Court System.

Virginia should improve the Commissioners of Accounts system by

4.27.

Adopting uniform minimum statewide standards for selection of Commissioners of Accounts.

4.28.

Adopting a uniform statewide fee schedule for Commissioners of Accounts which is regularly reviewed.

4.29.

Providing for regular audits of the operations and financial transactions of the Commissioners of Accounts by the ~~State Auditor~~ Auditor of Public Accounts or an independent certified public accountant ~~agency formed~~ to oversee the operations of Commissioners of Accounts.

(APPROVED AS REVISED)

4.30.

Providing that the Chief Judge of each circuit will supervise each Commissioner of Accounts. The supervision should include a review of the audit and quarterly reports of the Commissioner, a meeting with the Commissioner at least annually and seeking comments from relevant sources concerning the Commissioner's performance and ability to continue to carry out the duties of the office.

4.31.

Directing that Commissioner of Accounts will avoid filing documents in the public record that include social security numbers and other private information of the decedent, the fiduciary, creditors and beneficiaries. If such information is necessary, it should be filed under seal.

4.32.

Providing space for Commissioners of Accounts in court facilities with access in compliance with the Americans with Disabilities Act.

Guardians Ad Litem.

Virginia should address the need for Guardians Ad Litem by

4.33.

Providing for certification, evaluation of quality of services and complaint review procedures for, as well as education in the proper use and oversight of, Guardians Ad Litem.

4.34.

Conducting continuing assessments of the volume of Guardian Ad Litem cases and establish programs to recruit and train an appropriate roster of attorneys to serve as Guardians Ad Litem.

4.35.

Providing training for guardians and conservators.

4.36.

Establishing procedures for the *ex parte* appointment of guardians in emergency circumstances.

Commissioners in Chancery.

Virginia should improve the administration of justice by

4.37.

Abolishing the current system of Commissioners in Chancery and giving the circuit court judges authority to appoint special masters pursuant to procedures similar to Rule 53 of the Federal Rules of Civil Procedure.

Commonwealth Attorneys.

Virginia should improve the administration of justice by

4.38.

Developing appropriate caseload standards for attorneys in Commonwealth Attorneys' offices and ensure that each Commonwealth Attorney's office is appropriately staffed and fully funded.

Funding.

Virginia should support the effective delivery of court services across the Commonwealth by

5.1.

Fully funding the operation of the entire court system while permitting localities to supplement state funding.

Court Administration.

Virginia should modify the system of court administration and enhance its efficiency by

5.2.

Eliminating the constitutional office of Clerk of the Circuit Court. In its place, each Circuit Court should appoint a court administrator to perform all of the duties currently performed by the Clerk of the Circuit Court.

(NOT APPROVED)

5.2 (alt.)

Studying the responsibilities of the constitutional office of Clerk of the Circuit Court to determine which of those responsibilities would be better located in the Circuit Court itself. Each Circuit Court should appoint a court administrator to perform all of the duties so identified.

(ALTERNATIVE TO 5.2, APPROVED)

5.3.

Providing adequate resources and training to implement an effective calendar management system in all courts.

5.4.

Developing standards for the timely disposition of various types of cases. The standards should not be mandatory but incentives should be developed to achieve compliance with the standards.

Vision Five

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.

5.5.

Examining the compensation of all court staff to ensure that it is appropriate.

5.6.

Examining the role of court management to ensure that the model in Virginia reflects the best practices for the profession and that those serving in court management are provided appropriate training.

Office of Executive Secretary.

Virginia should provide for the effective organization and management of the Office of Executive Secretary, including ensuring access to its services for local courts by

5.7.

Providing for periodic review of the organization of the Office of the Executive Secretary to ensure that the organization is appropriate and effective.

5.8.

Providing executive management training for all department managers in the Office of the Executive Secretary.

5.9.

Increasing statewide access to the services of the Office of Executive Secretary through the use of technology, satellite offices and increased contact with judges, clerks and the public.

5.10.

Creating within the Office of Executive Secretary a department to provide technical assistance for calendar management in local courts. The department would consult with, train, and support courts and clerks in improving local calendar management, delay reduction and docket management programs. Virginia should also allocate resources to encourage professional calendar management leadership in the courts either on a court by court basis or regional basis.

5.11.

Changing the titles of Executive Secretary and Office of the Executive Secretary to State Court Administrator and Office of the State Court Administrator.

Security for Court Facilities.

Virginia should increase security for court facilities by

5.12.

Conducting periodic security assessments of all court facilities. Courts should encourage local sheriffs to avail themselves of the assistance of the Virginia State Police, Virginia Sheriffs' Association, Virginia Capitol Police and the United States Marshal's Service in assessing security needs in coordination with the Virginia Community Policing Institute. Any security assessments should be exempt from the Freedom of Information Act. Any deficiencies identified in the assessments should be addressed as soon as practicable.

5.13.

Directing judges and sheriffs to confer on all security issues. Judges should have authority to order additional court security.

5.14.

Providing that security be present for all court proceedings.

5.15.

Directing that all law enforcement officers appearing in court as parties are not to appear in uniform and are not to carry weapons. Guns in the courtroom and courthouse should be limited to court security officers as defined by the appropriate law enforcement authority and approved by the courts.

5.16.

Installing panic buttons in court facilities. Emergency response teams should be trained to respond to emergencies in the courtroom or in chambers. Court facilities should have emergency response plans that are reviewed and rehearsed regularly. Emergency response plans should be exempt from the Freedom of Information Act.

5.17.

Providing separate and secure rooms for victims and witnesses in criminal and civil cases.

5.18.

Requiring police academies to include training in courtroom protocol and security as required topics.

Security for Judges.

Virginia should increase security for judges by

5.19.

Promoting the availability of personal security assessments for judges and conducting them for all judges who request them.

5.20.

Providing security for any judge or members of any judge's family where there are threats to the judge or a member of the judge's family.

Access and Security for Records.

