

Commission on Virginia Courts in the 21st Century:
To Benefit All, To Exclude None

Final Report

Supreme Court of Virginia
Richmond, Virginia
January 2007

This project was financially assisted by the Virginia Law Foundation.



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The Commission on Virginia Courts in the 21st Century:
To Benefit All, To Exclude None

Dedicates this Report to the Memory of

The Honorable Randall G. Johnson

For His Leadership And
Long-Time Commitment To Virginia's Judiciary
Including His Service As A Member Of The Commission,
As A Member Of The Commission's Executive Committee, And
As Chair Of The Commission's Task Force On Judicial Administration

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January 26, 2007

The Honorable Leroy R. Hassell, Sr.
Chief Justice
Supreme Court of Virginia
100 North Ninth Street
Richmond, Virginia 23219

Dear Chief Justice Hassell:

On behalf of the Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None, it is my privilege to present our final report.

The report reflects the Commission's vision for the future of the Commonwealth's judicial system. We have endeavored to fulfill our charge to identify the challenges and opportunities that will confront the system in 2016 and beyond, and to make recommendations to continue its effective delivery of justice to all future Virginians.

We organized our recommendations according to the Vision Statements of Virginia's Judiciary. These Statements, which were developed by the Commission on the Future of Virginia's Judicial System (the first Futures Commission), provided aspirational guidance for our work.

Our recommendations are based on the study and analyses of our Task Forces and their subcommittees. Many of our recommendations reflect changes in our society since the report of the first Futures Commission. Other recommendations are repeated from the report of the first Commission based on our updated work. Some recommendations incorporate significant departures from our current system. In making such recommendations, we mean no criticism of any aspect of our system which is a model for the administration of justice. The recommendations reflect our judgment as to how to best realize the visions of the judicial system in the future.

We have included the reports of our subcommittees and Task Forces as an appendix to our report. In adopting the recommendations in our report, the Commission did not formally adopt any of the underlying reports. However, the Commission felt that the vast amount of information compiled in the reports and the analyses contained in them would be beneficial to those who will determine the implementation of our recommendations.

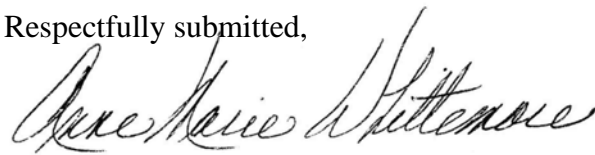
We set the ambitious goal of completing our work in one year. We were able to do so because the members of the Commission and its Task Forces gave generously of their time and talents. In reviewing our work, we found that in addition to the time members devoted individually to research and preparing reports, the various work groups of the Commission held 134 well-attended meetings. Our deliberations were noteworthy for collegiality, professionalism and a shared commitment to the administration of justice. It has been an honor to chair this remarkable group of judges, lawyers, law professors and lay members.

We were deeply saddened in the course of our work by the untimely passing of the Honorable Randall G. Johnson of the Circuit Court of the City of Richmond. Judge Johnson ably chaired the Task Force on the Administration of Justice notwithstanding his declining health. As he was a model jurist, so also was he an inspiration to us by his dedication to the work of the Commission and the Virginia judicial system. To his memory and in his honor, we dedicate this report.

We are indebted to all who participated in the important work of this Commission. Special recognition must be paid to Tom Diggs, assistant to the Commission. Tom's diligence was surpassed only by the excellence of his work, the thoroughness of his organization and the good humor he always displayed. Thank you, Tom.

We also thank you for your leadership of the Virginia judicial system and for your inspirational charge, your encouragement and your support of the work of the Commission. We hope we have charted a course that will enable the judicial system of the future "to benefit all, to exclude none."

Respectfully submitted,

A handwritten signature in cursive script, reading "Anne Marie Whittemore". The signature is written in black ink and is positioned above the printed name.

Anne Marie Whittemore

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Judge Johnson passed away on August 18, 2006. Judge Alexander was then selected to serve as chair.

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Introduction

The Commission on Virginia Courts In The 21st Century: To Benefit All, To Exclude None was the judiciary's second futures commission. In 2004, Chief Justice Leroy R. Hassell, Sr., established a planning committee to create a structure for and select the members of the Commission. He selected Anne Marie Whittemore to be the Commission's chair. Ms. Whittemore, a partner in the law firm McGuireWoods, has served as chairman of the board of directors of the Federal Reserve Bank of Richmond and in similar leadership positions with several public companies and educational institutions. The Planning Committee identified the topics that would be addressed by the Commission, recognizing that the Commission would add additional topics as it pursued its work. The Planning Committee selected 44 individuals to serve on the Commission, and the Planning Committee became the core of the Commission's Executive Committee.

The Commission formed five task forces to prepare recommendations for the Commission to consider. There were task forces on judicial administration, judicial functions, the public and the courts, the structure of the courts, and technology and science. In addition to including the members of the Commission, the task forces were composed of an additional 65 judges, clerks, attorneys, law professors, and members of the public. There was also an Advisory Committee that consisted of the presidents of statewide bar groups or their designees. This Committee was tasked with presenting the work of the Commission to the members of the statewide bar groups and bringing comments and suggestions back to the Commission.

