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January 9, 2024

Members of the General Assembly of Virginia
General Assembly Building
201 North 9th Street
Richmond, VA 23219

Justices of the Supreme Court of Virginia
Supreme Court of Virginia
100 North Ninth Street
Richmond, VA 23219-1315

Re: 2023 Report of the Judicial Council of Virginia

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

As Secretary of the Judicial Council of Virginia, I am pleased to submit the 2023 Report of the Judicial Council, as required by Code § 17.1-705.

If you have any questions, please do not hesitate to contact me.

With best wishes, I am

Very truly yours,

Karl R. Hade

KRH:jrs


cc: Division of Legislative Automated System

2023

Judicial Council of Virginia



Report to the General Assembly and Supreme Court of Virginia



The Judicial Council of Virginia
2023 Report to the General Assembly and Supreme Court of Virginia
Supreme Court of Virginia, Office of the Executive Secretary
Richmond, Virginia
Published January 2024

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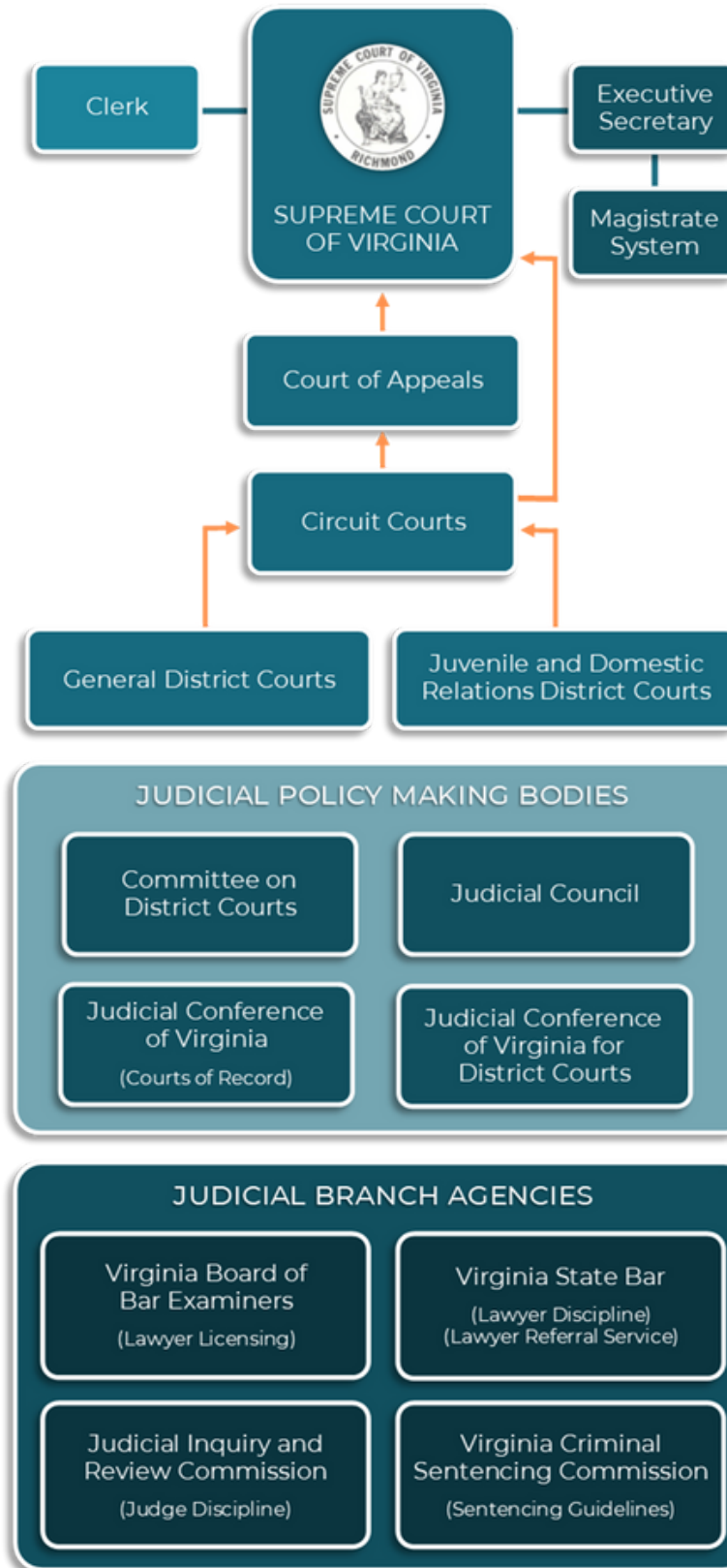
The Judicial Council of Virginia