Virginia should balance the public's right of access to public records and the need for security for electronic communications and data by

5.21.

Adopting a comprehensive policy on access to court records consistent with the Recommendations of the Guidelines for Public Access to Court Records published by the National Center for State Courts and the Justice Management Institute.

5.22.

Employing the most effective methods available to secure all electronic communications and data storage systems.

5.23.

Implementing technology for encryption of electronic data.

Courthouse Facilities.

Virginia should increase the accessibility, security and convenience of courthouse facilities by

5.24.

Clearly marking and signing court facilities from adjacent highways.

5.25.

Providing “drop in” childcare facilities for children of court users either on the premises or within walking distance of courts.

Vision Six

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 pre-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.

Creation of Judgeships.

Virginia should improve the procedure for requesting additional judgeships by

6.1.

Developing objective criteria for determining the need for new judgeships. The criteria should include caseload and benchtime per judge and such other criteria as the Supreme Court of Virginia deems appropriate.

6.2.

Authorizing the Supreme Court of Virginia to initiate requests for new judgeships. Judicial Circuits and Districts may continue to request additional judgeships.

6.3.

Authorizing additional staffing in the relevant clerk's office when new judgeships are approved.

Judicial Elections.

Virginia should assure that it continues to have men and women of the highest quality elected to serve on the bench by providing for election of judges as follows

6.4.

To statewide courts:

- (a) The General Assembly should appoint a Judicial Nominations Commission (JNC) which reflects the diversity of the Commonwealth. The members of the JNC shall include the Presidents (or their designees) of the Virginia State Bar and such voluntary statewide bar associations as may be selected by the General Assembly and members of the public.
- (b) The JNC shall evaluate candidates according to standards and criteria which shall include:
 1. Integrity;
 2. Legal knowledge and ability;
 3. Professional experience;
 4. Judicial temperament; and
 5. Such other factors as the General Assembly may consider appropriate.

- (c) For each vacancy, the JNC shall submit to the General Assembly the names of more than one candidate deemed “qualified” or “well qualified.” The General Assembly should elect judges from the slate submitted by the JNC.

To trial courts:

- (a) The process of electing trial court judges should reflect the particular circumstances and needs of each jurisdiction.
- (b) In every jurisdiction, the administration of justice benefits when the selection process includes input from the local legal community and the public. Therefore, local bar associations should communicate with their legislators to establish a process by which the local legal community may assist the General Assembly in identifying the best qualified candidates.

For reelection: In order to preserve judicial independence, judges should be reelected unless there are compelling non-political reasons not to reelect.

Judicial Education and Training.

Virginia should support judicial education and training by

6.5.

Funding education and training for all judges, substitute judges, senior judges and magistrates throughout their careers.

- (1) Judicial education provided to judges through the Supreme Court of Virginia should be comprehensive with regard to content and delivery methods; and
- (2) Judges should be able to attend specialized courses offered by other states or organizations.

6.6.

Expanding the education programs provided to judges to include education in the principles governing the assessment of scientific information.

Judicial Compensation.

Virginia should address judicial compensation by

6.7.

Providing judicial salaries and benefits sufficient to continue to attract and retain the best qualified people for the judiciary.

6.8.

Establishing an independent Compensation Commission to set judicial salaries and benefits. The Commission's Recommendations should be implemented unless the General Assembly acts to provide different compensation.

Law Clerks.

Virginia should assist judges with legal research by

6.9.

Providing state funded law clerks for each circuit.

Substitute Judges.

Virginia should replace or modify the current system of substitute judges by

6.10.

Providing replacement judges for all courts.

6.11.

Designating a cadre of experienced judges who would be granted "senior status" with responsibility to serve as replacement judges.

6.12.

Developing a uniform statewide application for substitute judges and statewide criteria for selecting substitute judges.

6.13.

Establishing a uniform process for the selection of substitute judges.

- (1) The Circuit Court judges should select substitute judges by a majority vote of all Circuit Court judges in the circuit.

- (2) The Circuit Court judges should receive and consider recommendations from the judges of the General District and Juvenile and Domestic Relations District Courts.
- (3) There should be an open recruitment process for substitute judges.
- (4) Substitute judges should be selected to serve as a substitute judge for the General District Court, the Juvenile and Domestic Relations District Court, or both courts, based on their experience and expertise.

6.14.

Requiring substitute judges to participate in a specialized training program focused on practical issues.

6.15.

Requiring that reasonable efforts be made to locate a substitute judge who does not regularly practice before the Court where the substitute judge is to be assigned.

6.16.

Increasing compensation for substitute judges as needed to increase the number of qualified candidates.

Legal Education.

Virginia should contribute to the law school experience by

6.17.

Providing that the Supreme Court of Virginia and the Court of Appeals of Virginia hold oral arguments periodically at each of the state's law schools.

6.18.

~~Requiring~~Encouraging applicants to the Virginia Bar to spend a designated number of hours in court to observe a variety of cases and provide for meetings with judges after proceedings.

(APPROVED AS REVISED)

Attorney Regulation.

Virginia should enhance the protection of the consumers of legal services by

6.19.

Requiring malpractice insurance for any attorney engaged in the private practice of law.

Attorney Discipline.

Virginia should improve the attorney disciplinary system by

6.20.

Making the substance of charges of attorney misconduct available to the public via the Virginia State Bar website when public notice is posted that a hearing on the charges has been scheduled regardless of whether a district committee or the Disciplinary Board is slated to hear the charges.

6.21.

Eliminating three-judge panels.

6.22.

Adding an additional lay person to District Committee and Disciplinary Board hearing panels so that the composition would be two lay persons and three attorneys.

6.23.

Preserving respondents' direct right of appeal from three-judge panel or Disciplinary Board decisions, but whenever a hearing panel determines that a respondent has engaged in misconduct sufficiently egregious to warrant a suspension, the hearing panel should receive evidence on the issue of whether the suspension should be stayed pending appeal and, if a stay is granted, determine whether the respondent should post an appeal bond.

