


2014

Judicial Council of Virginia



Report to the General Assembly and Supreme Court of Virginia



The Judicial Council of Virginia
2014 Report to the General Assembly and Supreme Court of Virginia
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Membership as of January 1, 2015

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The Honorable Glen A. Huff, Chief Judge, Court of Appeals of Virginia

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The Honorable Joseph W. Milam, Jr., Judge

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The Honorable David B. Albo, Member, Virginia House of Delegates

Richard Cullen, Esquire

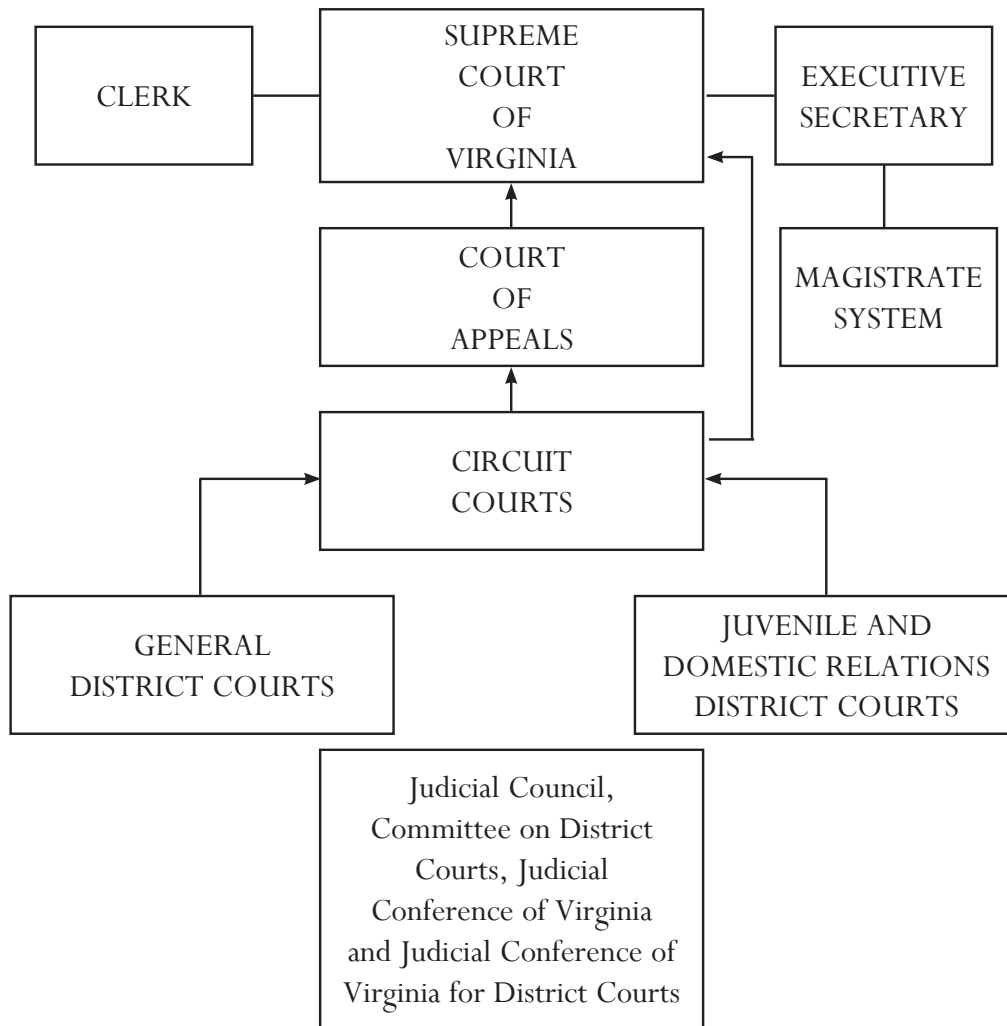
Monica Taylor Monday, Esquire

Lucia Anna Trigiani, Esquire*

Karl R. Hade, Executive Secretary

*By Invitation of the Chief Justice

VIRGINIA'S JUDICIAL SYSTEM



Route of Appeal →

I. Proceedings of the Judicial Council of Virginia

INTRODUCTION

The Judicial Council of Virginia was established by statute in 1930. Council is charged with making a continuous study of the organization and the rules and methods of procedure and practice of the judicial system of the Commonwealth of Virginia, including examining the work accomplished and results produced by the judicial system. See Va. Code § 17.1-703.