The Commission started its year-long work in Richmond on October 6, 2005. At this inaugural meeting, the Chief Justice challenged the Commission to look at what the citizens of the Commonwealth would need from the judicial system in the year 2016 and beyond. He indicated that the Commission's subtitle "To Benefit All, To Exclude None" should be a guide to the members as they looked at what the future might hold and ensure that they remember that the judicial system must continue to provide – and be perceived as providing – justice for all Virginians. The Chief Justice challenged the Commission to make recommendations that would safeguard our cherished judicial system and prepare it to address the opportunities and the challenges that we could foresee for the next ten to twenty years.

The task forces held their initial meetings on the afternoon immediately following this first Commission meeting. They organized into sixteen subcommittees. With further meetings beginning just a week after the Commission's opening meeting, the task forces, their chairs, and the subcommittees embarked on an aggressive schedule with the goal of presenting a significant number of preliminary recommendations to the Commission when it met again on March 13, 2006, in Fredericksburg. At that meeting, all the subcommittees had preliminary reports, many of which had already been approved by their task forces. By early June, all of the subcommittee reports had been approved by their respective task forces.

At its June 19-20 meeting in Charlottesville, the Commission considered all 209 recommendations approved by the task forces. With the help of the electronic voting system provided by Virginia CLE, the Commission conducted 216 formal votes (some recommendations

had votes on subparts). The Commission adopted 181 preliminary recommendations. Of the original 209, nine were withdrawn without votes and 19 were not adopted. In addition, the Commission did not adopt significant parts of five other recommendations.

During July, the Commission held public hearings on the preliminary recommendations in Roanoke, Abingdon, Fairfax, Richmond, and Virginia Beach. A total of 20 speakers, including 12 current or retired Clerks of the Circuit Court, presented comments to the Commission at the public hearings. In addition, other individuals provided comments on the preliminary recommendations in writing or by phone. Comments addressed 156 of the recommendations as well as an additional 23 topics not related to the preliminary recommendations. Thirty-one recommendations received comments opposing all or part of their contents, but only a handful of these received multiple comments in opposition.

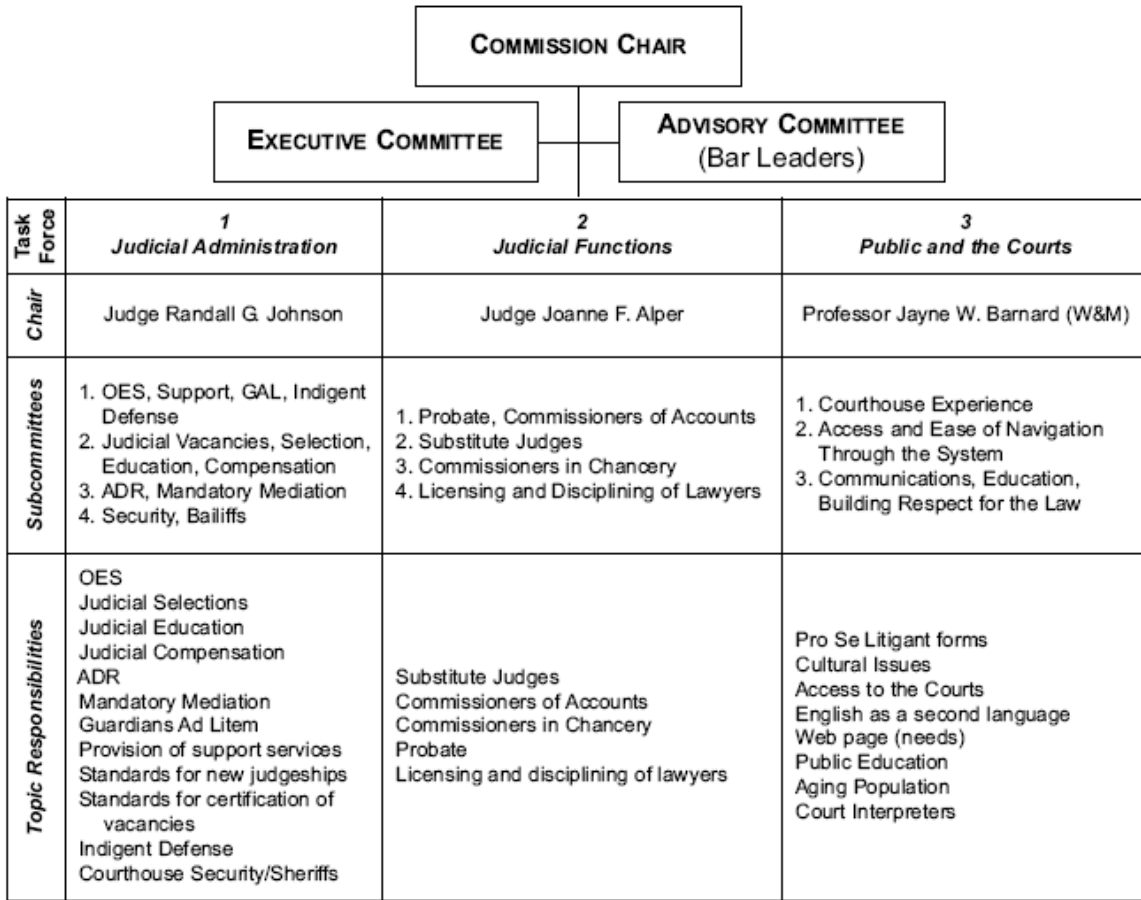
At its meeting in Richmond on October 6, 2006, the Commission considered the comments presented and voted on a final report. The members of the Commission were given time to review the final report and present supporting or dissenting statements. Only one such statement was presented. The Commission's final report was officially presented to the Supreme Court of Virginia and the Judicial Council of Virginia on January 26, 2007, in Richmond.