6.24.

Amending the attorney disciplinary rules to provide a diversionary program whereby first-time respondents engaging in minor misconduct occasioned by poor law office practices would receive no discipline if they comply with terms designed to improve their law office management skills. The Virginia State Bar should create a law office management program to assist attorneys whose law office management practices do not comport with the disciplinary rules.

6.25.

Developing a system whereby each lawyer is assigned a universal number used in each jurisdiction where the lawyer is licensed to practice law.

6.26.

Revising the disciplinary rules to include “speedy trial” provisions requiring bar complaints to be investigated and charges of misconduct issued within a reasonable period of time unless there is just cause for delay.

Potential of Technology.

Virginia should continue to take advantage of all the benefits technology can offer the court system and users of the court system by

Vision Seven

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.

7.1.

Equipping courts with modern technologies that optimize the use of court resources and facilitate the disposition of cases while at the same time maintaining the security of internal court systems.

7.2.

Establishing a Technology Advisory Committee comprised of public and private information technology specialists to advise the Office of the Executive Secretary on implementing new technology applications for the courts.

7.3.

Providing that all but the most personally sensitive court records are maintained in electronic form and are accessible by the public from remote locations.

7.4.

Permitting e-filing of legal pleadings.

7.5.

Developing an e-ticketing system for traffic infractions.

7.6.

Expanding the courts' e-payment system to permit all payments to be made electronically.

7.7.

Implementing the use of electronic forms using intelligent forms processing.

7.8.

Implementing a computer based electronic document management system in each level.

7.9.

Equipping all courtrooms for videoconferencing and promulgating statutes and rules to permit electronic appearances in all civil cases.

7.10.

Equipping all detention facilities with videoconferencing equipment to avoid the expensive transportation of prisoners for pretrial matters such as appointment of counsel, setting of trials and motions.

7.11.

Equipping courts of record with computer assisted transcription capability to produce text transcripts that can be searched and transmitted electronically and include links to evidence.

7.12.

Expanding Court webpages using nonproprietary technology, where appropriate.

Juror Experience.

Virginia should improve the experience of jurors by

Vision Eight

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

8.1.

Encouraging courtesy to jurors and prospective jurors and respecting their time. Courts should assess jury fees and other associated costs of empanelling a jury to the parties in civil cases which settle after the Clerk's office closes on the business day preceding the scheduled trial.

8.2.

Standardizing and publicizing policies and procedures for jury service from the circulation of the uniform background document to conclusion of the trial. These policies and procedures should communicate the high regard of the Court for citizen participation in the judicial process. They can also minimize opportunities for inappropriate communications or influence.

8.3.

Providing guidelines and "best practices" to minimize the need for multiple appearances by jurors during a court term.

8.4.

Providing guidelines and "best practices" for use by courts and clerks to encourage juror engagement and comprehension of the matters before them.

8.5.

Devising a meaningful system of follow-up for those prospective jurors who do not complete the uniform background document.

8.6.

Implementing an automated jury management system to enable courts to inform and to manage their jury panels more effectively.

8.7.

Providing up-to-date information by a method selected by each prospective juror (e-mail, text message, automated phone message, etc.) about the need for the juror to come to the court-

house. If there has been a delay or settlement, the juror should be informed as soon as reasonably feasible. Comparable information should be made available to litigants and witnesses.

8.8.

Providing orientation materials for prospective jurors on the judicial system's website including a virtual tour of the courthouse, a typical courtroom and a deliberation room.

8.9.

Providing driving and public transportation instructions to prospective jurors and instructions as to when to arrive, what to bring (and what not to bring) and court security requirements. This information should be included on the judicial system's website and should also be sent to prospective jurors.

8.10.

Eliminating all automatic exemptions from jury service.

8.11.

Paying jurors at least the national median for jury service and providing supplements to jurors who are required to serve more than five days.

8.12.

Providing for service of summons for jury service by mail and eliminating the option of service by the sheriff.

8.13.

Devising and using a standardized exit survey for jurors to be administered after each trial in each jurisdiction.

Public Education about the Court System.

Virginia should increase and support public education about the court system by

8.14.

Establishing an Office of Public Education in the court system to deliver information to the public about legal rights, court procedures and alternatives to litigation. This Office should provide information in multiple formats and through multiple information delivery systems.

8.15.

Encouraging the Office of Public Education to collaborate with the public law libraries to improve the delivery of information to the public.

8.16.

Sponsoring public judicial education forums and seminars in every circuit.

8.17.

Partnering the court system with media to produce informative and interactive programming about the legal system.

8.18.

Establishing a program to educate middle and high school teachers about the organization of the Virginia courts, including courtroom visits, interactions with judges, judicial visits to classrooms, mock trials and jury deliberations, arbitration and mediation.

8.19.

Increasing funding for public law libraries statewide in order to increase the resources available to the public.

Public Support for the Court System.

Virginia should strive to achieve full funding for the court system by

8.20.

Encouraging broad public support for full funding of the court system including appropriate levels of compensation and benefits, physical facilities, advanced technology and educational programs.

Demographic Changes.

Virginia should respond to anticipated demographic changes by

9.1.

Establishing a Multicultural Liaison Office within the court system.

Alternative Dispositions and Specialty Dockets.

Virginia should support effective alternative dispositions by

9.2.

Adopting legislation to authorize referrals of appropriate cases to a restorative justice process.

9.3.

Evaluating and developing guidelines, certification standards, and procedures for the use of parent coordinators in high-conflict family disputes.

9.4.

Developing guidelines, certification standards, and procedures for parent educators who provide court-ordered parent education.

9.5.

Establishing additional pilots and continuing to evaluate therapeutic and alternative dockets and programs such as the Mental Health Court docket in Norfolk, the DUI Court docket in Rappahannock County, the Domestic Violence docket in Roanoke County and the Youth Court programs in Roanoke City to determine the appropriateness of implementation in other jurisdictions.