PROCEEDINGS OF THE JUDICIAL COUNCIL

Senior Judge System Study

The Office of the Executive Secretary (OES) contracted with the National Center for State Courts (NCSC) for the completion of a study to examine the feasibility and impact of implementing a senior judge system for circuit and district courts in Virginia. Chapter 413, Virginia Acts of Assembly (2013) specifies that such a study should address: (a) the design characteristics of a senior judge system including method of selection, compensation, and duration of service; (b) the number of senior judges required and the minimum amount of time each senior judge would be required to sit in order to eliminate the need for substitute judges and special justices and to reduce the reliance on recalled retired judges; (c) the fiscal impact of a senior judge system; (d) how a senior judge system should be structured to allow for more equitable and efficient allocation of judicial resources within and among the judicial circuits and districts; (e) improvements to the administration of justice resulting from a senior judge system; and (f) the most effective procedure to transition to a senior judge system.

In implementing the study, the NCSC used a five-step research design that included the documentation of current practice in Virginia; review and documentation of other state and federal senior judge systems; survey of circuit and district court sitting and retired judges; Virginia court site visits; and development of scenarios with fiscal and personnel implications.

The NCSC prepared an Executive Summary of the Progress to Date for OES. The OES submitted this interim report to the General Assembly on November 14, 2014, for publication as a report document, and the report is now posted on the General Assembly's website. The NCSC will complete this study in 2015, during which time it will undertake the following:

- Prepare recommendations for the senior judge system design parameters;
- Estimate the costs of implementation of a senior judge system, based on the selected design parameters;
- Appraise the availability of a sufficient pool of retired judges to meet the needs of a senior judge system under alternative scenarios;
- Consider the need for additional sitting judges to cover the work currently being

- handled by special justices;
- Develop recommendations for the scheduling and monitoring of senior judge usage; and
- Document all research, assumptions, and recommendations in a final report.

Update on Implementation of Electronic Filing

In April of 2013, the Virginia Judiciary Electronic Filing System (VJEFS) was piloted in the Norfolk Circuit Court. With the implementation of VJEFS, attorneys may now electronically file cases with participating circuit courts. Once a new filing has been accepted by the clerk in VJEFS, the system creates a new case in the court's Case and Financial Management Systems and securely stores the pleadings and any other documents submitted in the Case Imaging System without additional intervention by the clerk. The parties may use the system to electronically file service of process requests, responsive pleadings, and other documents in the case. For the duration of the case, all parties in the case are electronically notified of subsequent document filings in the case, as well as any other actions.

In addition to the Norfolk Circuit Court, four other pilot circuit court sites were added in 2013: Portsmouth, Chesapeake, Prince William, and Dinwiddie. Six additional circuit courts implemented VJEFS in 2013: Rockingham/Harrisonburg, Richmond City, Smyth, Washington, Bedford, and Staunton. Thirteen circuit courts have implemented VJEFS in 2014, bringing the total number to 24. The circuit courts installing VJEFS in 2014 include Williamsburg/James City County, Newport News, Danville, Caroline, Hanover, Isle of Wight, Fredericksburg, Loudoun, Montgomery, Pulaski, Tazewell, Dickenson, and Roanoke County. Installation of VJEFS in additional circuit courts will continue in 2015.

Judicial Performance Evaluation Program

The Judicial Performance Evaluation Program (JPE Program), established pursuant to Va. Code § 17.1-100 and Rule 9 of the Rules of the Supreme Court of Virginia, was reinstated effective July 2014. The JPE Program provides feedback to judges for purposes of self-improvement and to members of the General Assembly for assistance in the judicial reelection process. The JPE Program is overseen by the Chief Justice and managed by staff in the OES.

An evaluation is based on the completion of surveys by attorneys who have appeared recently before the judge who is being evaluated. Although other respondents are surveyed, the JPE Program relies primarily on attorneys to provide the necessary feedback. Virginia Commonwealth University's Survey and Evaluation Research Laboratory, in the L. Douglas Wilder School of Government and Public Affairs, is conducting the evaluation surveys for the JPE Program.

During 2014, evaluations of 64 judges were commenced. Of these, 20 evaluations were provided to the General Assembly for judges who were previously evaluated as part of the JPE Program, have continued to serve in the same court, and who are eligible for reelection in 2015.

The remaining evaluations were conducted for the purpose of self-improvement, and results will be provided to the evaluated judges in January 2015.

The timing of the evaluations is based on judges' beginning and end-of-term dates. Judges are evaluated three times during a first term and twice during second and subsequent terms on a particular court. Retired judges serve as facilitators to observe and to consult with evaluated judges in interpreting the evaluation results.