During 2007, the Judicial Council will consider the report and send its recommendations regarding the report to the Supreme Court of Virginia.

Timeline of the Futures Commission

<u>Event</u>	<u>Date</u>
1 st Commission Meeting	October 6, 2005
Task Force and Subcommittee Meetings	October 2005 to March 2006
2 nd Commission Meeting	March 13, 2006
Task Force and Subcommittee Meetings	March 2006 to June 2006
3 rd Commission Meeting	June 19-20, 2006
Statewide Public Hearings	July 2006
Task Force and Subcommittee Meetings	August 2006 to September 2006
Final Commission Meeting	October 6, 2006
Presentation of Final Report to Supreme Court & Judicial Council	January 26, 2007
Circulation of Report for Comment	January 2007

Structure of the Futures Commission

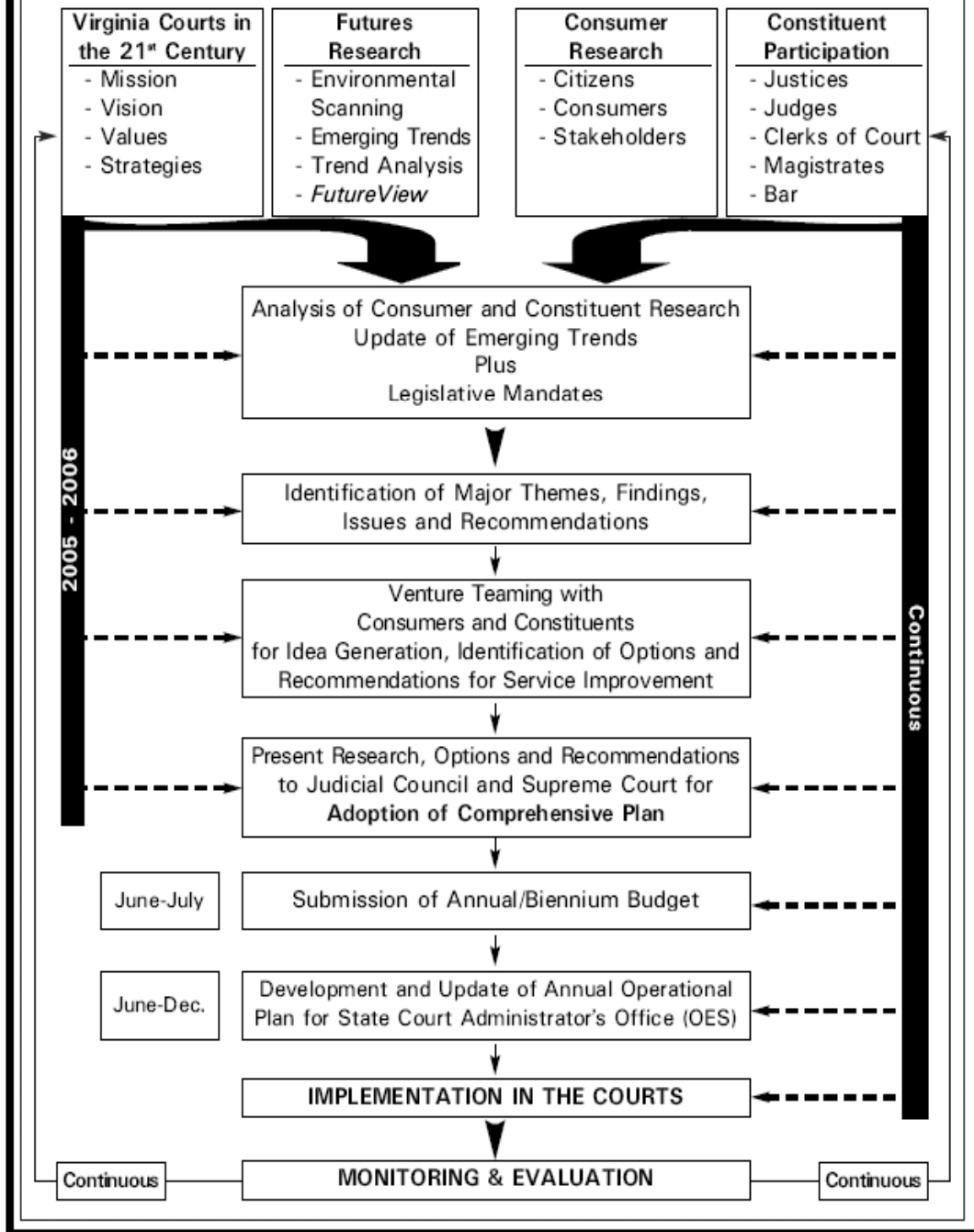


Task Force	4 Structure of the Judicial System	5 Technology and Science
Chair	Chief Judge Walter S. Felton, Jr.	Judge John E. Wetsel, Jr.
Subcommittees	<ol style="list-style-type: none"> 1. Structure of the Trial Courts 2. Special Dockets within Trial Courts or Specialty Courts 3. Structure of the Intermediate Appellate Court 	<ol style="list-style-type: none"> 1. Web page, OES IT, IT Infrastructure, Delivery of Services 2. Confidentiality, Access to IT, Court Reporters, Courtroom Technology
Topic Responsibilities	Special dockets within drug courts, mental health courts, therapeutic justice Structure of General District Courts and clerks Circuit Courts and clerks Court of Appeals	Web page enhancements Confidentiality of information in court records OES IT function Delivery of services to all levels of courts Access to IT by non-court personnel such as lawyers, creditors, etc. Court reporters