9.6.

Examining the current tax appeal process to determine whether a new forum or process should be created to address tax disputes.

9.7.

Evaluating business courts and dockets.

Vision Nine

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 Ten

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

[No recommendations were made with respect to the tenth vision.]

Chapter 4

Update on Reforms to the Magistrate System

Magistrates play a critical role in Virginia's court system. They have significant responsibilities, and their decisions in many instances impact the liberty interests of Virginia's citizens. They have the power to issue arrest and search warrants in criminal proceedings; release criminal defendants on bail or commit them to jail; issue emergency protective orders; issue mental and medical emergency custody orders; and issue mental and medical temporary detention orders.

During the 2008 Session of the General Assembly, Delegate Lacy E. Putney and Senator Janet D. Howell served as chief patrons for companion bills introduced on behalf of the Supreme Court of Virginia to reform the magistrate system. Both bills passed the General Assembly, were signed by the Governor, and became effective July 1, 2008.

The restructuring accomplished by the magistrate system reform legislation is among the most significant changes to Virginia's judicial system since the 1970s. These changes are designed to enhance the quality of services provided by magistrates to the citizens of the Commonwealth of Virginia. The following reform measures have been implemented as a result of the 2008 legislative changes:

1. Supervisory authority over magistrates has been transferred from the chief circuit court judges to the Executive Secretary.
2. The power to appoint magistrates has been transferred from the chief circuit court judges to the Executive Secretary; however, the Executive Secretary makes the appointments in consultation with the appropriate chief circuit judges.

The restructuring accomplished by the magistrate system reform legislation is among the most significant changes to Virginia's judicial system since the 1970s.

Magistrates no longer are appointed for four-year terms of office but, instead, serve at the pleasure of the Executive Secretary.

3. Magistrates no longer are appointed for four-year terms of office but, instead, serve at the pleasure of the Executive Secretary.
4. The jurisdiction of magistrates has been expanded from a single judicial district to one or more multi-district magisterial regions to make the most efficient use of technology and personnel resources.
5. A regional supervisory structure to manage and administer the realigned magistrate system has been implemented.
6. New magistrates and new chief magistrates must meet more stringent minimum qualifications to be eligible for appointment:
 - a. The “equivalent experience” alternative has been discontinued, and a bachelor’s degree is now required for new magistrates; and
 - b. New chief magistrates must be members in good standing of the Virginia State Bar.
7. The probationary period within which newly appointed magistrates must become certified has been increased from six to nine months to allow for additional on-the-job training and completion of an expanded four-week certification course.
8. The prohibition against familial relationships to district court clerks and district court judges, which disqualifies a person from being eligible to serve as a magistrate, has been expanded to persons who have such relationships to circuit court clerks and circuit court judges.
9. Before engaging in outside employment, magistrates must receive prior written approval from the Executive Secretary.
10. Magistrates appointed on or after July 1, 2008, may not engage in the practice of law.

11. Magistrates who are designated as marriage celebrants may not accept a fee, a gratuity, or any other thing of value for serving as a marriage celebrant.

In assuming his new role of administering the magistrate system, the Executive Secretary is implementing additional changes administratively to further enhance the services provided by Virginia's magistrates. The following measures are among the additional administrative reform measures being implemented by the Executive Secretary:

- Establishing a standardized process for receiving and responding to complaints from users of magistrate services.
- Expanding the certification course from four days to four weeks and applying uniformly the criteria for certification.
- Requiring all magistrates appointed prior to July 1, 2008, to successfully complete a recertification examination before January 1, 2010. Supplementary training will be made available to assist magistrates who must take the recertification examination.
- Increasing the number of hours of continuing legal education (CLE) required of each magistrate to 20 hours a year.
- Requiring all magistrates to have satisfactory annual performance evaluations.
- Providing a mandatory management training program exclusively designed for chief magistrates and requiring each new chief magistrate to receive the training within one month of appointment.
- Updating the Canons of Conduct for Virginia Magistrates.
- Discontinuing the use of on-call magistrates and transitioning to the exclusive use of full-time magistrates.
- Standardizing magistrate work schedules to be based on a 40-hour workweek and, generally, eight-hour shifts.

In assuming his new role of administering the magistrate system, the Executive Secretary is implementing additional changes administratively to further enhance the services provided by Virginia's magistrates.

- Ensuring that magistrates statewide have up-to-date videoconferencing technology that is compatible and easy to use.
- Providing 24-hour, seven-day-a-week technology support for magistrates.

Chapter 5

Advisory Committee on Domestic Violence Issues in Virginia's Courts

INTRODUCTION

In 2007, Chief Justice Leroy Rountree Hassell, Sr., established the Advisory Committee on Domestic Violence Issues in Virginia's Courts. Through the examination of domestic violence policy and procedure, this committee provides advice and guidance on improving the handling of domestic violence-related cases as well as on the content and format of domestic violence-related training for Virginia's judicial branch personnel. The full Committee meets three times a year, and its subcommittees hold additional meetings.

DOMESTIC VIOLENCE CASE PRACTICES, POLICIES, AND PROCEDURES

The Advisory Committee examines and provides recommendations for practice, policy, and procedural improvements related to such topics as: a concurrent protective order and criminal cases involving the same fact set; information system interfaces among the Supreme Court, Department of Juvenile Justice, and the Virginia State Police related to domestic violence cases; pro se litigants in domestic violence cases; expiration of Preliminary Protective Orders before service on the respondent; and concurrent domestic violence and divorce, support, custody, or visitation cases involving the same litigants and children. In addition, the Committee may respond to legislative directives such as those included in SB 236 from the 2004 session of the General Assembly and may provide suggestions for change or clarification on current domestic violence statutes.

Through the examination of domestic violence policy and procedure, this committee provides advice and guidance on improving the handling of domestic violence-related cases as well as on the content and format of domestic violence-related training for Virginia's judicial branch personnel.