Membership as of November 30, 2023

The Honorable S. Bernard Goodwyn	Chief Justice, Supreme Court of Virginia
The Honorable Marla Graff Decker	Chief Judge, Court of Appeals of Virginia
The Honorable Claude V. Worrell, Jr.	Judge, Sixteenth Judicial Circuit
The Honorable Douglas L. Fleming, Jr.	Judge, Twentieth Judicial Circuit
The Honorable Christopher B. Russell	Judge, Twenty-Fifth Judicial Circuit
The Honorable Deanis Simmons	Judge, Twenty-Eighth Judicial Circuit
The Honorable Jacqueline S. McClenney	Judge, Thirteenth Judicial Circuit
The Honorable Stacey W. Moreau	Judge, Twenty-Second Judicial Circuit
The Honorable George Barton Chucker	Judge, Fourteenth Judicial District
The Honorable Jay E. Dugger	Judge, Eighth Judicial District
The Honorable John S. Edwards	Co-Chair, Judiciary Committee, Senate of Virginia
The Honorable R. Creigh Deeds	Co-Chair, Judiciary Committee, Senate of Virginia
The Honorable James A. Leftwich Jr.	Member, Courts of Justice Committee, Virginia House of Delegates
Corrynn Peters, Esquire	Attorney-at-Law, Member of the Bar of the City of Norfolk
Michael N. Herring, Esquire	Attorney-at-Law, Member of the Bar of the City of Richmond
Karl R. Hade*	Executive Secretary

*Ex-officio

Virginia 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.

Update on Study of the Security of Judicial Officers

In 2021, the Judicial Council supported a proposal by the Executive Committee of the Judicial Conference of Virginia to study issues relating to the security of judicial officers over the course of 2022.

Chief Justice Goodwyn appointed a study group chaired by Justice Cleo Powell that was comprised of judges at all court levels, magistrates, and staff in the Office of the Executive Secretary. In 2022, the study group proposed, and the Judicial Council approved, legislation that was passed into law during the 2023 General Assembly Session (2023 Acts of Assembly Chapters 801 and 802) which strengthened protections in the Code of Virginia for the personal information of judicial officers. The Council also approved a request that the study group continue to meet and study additional security needs of judicial officers including suitable physical facilities for judges and magistrates, best practices for magistrate facilities, and office/home security audits.

In accordance with the wishes of the Council, the study group met several times between May, 2022 and September, 2023 to assess security needs and i) created a summary of existing security resources for judicial officers, ii) recommended that future trainings for chief judges include judicial security as an agenda item, and iii) recommended a legislative proposal that would add language to the Code of Virginia defining minimum security requirements for magistrate quarters. The Judicial Council approved the study group’s recommendations. The legislative proposal is included in this report among those for the 2024 Session of the General Assembly.

Revision of *Standards to Govern the Appointment of Guardians Ad Litem for Incapacitated Persons*

In 2023, the Council approved changes to the *Standards to Govern the Appointment of Guardians Ad Litem for Incapacitated Persons* (Appointment Standards) to remove the requirement that an attorney include their social security number in a letter to the Office of the Executive Secretary when requesting qualification as a guardian ad litem. The Council also approved minor technical edits to the Appointment Standards.

Requests for Additional Judgeships

Virginia Code § 17.1-507 provides that no additional circuit court judge shall be authorized or provided for any judicial circuit until the Judicial Council has made a study of the need for such additional circuit court judge and reports its findings and recommendations.

The Executive Committee of the Judicial Council adopted the National Center for State Courts' report and recommendations included in the 2017 Virginia Judicial Workload Assessment Report. The number of judicial positions in the circuits authorized in Va. Code § 17.1-507 was amended and became effective July 1, 2018, based upon the recommendation made in the Report. Additionally, the General Assembly authorized one new circuit court judgeship in the Thirty-First Judicial Circuit of Virginia, effective July 1, 2022.