The Futures Commission and Virginia’s Comprehensive Judicial Planning Process

The comprehensive strategic and operational planning process for Virginia courts operates on a two-year cycle. The process is driven by four information engines, the most fundamental of which has been the 1989 report of the Commission on the Future of Virginia’s Judicial System along with the mission, visions, and objectives that followed from its recommendations. The commission has strongly influenced the values and strategies that are reflected in the succeeding multi-year plans that have been adopted by the Judicial Council and Supreme Court of Virginia. The judiciary’s second futures commission, “Virginia Courts in the 21st Century: To Benefit All, To Exclude None,” used the work of its predecessor as a foundation for its work. The recommendations presented by the Commission in this report will inform the ensuing cycles of the comprehensive planning process.

THE COMPREHENSIVE STRATEGIC AND OPERATIONAL PLANNING SYSTEM FOR VIRGINIA COURTS (2005-2008)



The Virginia Judiciary's Mission and Visions

The Judiciary's Mission

To provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the United States and Virginia Constitutions.

Vision 1

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

Vision 2

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

Vision 3

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

Vision 4

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

Vision 5

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.

Vision 6

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 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.

Vision 7

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.

Vision 8

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

Vision 9

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 10

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

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Vision One

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

Access to Affordable and Efficient Legal Representation. The cost of hiring counsel is prohibitive for an increasingly substantial portion of Virginians as the need for legal services increases. Costs of representation are especially high in some cases because of regulatory restrictions on multi-jurisdictional practice and discrete task representation by counsel.

Virginia should provide more affordable and efficient legal representation by

- 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. *Recommendation 1.1.*
- Increasing and expanding tax credits for lawyers who participate in the voluntary reduced-fee program. *Recommendation 1.2.*
- Permitting the unbundling of legal services. *Recommendation 1.3.*
- Expanding the areas in which foreign legal consultants (non-U.S. attorneys) may practice law. *Recommendation 1.4.*
- Creating compacts with bordering jurisdictions to permit those licensed in a compact jurisdiction to practice in any other compact jurisdiction. *Recommendation 1.5.*
- 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. *Recommendation 1.6.*

Legal Aid. Effective access to justice requires assistance of counsel and the removal of economic barriers to legal representation. Virginia provides contributions to legal aid through a modest general revenue appropriation, \$4.00 from each case filed in Virginia, and Interest on Lawyers Trust Accounts. A recent study has found that Virginia is barely meeting 20% of the legal needs of its low-income residents. Providing legal representation to low-income individuals should be a funding priority for the Commonwealth and should also be supported by the private bar through increased *pro bono* representation.

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

- Increasing funding for legal aid and considering funding other non-profit agencies that provide free legal services to low-income individuals. *Recommendation 1.7.*
- Encouraging increased *pro bono* representation by the private bar. *Recommendation 1.8.*

Indigent Defense. Effective access to justice for indigent criminal defendants depends upon a system of qualified public defenders and court-appointed counsel to serve a growing number of indigent defendants. The current Public Defender System is inadequately staffed and suffers from a high turnover rate. Where there is no public defender and where the public defender has a conflict of interest, Virginia uses court appointed counsel. Compensation of court appointed counsel is determined by fee caps that have not been fully funded. Virginia currently ranks 50th among the states in compensation for court appointed counsel.

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

- 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. *Recommendation 1.9.*
- Providing for funding of Public Defender offices at a level comparable to the funding provided to Commonwealth Attorneys' offices. *Recommendation 1.10.*
- Reforming the current system of compensation of court appointed attorneys by removing the fee caps. *Recommendation 1.11.*
- 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. *Recommendation 1.12.*
- 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. *Recommendation 1.13.*

Fee Waivers. Virginia Courts help financially disadvantaged litigants by providing *in forma pauperis* status in appropriate cases. There is no easy way for those who need fee waivers or *in forma pauperis* status, such as a spouse in a divorce who does not have access to marital assets, to learn how to qualify for the waivers or status.

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

- 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. *Recommendation 1.14.*

- Allowing judges broad discretion to waive service of process fees in domestic relations cases. *Recommendation 1.15.*

Non-Attorney Representatives. Virginia permits non-attorney representatives of businesses in limited matters in General District Court. At trial, however, attorneys must represent those businesses. This requirement for even “simple” cases increases business costs which are then passed on to customers.

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

- Expanding the purposes for which business entities may be represented by non-attorney company representatives in courts not of record. *Recommendation 1.16.*

Proof of Damages by Affidavit. In general, evidence of damages in civil trials requires in-person testimony. Requiring parties to produce witnesses to substantiate damages which could be substantiated by affidavits increases the cost and complexity of litigation.