TRAINING FOR JUDICIAL PERSONNEL

The Advisory Committee reviews and provides recommendations for the content and format of domestic violence-related training for judicial personnel. These recommendations extend to training for new judges, reference materials provided to judges and other court personnel, and topics for presentations and discussion groups at the annual conference for juvenile and domestic relations district court judges.

The sub-committee's goal was to establish a more orderly and comprehensible process for deferring proceedings for persons charged with first offense assault and battery against a family or household member.

MEETINGS

The Committee's first meeting was held on July 19, 2007. The Advisory Committee has since formed two sub-committees: 1) the Pro Se Litigants and Concurrent Civil and Criminal Matters Subcommittee and 2) the Collaborative Community Response and Interagency Communication/Database Subcommittee. Judge Aundria D. Foster chairs the full Advisory Committee. Judge Randolph A. Beales and Judge H. Lee Chitwood co-chair Subcommittee 1, and Judge Avelina S. Jacob and Judge Lucretia A. Carrico co-chair Subcommittee 2. In 2008, the full Committee met on February 22, June 10, and October 9.

RECOMMENDATIONS & ACCOMPLISHMENTS

In 2008, the Advisory Committee's work covered a variety of topics and efforts including:

§18.2-57.3 Revisions. The Advisory Committee's sub-committee on Pro Se Litigants and Concurrent Civil and Criminal Matters reviewed and provided recommendations on the revision of Virginia Code § 18.2-57.3. This statute provides for a deferred disposition in a case where a person has been charged with a violation of §18.2-57.2, assault and battery against a family or household member. The sub-committee's goal was to establish a more orderly and comprehensible process for deferring proceedings for persons charged with first offense assault and battery against a family or household member. This was achieved through the creation of sub-headings as well as the revision or omission of confusing or conflicting language. This legislative proposal was considered and recommended without amendment by the Law Revision Committee of the Judicial Conference of Virginia for District Courts. The Conference voted to recommend the proposal to the Committee on District Courts who approved it at their October meeting.

Response to Senate Bill 236, Chapter 972 (2004). The subcommittee on Pro Se Litigants and Concurrent Civil and Criminal Matters also considered and issued recommendations in response to Senate Bill 236, Chapter 972 (2004). This bill directed the Office of the Executive Secretary to determine appropriate standards for the approval of education and treatment programs for persons accused of assault and battery against a family or household member. In response, a state-level advisory group was convened to review national trends and literature, examine Virginia's Batterer Intervention Program Certification Process, develop a domestic violence offender program description tool, recommend local court orders for §18.2-57.2 that reflect local practices and resources, and examine current local probation services.

Virginia's Family Abuse Protective Order Forms

Completion Program. I-CAN! is an online forms completion program that creates properly formatted petitions for individuals seeking family abuse protective orders in Virginia. The Advisory Committee provided several recommendations regarding the I-CAN! project, including an expansion plan for 2009. The Advisory Committee recommended that additional modules be considered and developed on topics such as stalking protective orders and custody/visitation. Accomplishments in 2008 included the permanent installation of the I-CAN! server at the Office of the Executive Secretary of the Supreme Court of Virginia—a transfer from its original location in Orange County, California; the development and distribution of a manual for local court workgroups for the family abuse protective order module; and the addition of a frequently asked questions section for the website.

Judicial Notice of Federal Firearms Prohibitions. The Advisory Committee reviewed and provided recommendations on the pamphlet “Federal Firearms Law: Domestic Violence Offender Gun Ban—An Important Notice to Persons Convicted of Misdemeanor Crimes of Domestic Violence” developed by the Office of the Executive Secretary and the Department of Criminal Justice Services. The pamphlets were distributed statewide to all district and circuit courts. To help explain the pamphlets, the Executive Secretary distributed memoranda to all circuit and district court judges and clerks in March 2008; these memoranda outlined the federal requirement that state courts notify domestic

I-CAN! is an online forms completion program that creates properly formatted petitions for individuals seeking family abuse protective orders in Virginia.

Project Passport, a project of the National Center for State Courts, is working to improve recognition and enforcement of protective orders within and between states by encouraging states to adopt a recognizable first page for protective orders that is consistent in format and structure.

violence offenders that they are prohibited from possessing any firearm or ammunition. State compliance with the notification requirement is a prerequisite for continued funding from the federal government pursuant to the Violence Against Women Act.

Protective Order Form Revisions and Conformance with Project Passport. Another subject that the Advisory Committee addressed was the Supreme Court of Virginia's newly revised protective order form. The protective order form was revised to reflect recent legislative changes and to track Project Passport guidelines. Project Passport, a project of the National Center for State Courts, is working to improve recognition and enforcement of protective orders within and between states by encouraging states to adopt a recognizable first page for protective orders that is consistent in format and structure. Staff from the Office of the Executive Secretary and the National Center for State Courts' Project Passport participated in Advisory Committee sessions on this topic. The sessions provided Advisory Committee members with an opportunity to discuss process, procedure, and best practices for the Supreme Court of Virginia's protective order forms and to make recommendations on critical form issues that may affect enforcement, service, or due process issues.

Cross-Warrant Practices in Virginia. The Advisory Committee recommended that a statewide survey of law enforcement, commonwealth's attorneys, magistrates, and juvenile and domestic relations district court judges be conducted to examine current cross-warrant practices in Virginia. Cross-warrants were identified as problematic at the August 2007 annual juvenile and domestic relations district court judges conference. A survey was conducted in the spring of 2008 in order to determine: 1) the volume of cross-warrants; 2) the current practice for handling cross warrants; 3) practices that are particularly helpful; 4) whether current practices are satisfactory; 5) the greatest challenges in the handling of cross-warrants; and 6) suggestions for improvement. In 2009, the Advisory Committee will make its final recommendations on this issue.