In 2023, the Judicial Council received requests for additional judgeships from the First Judicial Circuit, Ninth Judicial Circuit, Fifteenth Judicial Circuit, and the Twenty-Fifth Judicial Circuit. The Council reviewed documentation and statistical information presented by each jurisdiction and recommends the authorization of one additional judgeship in each of the requesting circuits.

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, Chief Justice of Virginia from 1981 to 2003. 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 Judicial Council of Virginia named the Honorable C. Randall Lowe, a judge of the Twenty-Eighth Judicial Circuit, as the recipient of the 2022 award at the annual meeting of the Judicial Conference of Virginia on May 18, 2023. Judge Lowe has been a judge of the Washington Circuit Court since his election to the bench by the General Assembly in 2001 and served as Chief Judge of the Twenty-Eighth Judicial Circuit from 2003 to 2014. Judge Lowe initiated the Adult Drug Court Docket in Washington Circuit Court and presided over the docket for 11 years. Judge Lowe has served Virginia's judiciary as a member of the Judicial Council of Virginia, a member of the Executive Committee of the Judicial Council, a Chairman of the Education Committee of the Judicial Conference of Virginia, and a member of the Judicial Education Committee of the Virginia Access to Justice Commission.

Judge Lowe received his undergraduate degree from Emory & Henry, and his law degree from the University of Richmond School of Law. Prior to taking the bench, Judge Lowe was engaged in the general practice of law in Abingdon, Virginia, and is a past president of the Washington County Bar Association. He was an active member of the Virginia Trial Lawyers Association, serving on its Board of Governors, Executive Council, and as president of the Young Lawyers Section. He was a member of

the Washington County Planning Commission and served as Chairman from 1996 to 2001. Judge Lowe is a recipient of a March of Dimes Outstanding Service Award and American Red Cross Special Citation for Exceptional Volunteer Service Award and is also the 2022 Recipient of the Virginia Mountain/Valley Lawyer's Alliance, Roscoe Boler Stephenson Jr. Lifetime Service to Justice Award.

II. LEGISLATIVE PROPOSALS FOR THE 2024 GENERAL ASSEMBLY SESSION

In 2023, the Judicial Council endorsed legislative proposals recommended by the Judicial Officer Security Study Group and the Executive Committee of the Judicial Conference of Virginia for approval by the Supreme Court of Virginia, and inclusion in the Court’s legislative package for the 2024 Session of the General Assembly.

Proposals Recommended by the Security of Judicial Officers Study Group

Enhanced Minimum Security Standards for Magistrate Quarters

The Study Group recommended the following legislative proposal that was approved by the Judicial Council. The proposed legislation seeks to address situations where a locality has been unwilling to work with magistrates on addressing security needs for magistrate quarters by adding language to the Code requiring certain minimum security features for magistrate quarters.

§ 19.2-48.1. Quarters for magistrates.

A. The counties and cities served by a magistrate or magistrates shall provide suitable quarters for such magistrates, including a site for any videoconferencing and other equipment necessary to provide secure, remote access and the transmission of paperwork to such magistrates by the public and law-enforcement officers. ~~Insofar as possible~~ Such quarters ~~should~~ shall be located in a public facility open to the public and should be appropriate to conduct the affairs of a judicial officer as well as provide convenient, 24-hour access to the public and law-enforcement officers. Where practicable, such quarters shall be in a courthouse or a law-enforcement office where business is regularly conducted and shall include an entrance, exit, and parking for magistrates that is separate from members of the public. Such quarters shall provide for the physical security of the magistrate and shall include access control to interior spaces and/or intrusion detection, a secure physical barrier between the magistrate and members of the public and a readily accessible duress button that connects the magistrate to local law enforcement. The county or city shall also provide all furniture and other equipment necessary for the efficient operation of the office.

B. Wherever practical, the office of magistrate shall be located at the county seat. However, offices may be located at other locations in the county, or city adjacent thereto, whenever such additional offices are necessary to effect the efficient administration of justice.