Revisions to Standards Governing Appointment of Guardians *ad litem*

In accordance with Va. Code § 16.1-266.1, the Judicial Council of Virginia adopts standards to govern the appointment of attorneys as guardians *ad litem* for children pursuant to § 16.1-266. Similarly, in accordance with the provisions of Chapter 921 of the 1997 Virginia Acts of Assembly, the Judicial Council of Virginia adopts standards to govern the appointment of attorneys as guardians *ad litem* for incapacitated persons pursuant to § 64.2-2003. The OES, through the Court Improvement Program (CIP), administers the programs that qualify attorneys as guardians *ad litem* for children and for incapacitated persons. Standards for these programs were originally adopted in 1994 and 1997, respectively.

At its meeting on September 12, 2014, the Judicial Council revised the standards for both of these programs. These revisions were made to clarify administrative procedures and expectations and to support the functionality of a new electronic system that will be used to maintain information about attorneys' qualification as guardians *ad litem*. An interface between OES and the attorney database of the Virginia State Bar (VSB) will help assure that name, contact information, and license status of guardians *ad litem* are accurate and up-to-date when provided to the courts that appoint them.

In October 2014, CIP contacted each attorney who is qualified as guardian *ad litem* either for children or incapacitated adults to provide notice of changes to the qualification standards which are effective January 1, 2015. The standards in their revised format can be found online at <http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/home.html>. In November 2014, CIP again contacted qualified guardians *ad litem* and notified them about the interface with the VSB for obtaining contact and license status information.

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 2014 recipient of this award was the Honorable Walter S. Felton, Jr., who served three terms as Chief Judge of the Court of Appeals of Virginia.

A native of Suffolk, Virginia, Judge Felton was first elected to the Court of Appeals of Virginia in 2002, and, in 2006, he was elected as Chief Judge by the members of the Court. In

2010, he was re-elected to an additional eight-year term as Judge of the Court of Appeals. Judge Felton retired from the Court of Appeals on December 31, 2014.

Judge Felton served as a Captain in the United States Army Judge Advocate General Corps, a member of the faculty at the Marshall-Wythe School of Law, at the College of William & Mary, and as Administrator of the Commonwealth's Attorneys Services Council, the state agency responsible for training, education, and services for the Commonwealth's prosecutors. In 1994, he was appointed as a Deputy Attorney General of Virginia and, in 1995, was appointed as Senior Counsel to the Attorney General. He also served as Counsel to the Governor of Virginia and as Director of Policy. As a member of the judiciary, Chief Judge Felton continued to lead through his service on many commissions and committees including the Chief Justice's Commission on Virginia Courts in the 21st Century, the Pandemic Flu Preparedness Commission, the Judicial Council, and the Executive Committee of the Judicial Conference of Virginia.

LEGISLATIVE PROPOSALS FOR THE 2015 SESSION OF THE GENERAL ASSEMBLY

Filing of Petitions for Attachment

This proposal, recommended by the Judicial Council, removes judges from the list of those with whom an attachment petition may be filed and adds magistrates to those who may receive payments for an attachment petition.

A BILL to amend and reenact § 8.01-537 of the Code of Virginia, relating to filing attachment petitions.

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-537 of the Code of Virginia is amended and reenacted as follows:****§ 8.01-537. Petition for attachment; costs, fees and taxes.**

A. Every attachment shall be commenced by a petition filed before a ~~judge or~~ clerk of a circuit or general district court of, or magistrate serving, the county or city in which venue is given by subdivision 11 of § 8.01-261. If it is sought to recover specific personal property, the petition shall state (i) the kind, quantity, and estimated fair market value thereof, (ii) the character of estate therein claimed by the plaintiff, (iii) the plaintiff's claim with such certainty as will give the adverse party reasonable notice of the true nature of the claim and the particulars thereof and (iv) what sum, if any, the plaintiff claims ~~he is entitled~~ an entitlement to recover for its detention. If it is sought to recover a debt or damages for a breach of contract, express or implied, or damages for a wrong, the petition shall set forth (i) the plaintiff's claim with such certainty as will give the adverse party reasonable notice of the true nature of the claim and the particulars thereof, (ii) a sum certain which, at the least, the plaintiff is entitled to, or ought to recover, and (iii) if based on a contract and if the claim is for a debt not then due and payable, at what time or times the same will become due and payable. The petition shall also allege the existence of one or more of the grounds mentioned in § 8.01-534, and shall set forth specific facts in support of the allegation. The petition shall ask for an attachment against the specific personal property mentioned in the petition, or against the estate, real and personal, of one or more of the principal defendants, or against the estate, real and personal, of one or more of the principal defendants, or against both the specific personal property and the estate of such defendants, real or personal. The petition shall state whether the officer is requested to take possession of the attached tangible personal property. The petition shall be sworn to by the plaintiff or ~~his~~ the plaintiff's agent, or some other person cognizant of the facts therein stated.