Grant to Encourage Arrest and Enforcement of Protection Orders (GEAP). The Advisory Committee was briefed on the activities of this grant-funded, statewide partnership that has been working with 14 Virginia communities (the counties of Albemarle, Lee, Scott, Wise, Russell, Dickenson, Washington, Henry, and Fairfax; the cities of Martinsville, Roanoke, Norfolk, and Charlottesville; and the University of Virginia). In 2008, the GEAP partnership developed an assessment tool to evaluate the effectiveness of protective orders in Virginia and has been facilitating key stakeholder meetings in all 14 communities with the goal of developing local coordinated community response teams to improve local domestic violence policy and practice. In 2009, training and technical assistance will continue in these localities along with the development of a statewide GEAP conference on domestic violence, to take place in Richmond in the fall. The Advisory Committee is working with the GEAP partners to provide recommendations on conference topics and speakers specific to the needs of court personnel.

In 2008, the GEAP partnership developed an assessment tool to evaluate the effectiveness of protective orders in Virginia....

Other Activities. The Advisory Committee has also been actively involved in several other activities. The Advisory Committee was invited to participate in a symposium in Maryland in September 2008 on “Improving the Judicial Response to Sexual Abuse.” Four Committee members attended and later reported what they learned to the Committee, sharing relevant research/literature. Discussions have also taken place on best or promising practices for handling domestic violence cases in Virginia and domestic violence priorities for the Committee’s work in 2009.

MEMBERSHIP

Membership on the Advisory Committee includes the Chief Justice, a court of appeals judge, a circuit court judge, two juvenile and domestic relations district court judges, a general district court judge, a magistrate, a commonwealth’s attorney, a representative of the Family Law Section of the Virginia State Bar, a public defender, a Court Services Unit representative, a Victim/Witness program representative, and a representative of the Virginia Sexual and Domestic Violence Action Alliance. Representatives of other agencies and organizations such as the Virginia State Police, Office of the Chief Medical Examiner, and the Department of Criminal Justice Services are invited to participate when the work of the Advisory Committee requires

their input on a specific topic or issue. Currently, the Advisory Committee is working to fill two vacancies in the categories of public defender and law enforcement.

Current Members:

The Honorable Leroy Rountree Hassell, Sr.	Chief Justice, Supreme Court of Virginia
The Honorable Aundria D. Foster, Chair,	Judge, Newport News Circuit Court
The Honorable Randolph A. Beales	Judge, Court of Appeals of Virginia
The Honorable Lucretia A. Carrico	Chief Judge, Petersburg General District Court
The Honorable H. Lee Chitwood	Chief Judge, Pulaski Juvenile and Domestic Relations District Court
The Honorable Avelina S. Jacob	Chief Judge, Loudoun Juvenile and Domestic Relations District Court
Shavaughn N. Banks, Esq.	Assistant Commonwealth's Attorney, Suffolk
Joyce W. Crews,	Chief Magistrate, Danville
Linda D. Curtis, Esq.	Commonwealth's Attorney, Hampton
Regina J. Elbert, Esq.	McGuire Woods, LLP
Karl R. Hade	Executive Secretary, Supreme Court of Virginia
Edward H. Holmes	Field Operations Manager, Department of Juvenile Justice
Lelia B. Hopper,	Director, Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia
Saundra M. Jack, Esq.	Office of the Chief Staff Attorney, Supreme Court of Virginia

Ruth Micklem	Co-Director, Virginia Sexual and Domestic Violence Action Alliance
Cherri Murphy	President, Virginia Network for Victims and Witnesses of Crimes
Nancy G. Parr, Esq.	Commonwealth's Attorney, Chesapeake (Virginia State Bar designee)
Dawn C. Williams	Clerk of Court, Campbell Juvenile and Domestic Relations District Court
Vivian F. Brown, Esq.	Assistant Attorney General, Office of the Attorney General

Staff, Office of the Executive Secretary, Supreme Court of Virginia

Madelynn M. Herman	Senior Domestic Violence Program Analyst, Department of Judicial Planning,
Harriett R. McCollum	Family Violence Program Consultant, Department of Judicial Planning,
Cyril W. Miller, Jr.	Director, Department of Judicial Planning



Chapter 6

Update on the Implementation of the Judicial Performance Evaluation Program

INTRODUCTION

In January 2005, the Supreme Court of Virginia approved the establishment of a permanent Judicial Performance Evaluation (JPE) Program. Effective July 1, 2005, the General Assembly authorized funding for the statewide implementation of the program. The program, as established pursuant to § 17.1-100 of the Code of Virginia, has two principal aims. One is to provide judges with an objective assessment of their job performance so as to encourage and facilitate their professional self-improvement. The other is to provide the Virginia General Assembly with evaluations of judges being considered for reelection. Each judge will receive at least one self-improvement evaluation before results of his or her end-of-term evaluation are sent to the General Assembly for reelection purposes. The evaluations began in July 2006.

The Judicial Performance Evaluation Commission determines JPE policy and oversees the management of the program. The Commission, a nine-member body, convenes semi-annually and is committed to ensuring the integrity and effectiveness of the Program. Justice Barbara Milano Keenan led development of the program and chaired the Commission until June 2008. Effective July 1, 2008, Justice Keenan was succeeded by Justice Lawrence L. Koontz, Jr., who currently serves as the Commission chair.

Day-to-day operation of the Program rests with a full-time program director and program coordinator. Retired district judge Suzanne K. Fulton served as program director from 2005 until 2008. Patricia G. Davis was hired to fill this position in October 2008.

The Commission has partnered with Virginia Commonwealth

The Judicial Performance Evaluation Program has two principal aims. One is to provide judges with an objective assessment of their job performance so as to encourage and facilitate their professional self-improvement. The other is to provide the Virginia General Assembly with evaluations of judges being considered for reelection.

Evaluation reports are disclosed only to evaluated judges, assigned facilitator judges, and to members of the General Assembly.