Proposals Recommended by the Executive Committee of the Judicial Conference of Virginia

1. Clarification of the Clerk’s Duties During the Guardian Appointment Process

This proposal would amend the process for guardianship appointment within the Code of Virginia to provide clarification that reflects current practice.

In Virginia, guardianship appointment is a two-step process. The court must enter an order of appointment and the individual that is appointed must then report to the clerk’s office for qualification.

The clerk is currently required to send a copy of the order of appointment to the local department of social services in which the respondent resides, but there is no requirement to send a copy of the certificate of qualification. The local Department of Social Services needs to know that the person appointed as guardian has qualified before the clerk. This proposal will ensure that the individual appointed as guardian has taken the necessary oath and signed the necessary bond in the qualification process prior to officially acting as guardian.

§ 64.2-2011. Qualification of guardian or conservator; clerk to record order and issue certificate; reliance on certificate.

...

B. Upon qualification, the clerk shall issue to the guardian or conservator a certificate with a copy of the order of appointment appended thereto. The clerk shall record the order in the same manner as a power of attorney would be recorded and shall, in addition to the requirements of § 64.2-2014, provide a copy of the order to the commissioner of accounts. It shall be the duty of a conservator having the power to sell real estate to record the order in the office of the clerk of any jurisdiction where the respondent owns real property. If the order appoints a guardian, the clerk shall promptly forward a copy of the order of appointment and a copy of the certificate of qualification to the local department of social services in the jurisdiction where the respondent then resides and a copy of the order of appointment to the Department of Medical Assistance Services.

...

Additionally, the current language within Va. Code § 64.2-2020 regarding the filing of the annual report is imprecise, as it does not provide specific timeframes by which guardians must file the annual reports. The proposed language clarifies the filing requirements by adding filing deadlines, which is anticipated to lead to more reports being filed in a timely manner.

§ 64.2-2020. Annual reports by guardians.

A. A guardian shall file an initial annual report within four months of the date of qualification ~~in compliance with the filing deadlines in § 64.2-1305~~ and annually thereafter on the date of qualification with the local department of social services for the jurisdiction where the incapacitated person then resides. The annual report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of \$5. The local department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of services to adults in need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy of the annual report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case. Twice each year the local department shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 64.2-1305.

2. Require a Cover Sheet for Guardianship Petitions

This proposal would require a cover sheet for guardianship petitions to allow for the collection of more identifying information about individuals who are subject to guardianship. This data would be collected as a part of the grant-funded guardianship IT system enhancements. Also, some additional data is required to be reported to external entities including Virginia State Police, the Department of Elections, and licensing entities. Other data points would be collected for OES and WINGS analysis to determine gaps in coverage and the effect on underserved populations to determine if changes are necessary.

§ 64.2-2002. Who may file petition; contents.

B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, post office address, and the sealed filing of the social security number;
2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of Chapter 21;
3. The names and post office addresses of the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including stepchildren. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;
4. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;
5. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal, and any guardian, committee, or conservator currently acting, whether in this state or elsewhere, and the petitioner shall attach a copy of any such durable power of attorney, advance directive, or order appointing the guardian, committee, or conservator, if available;
6. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;
7. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangements and treatment plan;
8. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment and, if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment;
9. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent and that person's relationship to the respondent;

10. The native language of the respondent and any necessary alternative mode of communication;
11. A statement of the financial resources of the respondent that shall, to the extent known, list the approximate value of the respondent's property and the respondent's anticipated annual gross income, other receipts, and debts;
12. A statement of whether the petitioner believes that the respondent's attendance at the hearing would be detrimental to the respondent's health, care, or safety; and
13. A request for appointment of a guardian ad litem.

C. The petitioner shall complete and file with the petition for appointment of a guardian, a conservator, or both, a cover sheet on a form prepared by the Office of the Executive Secretary of the Supreme Court containing such information as the Executive Secretary deems necessary.

3. Changes to the Oath for Grand Jurors

This proposal would amend § 19.2-197 of the Code of Virginia, which sets forth the oath for grand jurors, so that the language can be more easily understood by the jurors.

§ 19.2-197. Foreman of grand jury; oaths of jurors and witnesses.