B. The plaintiff praying for an attachment shall, at the time ~~that he files his~~ the petition is filed, pay to the magistrate or clerk of the court to which the return is made the proper costs, fees and taxes, and in the event ~~of his failure~~ the plaintiff fails to do so, the attachment shall not be issued.

Representation by Counsel in Proceedings for Commitment

This proposal, recommended by the Judicial Council, increases from \$25 to \$75 the fee that is paid to court-appointed counsel for representing persons in commitment hearings under Title 19.2 of the Code. It also increases the current \$25 fee to an amount not to exceed \$445 in cases where the attorney is appointed in circuit court to represent a person who is undergoing an annual review hearing after having been acquitted of a felony by reason of insanity.

A BILL to amend and reenact § 19.2-182 of the Code of Virginia, relating to civil commitment hearings; fees; compensation.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-182 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-182. Representation by counsel in proceeding for commitment.

A. In any proceeding for commitment under this title, the judge before whom or upon whose order the proceeding is being held, shall ascertain if the person whose commitment is sought is represented by counsel. If the person is not represented by counsel, the judge shall appoint an attorney at law to represent ~~him~~ such person in the proceeding. The attorney shall receive a fee of ~~twenty-five dollars~~ \$75 for ~~his~~ services, to be paid by the Commonwealth. However, an attorney appointed by a circuit court to represent an acquittee who was acquitted of a felony by reason of insanity in a hearing to assess the need for inpatient hospitalization pursuant to § 19.2-182.5 shall be compensated on an hourly basis at a rate set by the Supreme Court of Virginia, provided such total compensation shall not exceed \$445, to be paid by the Commonwealth.

B. Any attorney representing any person in any proceeding for commitment under this title shall, prior to such proceeding, personally consult with such person.

Mandatory Retirement Age for Judges

This proposal, recommended by the Judicial Council, raises the mandatory retirement age for judges to 73 years of age.

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

Be it enacted by the General Assembly of Virginia:

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

§51.1-305 Service retirement generally.

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

B. Early retirement.-- Any member in service who has either (i) attained ~~his fifty-fifth birthday~~ 55 years of age with five or more years of creditable service or (ii) in the case of a member of any of the previous systems immediately prior to July 1, 1970, complied with the requirements for retirement set forth under the provisions of such previous system as in effect immediately prior to July 1, 1970, may retire upon written notification to the Board setting forth the date the retirement is to become effective.

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

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

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

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

Compensation of Retired Recalled Judges

The per diem compensation paid to retired recalled judges has remained at \$200 since 1999. This proposal, recommended by the Judicial Council, raises this amount to \$250. The fiscal impact was estimated to be \$442,200, which was developed based upon the number of days in which retired recalled judges sat in 2013.

A BILL to amend and reenact § 17.1-327 of the Code of Virginia, relating to payment of retired recalled judges.

Be it enacted by the General Assembly of Virginia:

1. That § 17.1-327 of the Code of Virginia is amended and reenacted as follows:

§ 17.1-327. Payment for services of retired judges; members of the State Corporation Commission and Virginia Workers' Compensation Commission.

Any justice, judge, member of the State Corporation Commission, or member of the Virginia Workers' Compensation Commission who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) and who is temporarily recalled to service shall be reimbursed for actual expenses incurred during such service and shall be paid a per diem of ~~\$200~~\$250 for each day ~~he~~the person actually sits, exclusive of travel time.

II. Recommended Changes to Rules of Court

BACKGROUND

Article VI, Section 5 of the Constitution of Virginia authorizes the Supreme Court of Virginia to promulgate rules governing the practice and procedures in the courts of the Commonwealth.