University's Survey and Evaluation Research Laboratory (SERL) to conduct and compile the surveys. SERL uses the survey responses to generate the confidential evaluations of judges. All SERL employees are contractually bound to keep all judicial evaluations, including survey responses and related information, confidential. Evaluation reports are disclosed only to evaluated judges, assigned facilitator judges, and to members of the General Assembly.

THE EVALUATION PROCESS

A judge's evaluation date is determined by the date his or her term begins. The frequency of evaluation is different for circuit and district judges. A circuit court judge in her first term will be evaluated three times: in the second, fifth, and eighth (or last) year of her term. The end-of-term evaluation will be provided to the General Assembly as directed by statute. In second and subsequent terms, the circuit judge will be evaluated only in her fifth and eighth years, again with the end-of-term evaluation being sent to the General Assembly. A district court judge in his first term will be evaluated in his second, fourth, and sixth years, with the last evaluation going to the General Assembly. In second and subsequent terms, the district judge will be evaluated only in the fourth and sixth years of his term, with the results of the last evaluation going to the General Assembly.

With the assistance of the relevant clerk's office, the JPE Program collects the names of all attorneys who have appeared before a judge who is scheduled for evaluation. During 2008, the Office of the Executive Secretary implemented an automated process for collecting the names and bar numbers of attorneys who have appeared before the judges being evaluated. This has enabled the JPE staff to access the information electronically and to monitor the number of attorneys listed. It has largely eliminated the need to collect the data in paper form from the clerks.

For a district court judge, those attorneys who appeared before the judge during the previous twelve months are eligible to complete an evaluation, while attorneys may evaluate a circuit court judge if they have appeared before her during the prior three years. SERL sends the attorneys a survey with questions based on the principles set forth in the Canons of Judicial Conduct for the Commonwealth of Virginia. All responses are returned directly to SERL. For evaluations completed during 2008, SERL reports a 78% survey response rate from attorneys who received a survey.

Since May 2008, jurors have been asked to complete specially designed surveys for circuit judges. Also, Court Services Unit staff and Department of Social Services staff appearing before juvenile and domestic relations district court judges are now asked to complete surveys.

In addition, each judge is observed on the bench by a retired judge who has been trained as a facilitator for the JPE program. Once the completed surveys have been returned, SERL compiles a report that includes written comments and the survey responses. The report is forwarded to the evaluated judge and the facilitator judge, who then meets with the evaluated judge to discuss the survey results.

SERL reports that, as of December 2008, 256 evaluations have been completed over the life of the program. During 2008, the program has completed 117 evaluations, and two evaluations remain in progress. Seven evaluations were sent to the General Assembly for the 2009 Session, in accordance with the requirements of Code § 17.1-100. It is estimated that 142 evaluations will be conducted in 2009, with 43 evaluations to be sent to the General Assembly for the 2010 Session.

Since May 2008, jurors have been asked to complete specially designed surveys for circuit judges. Also, Court Services Unit staff and Department of Social Services staff appearing before juvenile and domestic relations district court judges are now asked to complete surveys.



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) evaluating 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 Judicial Council itself is called upon to continually study and make recommendations to the Supreme Court regarding 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.

The Judicial Council itself is called upon to continually study and make recommendations to the Supreme Court regarding Rules of Court.

PROPOSED RULES OF EVIDENCE

At its meeting on March 18, 2008, the Judicial Council of Virginia recommended that the Supreme Court approve and promulgate for review by the Code Commission proposed Rules of Evidence, which had been presented to the Judicial Council by the Advisory Committee on Rules of Court. The Supreme Court is considering this proposal .

[T]he Judicial Council of Virginia recommended that the Supreme Court approve and promulgate for review by the Code Commission proposed Rules of Evidence....

PROPOSED RULES ON THE PRIVACY OF AND ACCESS TO COURT RECORDS

At its meeting on March 18, 2008, the Judicial Council unanimously recommended that the Supreme Court adopt proposed rules regarding the privacy of and access to court records. The Judicial Council's recommendation adopts, with very few modifications, the recommendations presented to Judicial Council by the Advisory Committee on Rules of Court. This proposal is currently before the Supreme Court.

After study, the Advisory Committee on Rules of Court had unanimously agreed to recommend to the Judicial Council that it approve the Report of the Committee to Study Privacy and Access to Court Records. The report is the result of over a year of study, drafts and meetings, both in small drafting groups, as well as plenary sessions of the full committee. That Committee, appointed by Chief Justice Hassell to study the relevant issues, had approximately 25 members from a wide spectrum of business and legal perspectives. Community and public participation was extensive and included active comment and participation by media and public interest parties. Five drafts of the report were circulated for comment and revision over many months. The work of that Committee was reported by VIRGINIA LAWYERS' WEEKLY, interest group newsletters, and several newspapers in Virginia and the District of Columbia.

The Judicial Council and the Advisory Committee endorsed the balance and the restraint which guided the work of the Committee on Privacy and Access to Court Records. Between the demands for unfettered access on one hand and the widely recognized and very real risks of invasion of privacy and abuse of financial information on the other, the Committee on Privacy and Access to Court Records

followed a path that protects the competing concerns and implements existing Virginia Constitutional, legislative, and case law doctrines harmoniously.

OTHER PROPOSED RULES

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

- Rule 3:9 Counterclaims
- Rule 3:21 Jury Trial of Right
- Rule 3A:12 Subpoena
- Rule 3A:17.1 Proceedings in Bifurcated Jury Trials of Non-Capital Felonies and Class 1 misdemeanors.
- Rule 4:1 General Provisions Governing Discovery
- Rule 4:4 Stipulations Regarding Discovery
- Rule 4:5 Depositions Upon Oral Examination
- Rule 4:8 Interrogatories to Parties
- Rule 4:9 Production by Parties of Documents, Electronically Stored Information, and Things; Entry on Land for Inspection and Other Purposes; Production at Trial
- Rule 4:9A Production from Non-Parties of Documents, Electronically Stored Information, and Things; Entry on Land for Inspection and Other Purposes; Production at Trial
- Rule 4:13 Pretrial Procedure; Formulating Issues
- Rule 5:9 Notice of Appeal
- Rule 5A:6 Notice of Appeal
- Rule 7B:3 General Provisions as to Pleadings
- Rule 7B:11 Motions to Transfer
- Rule 7C:7 Service and Filing of Papers

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL TO THE SUPREME COURT OF VIRGINIA (not adopted as of December 31, 2008)

- Rule 3:25 Claims for Attorney's Fees

Between the demands for unfettered access on one hand and the widely recognized and very real risks of invasion of privacy and abuse of financial information on the other, the Committee on Privacy and Access to Court Records followed a path that protects the competing concerns and implements existing Virginia Constitutional, legislative, and case law doctrines harmoniously.