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

- 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. *Recommendation 1.17.*

Court Hours. Court dockets are full and court sessions are limited to 9 to 5 on weekdays. Although almost everyone who has business with a court finds a way to be present when it is in session, doing so is often inconvenient. Further, some must take time off from work without pay. There are some who cannot come to court when it is in session and they are effectively denied access to the system.

Virginia should eliminate time barriers to access to its courts by

- Providing funding and support for expanded court hours, including nights and weekends. *Recommendation 1.18.*

Legal Assistance following Disasters. Disasters create unusual needs for legal services. All affected persons must be able to get timely fundamental legal services as part of the government’s response to those disasters. In addition, the government’s response must ensure that all courts in the Commonwealth are able to adapt to the circumstances created by the disasters and continue their work as soon as practicable following the disasters.

Virginia should prepare for disasters by

- 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. *Recommendation 1.19.*
- Establishing a plan for the judicial branch’s response to disasters. *Recommendation 1.20.*
- Establishing a plan for each court’s response to disasters. *Recommendation 1.21.*

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.

General Public Assistance in Court Facilities. Bedrock principles of Virginia’s court system are public acceptance of judicial decisions and respect for the rule of law. To promote that acceptance and respect, all members of the public must feel welcome in the courthouse and their experience must inculcate an understanding and appreciation for the court process.

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

- Training all personnel in court facilities to be helpful and proactive, and to identify those who may need special assistance. *Recommendation 2.1.*
- 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. *Recommendation 2.2.*
- 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. *Recommendation 2.3.*
- 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. *Recommendation 2.4.*
- Developing a comprehensive diversity training program for all court personnel. *Recommendation 2.5.*
- Continuing to promote recruitment and retention of a diverse workforce in the judicial system. *Recommendation 2.6.*
- Developing a uniform assessment instrument to gather and tabulate information from trial participants and other court users regarding their court house experience. *Recommendation 2.7.*
- Ensuring that all District Court Clerk’s Offices have coverage by at least one employee whenever Courts are open. *Recommendation 2.8.*
- Ensuring that only current court approved forms are available in and accepted by the courts. *Recommendation 2.9.*
- Ensuring that court forms are written in plain language and are easily comprehensible. *Recommendation 2.10.*

- Ensuring that all clerk’s offices are appropriately staffed. *Recommendation 2.11.*

Self Represented Litigants. There are many who choose to represent themselves in court. Those who do so include not only those parties who cannot afford to engage counsel but also those who *choose* to represent themselves with the assistance and empowerment of information readily available. There are no uniform procedures for judges and clerks who deal with self represented litigants.

Virginia should address self representation in litigation by

- 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. *Recommendation 2.12.*
- 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. *Recommendation 2.13.*
- 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. *Recommendation 2.14.*
- 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. *Recommendation 2.15.*
- 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. *Recommendation 2.16.*

Court Users Whose First Language is not English. Virginia now has a significant number of first generation immigrants. There are many other residents who have limited fluency in English or who speak no English at all. These people have limited meaningful access to legal services, especially in their interactions in the courthouse.

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

- Increasing efforts to recruit, train and certify foreign language interpreters for criminal and civil cases. *Recommendation 2.17.*
- Evaluating salary supplements for court personnel who offer skills such as fluency in a foreign language or sign language proficiency. *Recommendation 2.18.*
- Providing court forms and instructional materials in languages other than English. *Recommendation 2.19.*
- 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. *Recommendation 2.20.*
- 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.) *Recommendation 2.21.*
- 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.) *Recommendation 2.22.*
- Recruiting a significant number of interpreters for as many languages as possible. *Recommendation 2.23.*
- Developing certification programs for interpreters in as many languages as possible. *Recommendation 2.24.*
- 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. *Recommendation 2.25.*

Court Users Who Need Special Accommodations. There are a number of populations in Virginia who need special accommodations to ensure they have full and meaningful access to legal services. Principally, special accommodations are needed for those who have limited literacy, physical limitations, or are elderly.

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

- 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. *Recommendation 2.26.*
- 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. *Recommendation 2.27.*
- Training all court personnel to assist court users with disabilities and the needs associated with aging. *Recommendation 2.28.*
- 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. *Recommendation 2.29.*
- Providing equipment to accommodate vision and hearing impairments in court facilities. *Recommendation 2.30.*
- 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. *Recommendation 2.31.*
- 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. *Recommendation 2.32.*
- 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. *Recommendation 2.33.*
- 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. *Recommendation 2.34.*
- 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. *Recommendation 2.35.*
- 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. *Recommendation 2.36.*

- Undertaking to make all new or significantly-modified court facilities compliant with the Americans with Disabilities Act. *Recommendation 2.37.*
- 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. *Recommendation 2.38.*

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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.

Availability of Information about Alternative Dispute Resolution. Alternative Dispute Resolution has been effective for a significant proportion of those who use it. Information about Alternative Dispute Resolution should be widely available. The earlier that parties to litigation learn about available options to their litigation, the earlier they can choose the best option for their circumstances. With earlier decisions to use Alternative Dispute Resolution, parties are able to reduce their legal expenses, often significantly and may also have a wider range of possible resolutions available.