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

Rules recommended by the Council and subsequently adopted by the Supreme Court are published in Volume 11 of the Code of Virginia. All orders of the Supreme Court amending the Rules, along with an updated version of the Rules that incorporates the amendments as they become effective, are posted on Virginia's Judicial System website at <http://www.courts.state.va.us/courts/scv/rules.html>.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL IN 2013 AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2014

The proposed revision to Rule 1:18 eliminated the requirement of 14 days advance notice to counsel before the court may enter a Uniform Pretrial Scheduling Order, while preserving the discretion of counsel to submit an agreed to order or object to the terms of an order issued *sua sponte* by the court. At its November 4, 2013, meeting, the Judicial Council voted to recommend these proposed changes to the Supreme Court of Virginia. This Rule was amended by Order dated February 28, 2014, effective May 1, 2014.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2014

Virginia Code § 8.01-3 addresses the Court's rulemaking authority and makes clear that enactments of the General Assembly supersede any contrary provisions of Rules of Court. At the June 6, 2014 meeting, the Judicial Council voted to support the following recommendations

from the Advisory Committee to bring specific Rules into conformity with changes to the Code of Virginia made by 2014 Acts of Assembly.

- New Rule 2:413 Evidence of similar crimes in child sexual offense cases (derived from Code § 18.2-67.7:1), adopted to reflect the provisions of House Bill 403, 2014 Acts of Assembly, Ch. 782.
- Rule 2:404 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes, amended to reference new Rule 2:413.
- Rule 2:803. Hearsay Exceptions Applicable Regardless of Availability of the Declarant (Rule 2:803(10)(a) derived from Code § 8.01-390(C); Rule 2:803(10)(b) derived from Code § 19.2-188.3; Rule 2:803(17) derived from Code § 8.2-724; and Rule 2:803(23) is derived from Code § 19.2-268.2), Rule caption amended to reflect the re-ordering of Code § 8.01-390 by House Bill 1248, 2014 Acts of Assembly, Ch. 353.
- Rule 2:902 Self-Authentication (Rule 2:902(6) derived from Code § 8.01-390.3 and Code § 8.01-391(D)), amended to reflect the provisions of House Bill 1248, 2014 Acts of Assembly, Ch. 353.
- Rule 2A:2 Notice of Appeal for Appeals Pursuant to the Administrative Process Act, amended to reflect the provisions of Senate Bill 358, 2014 Acts of Assembly, Ch. 699.
- Rule 3A:8 Pleas, amended to reflect the provisions of House Bill 452, 2014 Acts of Assembly, Ch. 165.
- Rule 7C:6 Pleas, amended to reflect the provisions of House Bill 452, 2014 Acts of Assembly, Ch. 165.
- Rule 8:18 Pleas, amended to reflect the provisions of House Bill 452, 2014 Acts of Assembly, Ch. 165.

These Rules were amended by Order of the Supreme Court of Virginia dated July 2, 2014, effective immediately.

The following Rules of Evidence were presented and recommended to the Supreme Court at the November 3, 2014, meeting of the Judicial Council of Virginia.

- Rule 2:801 Definitions.
- Rule 2:803 Hearsay Exceptions Applicable Regardless of Availability of the Declarant (Rule 2:803(10)(a) derived from Code § 8.01-390(C); Rule 2:803(10)(b) derived from Code § 19.2-188.3; Rule 2:803(17) derived from Code § 8.2-724; and Rule 2:803(23) is derived from Code § 19.2-268.2).

These Rules were amended by Orders of the Supreme Court of Virginia dated November 12, 2014, effective July 1, 2015.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL IN 2014 PENDING ACTION BY THE SUPREME COURT OF VIRGINIA

At the November 3, 2014, meeting of the Judicial Council, the Advisory Committee recommended amendments to Rule 4:11 to limit the number of Requests for Admission to 50, except for Requests that relate to the genuineness of documents. The Judicial Council voted to recommend this proposal to the Supreme Court.

The Appellate Practice Section of the Virginia Bar Association submitted and the Advisory Committee reviewed and endorsed a number of rewording suggestions relating to the practical operation of the appellate Rules in Part Five and Part Five-A governing procedure in the Supreme Court of Virginia and the Court of Appeals of Virginia. The Judicial Council voted to recommend to the Supreme Court amendment to the following appellate practice Rules.

- New Rule 5:6A Citation of Supplemental Authorities.
- Rule 5:9 Notice of Appeal.
- Rule 5:17 Petition for Appeal.
- Rule 5:18 Brief in Opposition.
- Rule 5:19 Reply Brief.
- Rule 5:20 Petition for Rehearing After Refusal of Petition for Appeal or Disposition of an Original Jurisdiction Petition.

Rule 5:26	General Requirements for All Briefs.
Rule 5:30	Briefs Amicus Curiae.
New Rule 5A:4A	Citation of Supplemental Authorities.
Rule 5A:6	Notice of Appeal.
Rule 5A:12	Petition for Appeal.
Rule 5A:19	General Requirements for all Briefs.
Rule 5A:23	Briefs Amicus Curiae.