~~The court shall select a foreman fFrom among the persons summoned who attend the court shall select a foreman who shall be sworn as follows: "Do you solemnly swear or affirm that Yyou shall will diligently inquire into, and true presentment make, of and carefully consider all such matters as may be given you in charge that come to your attention, or come to your knowledge, touching the concerning this present service-, and do you solemnly swear or affirm that Yyou shall will present indict no person through prejudice or ill-will, nor leave any unrepresented unindicted through fear or favor, but in all your presentments you shall will present the truth, the whole truth, and nothing but the truth-, (Sso help you God.)?" The other grand jurors shall afterwards be sworn as follows: "The same oath that your foreman has taken on his part, do you and each of you solemnly swear or affirm that you shall will observe and keep the same on your part-, (Sso help you God-)?" Any witness testifying before the grand jury may be sworn by the foreman.~~

4. Termination of Temporary Support Orders

This proposal would add a provision to the Code of Virginia to explicitly state that a temporary support order that has been issued in conjunction with a family abuse protective order shall terminate upon the expiration of the protective order, or the determination of support pursuant to § 20-108.1, whichever is first to occur.

This amendment is necessary because at least some temporary support orders are being enforced, even though the accompanying protective order has terminated, since no party ever sought to have child support determined in accordance with § 20-108.1 or sought termination of the support order. In such instances, the proper recourse for the temporary support to be curtailed is not readily apparent (i.e. whether to file a motion to amend or a new petition).

§ 16.1-279.1. Protective order in cases of family abuse.

A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

[. . .]

A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary child support order for the support of any children of the petitioner whom the respondent has a legal obligation to support. Such order shall terminate upon the determination of support pursuant to § 20-108.1, or upon the termination of the protective order, whichever occurs first.

III. 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.vacourts.gov/courts/scv/rules.html>.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2023

At the May 9, 2023, meeting, Judicial Council considered and recommended to the Supreme Court these changes to the Rules of the Supreme Court of Virginia:

1. Amend Rule 5A:25 to require an appendix be filed with a written transcript in video-record cases;
2. Amend Rule 3:19 to require written notice of default-judgment motion;
3. Amend Rule 4:1(g) to cure signature defects in discovery pleadings;
4. Conform Rules 2:615 to 2023 Acts of Assembly Chapter 615 (amending the rule on witnesses);
5. Conform Rule 5:17A to 2023 Va. Acts of Assembly Chapter 741 (petitions for review); and
6. Amend Rule 2:103, Part 3A Form 10, Part 5 Form 11 to replace or eliminate the use of “shall.”

Rules 5:17A, 2:103, Part 3A Form 10, and Part 5 Form 11 were amended by Order dated May 26, 2023, effective immediately.

Rules 3:19, and 4:1(g) were amended by Order dated June 9, 2023, effective August 8, 2023.

Rule 2:615 was amended by Order dated June 23, 2023, effective July 1, 2023.

Judicial Council recommended changes to Rule 5A:25 during the May meeting. The changes to this Rule were returned to the Council for additional review.

At the October 17, 2023, meeting, Judicial Council considered and recommended to the Supreme Court these changes to the Rules of the Supreme Court of Virginia:

1. Amend Rule 5A:25 to require an appendix when a court proceeding is memorialized only by a video recording;
2. Amend Rules 4:1(g), 4:8(d), and 4:9(b) to prohibit the use of “blanket” discovery Objections;
3. Conform Rules 5A:6, 5A:8, and 5A:10 to 2023 Va. Acts chs. 314, 315 (postponing the appearance of the Attorney General in criminal appeals until the record is filed in the Court of Appeals);
4. Amend Rule 5A:19 to postpone the deadline for the appellee’s brief until after the record is filed;
5. Amend Rules 5A:19 and 5A:25 to require a joint appendix in cases with large records; and
6. Adopt Rule 3:26 to specify the standard for granting a preliminary injunction.

Rules 5A:25, 4:1(g), 4:8(d), 4:9(b), 5A:6, 5A:8, and 5A:10 were amended by Order dated November 21, 2023, effective January 20, 2024.

Rule 5A:19 was amended by Order dated November 21, 2023, effective immediately.

Changes to Rule 3:26 are still pending before the Supreme Court.