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

- Increasing information provided to the public regarding alternative dispute resolution through an Office of Public Education. *Recommendation 3.1.*

Voluntary Alternative Dispute Resolution. Voluntary Alternative Dispute Resolution has provided substantial benefits to the court system and litigants by relieving the burden of increased litigation on the court docket and reducing the cost and time required for resolution of individual disputes. Alternative Dispute Resolution allows for creative outcomes without regard to the dispositions available from the courts and can improve relationships between parties. Voluntary Alternative Dispute Resolution in both the public and private sectors is a cornerstone for addressing the continuing challenge of increasing litigation. Some potential users of Alternative Dispute Resolution services are unable to take advantage of these services because they are generally provided only at full cost.

Virginia should foster increased voluntary alternative dispute resolution by

- 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. *Recommendation 3.2.*
- 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. *Recommendation 3.3.*
- Supporting voluntary participation in alternative dispute resolution without mandating participation by statute, rule, order or otherwise. *Recommendation 3.4.*

Alternative Dispute Resolution Orientation. Parties to litigation need to be aware of the benefits of Alternative Dispute Resolution before they can take advantage of those benefits. In many instances parties to litigation are not aware that Alternative Dispute Resolution is available. In other instances, they may know about it, but do not know if it is right for them. The

orientation provided by courts is the best opportunity for parties to get consistent and accurate information about Alternative Dispute Resolution as well as the best opportunity to decide if it is appropriate for them.

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

- 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. *Recommendation 3.5.*
- 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. *Recommendation 3.6.*

Facilities for Alternative Dispute Resolution. Although private facilities are always available for parties engaged in Alternative Dispute Resolution, there are appropriate occasions for parties to use public facilities, especially courthouses. Ease of access to a secure, appropriate, and technologically enhanced facility is an important part of providing Alternative Dispute Resolution.

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

- Providing rooms suitable and available for counseling, mediation and settlement discussions in or near court facilities. *Recommendation 3.7.*
- Exploring the use of technology-enabled alternative dispute resolution as a means of inexpensively and efficiently resolving some civil cases. *Recommendation 3.8.*

Diversity in Alternative Dispute Resolution. Alternative Dispute Resolution is an efficient and cost-effective alternative to litigation. As such, it needs to be available to everyone for whom it is appropriate, including populations in Virginia who are not able to take advantage of it or who are not comfortable with it.

Virginia should accommodate diversity in alternative dispute resolution services by

- 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. *Recommendation 3.9.*
- 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. *Recommendation 3.10.*
- Establishing a roster of certified mediators as diverse as the general population of the Commonwealth. *Recommendation 3.11.*

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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.

Trial Courts. Virginia has three trial courts with concurrent jurisdiction and *de novo* appeals from the District Courts to the Circuit Court. This system does not permit the efficient allocation of judicial and administrative resources. Further, it is confusing to those who must often must litigate related matters simultaneously in different courts, especially in family matters. The trial court system can become more efficient and less burdensome for litigants by structural and procedural changes.

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

- 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. *Recommendation 4.1.*
- Establishing a Family Court as a court of record as either a separate court or as a division of the Circuit Court. *Recommendation 4.2.*
- Expanding the Drug Treatment Court case management system to include all circuits. *Recommendation 4.3.*
- Reconfiguring the jurisdictional boundaries of the trial courts to assure an efficient use of judicial resources. *Recommendation 4.4.*
- 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. *Recommendation 4.5.*
- Adopting Rules of Evidence for civil and criminal proceedings. *Recommendation 4.6.*
- Providing administrative proceedings for infractions and small claims matters. *Recommendation 4.7.*
- Discontinuing the practice of obtaining a grand jury indictment after a finding of probable cause at a preliminary hearing. *Recommendation 4.8.*
- 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. *Recommendation 4.9.*

Court of Appeals of Virginia. The Court of Appeals of Virginia has jurisdiction over most criminal appeals, but only over a limited range of civil appeals. With its ability to hear a

significant number of criminal appeals, the Court of Appeals has developed an extensive body of criminal case law which has greatly enhanced the administration of justice in Virginia. There is no equivalently developed body of civil case law.

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

- 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. *Recommendation 4.10.*
- 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. *Recommendation 4.11.*
- Streamlining the appellate process by exploring means to limit en banc review in the Court of Appeals. *Recommendation 4.12.*
- 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.
Recommendation 4.13.
- 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. *Recommendation 4.14.*
- 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. *Recommendation 4.15.*
- Providing separate space for the Court of Appeals. *Recommendation 4.16.*

Supreme Court of Virginia. In addition to its own appellate case load, the Supreme Court of Virginia provides oversight to all of the courts in Virginia, the Office of the Executive Secretary, the Virginia State Bar, the State Law Library, the Judicial Council, the Committee on District Courts, the Conferences of Circuit and District Courts, the State Board of Bar Examiners, the Clerk of the Supreme Court of Virginia, and the Office of the Chief Staff Attorney.

Virginia should assure an efficient court system by

- Periodically examining the relationships of all entities reporting to the Supreme Court to ensure an effective span of control and appropriate organization. *Recommendation 4.17.*
- Amending the rules of appellate procedure to allow the opportunity to show good cause for missing a deadline. *Recommendation 4.18.*

Probate System. Circuit Courts have responsibility for all probate matters. The Clerk of the Circuit Court qualifies fiduciaries and files inventories and accounts. Commissioners of Accounts work with fiduciaries and approve all inventories and accounts before they are presented to the Circuit Courts. Although the probate system has served Virginia well, the public has little knowledge about it.