MANDATORY RETIREMENT AGE FOR JUDGES

§ 51.1-305. Service retirement generally.

B1. Mandatory retirement. - Any member who attains ~~70~~ 75 years of age shall be retired 20 days after the convening of the next regular session of the General Assembly following his 75th birthday. ~~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.~~



Virginia Localities by Judicial Circuit/District

Accomack	2/2A	Giles	27	Powhatan	11
Albemarle	16	Gloucester	9	Prince Edward	10
Alexandria	18	Goochland	16	Prince George	6
Alleghany	25	Grayson	27	Prince William	31
Amelia	11	Greene	16	Pulaski	27
Amherst	24	Greensville	6	Radford	27
Appomattox	10	Halifax	10	Rappahannock	20
Arlington	17	Hampton	8	Richmond County	15
Augusta	25	Hanover	15	Richmond City	13
Bath	25	Harrisonburg	26	Roanoke County	23
Bedford County	24	Henrico	14	Roanoke City	23
Bland	27	Henry	21	Rockbridge	25
Botetourt	25	Highland	25	Rockingham	26
Bristol	28	Hopewell	6	Russell	29
Brunswick	6	Isle of Wight	5	Salem	23
Buchanan	29	James City	9	Scott	30
Buckingham	10	King and Queen	9	Shenandoah	26
Buena Vista	25	King George	15	Smyth	28
Campbell	24	King William	9	Southampton	5
Caroline	15	Lancaster	15	South Boston	10
Carroll	27	Lee	30	Spotsylvania	15
Charles City	9	Lexington	25	Stafford	15
Charlotte	10	Loudoun	20	Staunton	25
Charlottesville	16	Louisa	16	Suffolk	5
Chesapeake	1	Lunenburg	10	Surry	6
Chesterfield	12	Lynchburg	24	Sussex	6
Clarke	26	Madison	16	Tazewell	29
Colonial Heights	12	Manassas	31	Virginia Beach	2
Covington	25	Manassas Park	31	Warren	26
Craig	25	Martinsville	21	Washington	28
Culpeper	16	Mathews	9	Waynesboro	25
Cumberland	10	Mecklenburg	10	Westmoreland	15
Danville	22	Middlesex	9	Williamsburg	9
Dickenson	29	Montgomery	27	Winchester	26
Dinwiddie	11	Nelson	24	Wise	30
Emporia	6	New Kent	9	Wythe	27
Essex	15	Newport News	7	York	9
Fairfax County	19	Norfolk	4		
Fairfax City	19	Northampton	2/2A		
Falls Church	17	Northumberland	15		
Fauquier	20	Norton	30		
Floyd	27	Nottoway	11		
Fluvanna	16	Orange	16		
Franklin County	22	Page	26		
Franklin City	5	Patrick	21		
Frederick	26	Petersburg	11		
Fredericksburg	15	Pittsylvania	22		
Galax	27	Portsmouth	3		

Note	
Circuit 2	Virginia Beach Accomack Northampton
District 2	Virginia Beach
District 2A	Accomack Northampton

Virginia Judicial Circuits and Districts

1	Chesapeake	13	Richmond	25	Alleghany
2	Virginia Beach	14	Henrico		Augusta
2A	Accomack	15	Caroline		Bath
	Northampton		Essex		Botetourt
3	Portsmouth		Fredericksburg		Buena Vista
4	Norfolk		Hanover		Covington
5	Franklin City		King George		Craig
	Isle of Wight		Lancaster		Highland
	Southampton		Northumberland		Lexington
	Suffolk		Richmond		Rockbridge
			Spotsylvania	26	Staunton
			Stafford		Waynesboro
			Westmoreland		
6	Brunswick	16	Albemarle		Clarke
	Emporia		Charlottesville		Frederick
	Greensville		Culpeper		Page
	Hopewell		Fluvanna		Rockingham
	Prince George		Goochland		Harrisonburg
	Surry		Greene		Shenandoah
	Sussex		Louisa	27	Warren
7	Newport News		Madiso		Winchester
			Orange		
8	Hampton	17	Arlington		Bland
			Falls Church		Carroll
9	Charles City				Floyd
	Gloucester	18	Alexandria		Galax
	James City				Giles
	King & Queen	19	Fairfax County		Grayson
	King William		Fairfax City		Montgomery
	Mathews	20	Fauquier		Pulaski
	Middlesex		Loudoun		Radford
	New Kent		Rappahannock	28	Wythe
	Poquoson				
	Williamsburg	21	Henry		Bristol
	York		Martinsville		Smyth
10	Appomattox		Patrick		Washington
	Buckingham				
	Charlotte	22	Danville		29
	Cumberland		Franklin County		Buchanan
	Halifax		Pittsylvania	30	Dickenson
	Lunenburg				Russell
	Mecklenburg	23	Roanoke City		Tazewell
	Prince Edward		Roanoke County		
11	Amelia		Salem	31	Manassas
	Dinwiddie	24	Amherst		Manassas Park
	Nottoway		Bedford City		Prince William
	Petersburg		Bedford County		
	Powhatan		Campbell		
12	Chesterfield		Lynchburg		
	Colonial Heights		Nelson		