Virginia should improve the probate system by

- Providing consistent, complete and easy to read information to the public regarding the probate system. *Recommendation 4.19.*
- Making information regarding the probate system and the Manual for Commissioners of Accounts available to the public through the judicial system's website. *Recommendation 4.20.*
- 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. *Recommendation 4.21.*
- Encouraging interstate compacts to exchange relevant probate information among courts to ensure that when parties leave the original jurisdiction probate matters are properly handled. *Recommendation 4.22.*
- 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. *Recommendation 4.23.*
- 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.
Recommendation 4.24.

- 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. *Recommendation 4.25.*
- Connecting all personnel within the Probate System electronically with each other and with all other personnel within the Court System. *Recommendation 4.26.*

Commissioners of Accounts. Commissioners of Accounts work individually with all fiduciaries in the probate system as well as with guardians of minors, conservators of incapacitated adults, trustees of testamentary trusts, and trustees under deeds of trust. Commissioners of Accounts ensure that all fiduciaries comply with the laws applicable to inventories and accounts. They also approve those inventories and accounts. Currently, there are variations in how Commissioners of Accounts are selected and supervised, as well as in their fees.

Virginia should improve the Commissioners of Accounts system by

- Adopting uniform minimum statewide standards for selection of Commissioners of Accounts. *Recommendation 4.27.*
- Adopting a uniform statewide fee schedule for Commissioners of Accounts which is regularly reviewed. *Recommendation 4.28.*
- Providing for regular audits of the operations and financial transactions of the Commissioners of Accounts by the State Auditor or an agency formed to oversee the operations of Commissioners of Accounts. *Recommendation 4.29.*
- 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. *Recommendation 4.30.*
- 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. *Recommendation 4.31.*
- Providing space for Commissioners of Accounts in court facilities with access in compliance with the Americans with Disabilities Act. *Recommendation 4.32.*

Guardians Ad Litem. Guardians Ad Litem are appointed for children and incapacitated adults. There are well developed criteria for qualifying as a Guardian Ad Litem which are applied by the Office of the Executive Secretary. Complaints regarding the quality of representation provided by Guardians Ad Litem are directed to the Virginia State Bar or the judges who appointed them, but there are no uniform criteria for evaluating the quality of services they provide. Attorneys interested in becoming Guardians Ad Litem pursue qualification on their own; there is no active recruitment of attorneys to become Guardians Ad Litem.

Virginia should address the need for Guardians Ad Litem by

- 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. *Recommendation 4.33.*
- 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. *Recommendation 4.34.*
- Providing training for guardians and conservators. *Recommendation 4.35.*
- Establishing procedures for the *ex parte* appointment of guardians in emergency circumstances. *Recommendation 4.36.*

Commissioners in Chancery. Commissioners in Chancery may be appointed when necessary, generally with the agreement of the parties. The responsibilities undertaken by Commissioners in Chancery vary, but are specifically defined in the judicial decrees of reference. A Commissioner in Chancery's findings of fact are sustained by the Court if they are supported by the evidence, but the Court is not bound by the Commissioner's rulings on legal principles.

Virginia should improve the administration of justice by

- 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. *Recommendation 4.37.*

Commonwealth Attorneys. Commonwealth Attorneys are constitutional officers elected to serve as the chief prosecutor in a city or county. Their offices are funded principally by the state, but receive supplements at the discretion of their local government. Often, there are more cases to prosecute than can be handled by the attorneys in the office and their resources are insufficient to provide the Commonwealth with the best possible representation.

Virginia should improve the administration of justice by

- Developing appropriate caseload standards for attorneys in Commonwealth Attorneys' offices and ensure that each Commonwealth Attorney's office is appropriately staffed and fully funded. *Recommendation 4.38.*

Separate Statement by Chief Judge Walter S. Felton, Jr. of the Court of Appeals of Virginia

Recommendation 4.12 suggests that the Court of Appeals explore various “means” of limiting *en banc* review. Because published panel opinions of the Court create binding precedent on all lower courts and other panels of the Court of Appeals, until overruled by the Court sitting *en banc* or by superior court, caution should be exercised in limiting the authority for the full Court to review and reverse or affirm a prior published opinion of the Court. Code § 17.1-400(A) provides that the Court of Appeals shall consist of 11 judges and will govern itself by majority vote. Like all multi-panel appellate courts, the Court of Appeals uses three-judge panels to handle the high volume of cases that require decisions on the merits. The panel system works because each panel serves as an agent of the full Court, the principal. When a panel issues an opinion inconsistent with the will of the full Court, the panel’s delegable authority may be recalled (through the *en banc* process) and the case may then be addressed *de novo* by the full Court. This reserved recall authority provides the essential justification for making one panel’s opinion (when left to stand by the *en banc* Court) binding upon all later panels under the inter-panel accord doctrine. Shielding a panel’s decision from *en banc* review throws off the checks and balances necessary for the panel to speak with the presumptive authority of the full Court. The proposal to limit *en banc* review, therefore, could undermine the internal governance of the Court of Appeals and likely produce discord among panels that could not be effectively refereed by the full Court. The proposal could also lead to inconsistent results in identical cases depending on the make-up of a panel hearing a particular case rather than having the law uniformly applied to all cases by all panels across the Commonwealth.

This statement represents my individual views and does not necessarily represent the views of the Court of Appeals of Virginia.

The Honorable Walter S. Felton, Jr.

Joining in this statement are David P. Bobzien, Karen A. Gould (Advisory Member), André H. Mayfield, Sharon E. Pandak, Sandy T. Tucker, and The Honorable Diane Strickland.

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.

Funding. Courts in all jurisdictions in Virginia should provide the same minimal quality of services and technology. Funding of many aspects of Circuit Court operations by localities creates a lack of uniformity across the state that inhibits the delivery of court services of the same quality to all Virginians.

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

- Fully funding the operation of the entire court system while permitting localities to supplement state funding. *Recommendation 5.1.*

Court Administration. The administration of Virginia's Circuit Courts is conducted by a combination of Judges and their staffs and elected Clerks of the Circuit Court and their staffs. Most of the time this system is effective. It is not always efficient, however. Also, although the Office of the Executive Secretary provides a case management system to all courts, some courts have chosen to fund their own systems which are not compatible with the centralized system.

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

- 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. *Recommendation 5.2.*
- Providing adequate resources and training to implement an effective calendar management system in all courts. *Recommendation 5.3.*
- 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. *Recommendation 5.4.*
- Examining the compensation of all court staff to ensure that it is appropriate. *Recommendation 5.5.*
- 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. *Recommendation 5.6.*

Office of Executive Secretary. The Office of the Executive Secretary provides support to all courts and most of the judicial branch agencies. The Executive Secretary serves as the Chief Operating Officer of the judicial branch of government. The Office has ten departments and

approximately 200 full-time equivalent employees. It also tracks all financial transactions for all of the courts.

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

- Providing for periodic review of the organization of the Office of the Executive Secretary to ensure that the organization is appropriate and effective. *Recommendation 5.7.*
- Providing executive management training for all department managers in the Office of the Executive Secretary. *Recommendation 5.8.*
- 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. *Recommendation 5.9.*
- 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. *Recommendation 5.10.*
- Changing the titles of Executive Secretary and Office of the Executive Secretary to State Court Administrator and Office of the State Court Administrator. *Recommendation 5.11.*

Security for Court Facilities. Security varies significantly among Virginia’s court facilities. Some have full, state of the art security systems and adequate staffing, while others have a patchwork of systems and inadequate staffing. The most effective security ensures protection for judges, staff, and court users and provides them with confidence in those security systems.

Virginia should increase security for court facilities by

- 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. *Recommendation 5.12.*
- Directing judges and sheriffs to confer on all security issues. Judges should have authority to order additional court security. *Recommendation 5.13.*

- Providing that security be present for all court proceedings. *Recommendations 5.14.*
- 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. *Recommendation 5.15.*
- 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. *Recommendation 5.16.*
- Providing separate and secure rooms for victims and witnesses in criminal and civil cases. *Recommendation 5.17.*
- Requiring police academies to include training in courtroom protocol and security as required topics. *Recommendation 5.18.*

Security for Judges. Virginia provides only limited security for judges when they are not in the courthouse.

Virginia should increase security for judges by

- Promoting the availability of personal security assessments for judges and conducting them for all judges who request them. *Recommendation 5.19.*
- 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. *Recommendation 5.20.*

Access and Security for Records. All court records are available to the public unless they are specifically sealed by a judge for good cause or a statute prohibits access. Some courts have some documents available electronically. There are no uniform policies for electronic access to court records or for restricting access to information which could be used to steal someone's identity.

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

- 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. *Recommendation 5.21.*

- Employing the most effective methods available to secure all electronic communications and data storage systems. *Recommendation 5.22.*
- Implementing technology for encryption of electronic data. *Recommendation 5.23.*

Courthouse Facilities. Virginia courts are often not easy to find. There are limited locations where signs provide directions. Also, when parents with small children must come to court or to the clerk’s office, they often must bring their children with them. This can cause disruptions for the court or staff and may pose safety issues for court users, e.g., a person in a motorized wheelchair may not see a young child laying on the floor just around a corner.

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

- Clearly marking and signing court facilities from adjacent highways. *Recommendation 5.24.*
- Providing “drop in” childcare facilities for children of court users either on the premises or within walking distance of courts. *Recommendation 5.25.*

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. Judicial vacancies occur when there is a demonstrated need. The most important factor in determining the need for a new judge is the Court's caseload. The General Assembly will generally authorize a new judgeship when case loads are 20% above the state average.

Virginia should improve the procedure for requesting additional judgeships by

- 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. *Recommendation 6.1.*
- Authorizing the Supreme Court of Virginia to initiate requests for new judgeships. Judicial Circuits and Districts may continue to request additional judgeships. *Recommendation 6.2.*
- Authorizing additional staffing in the relevant clerk's office when new judgeships are approved. *Recommendation 6.3.*

Judicial Elections. Judges in Virginia are elected to their office by the General Assembly. The members of the General Assembly have employed a wide range of methods to identify potential judges.

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

- 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. *Recommendation 6.4.*

Judicial Education and Training. Virginia judges begin their judge-specific education after they are elected to the bench by the General Assembly and before they start their service. They also have an annual mandatory educational conference and an annual voluntary educational conference.

Virginia should support judicial education and training by

- 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. *Recommendation 6.5.*
- Expanding the education programs provided to judges to include education in the principles governing the assessment of scientific information. *Recommendation 6.6.*

Judicial Compensation. Judicial salaries are set by the General Assembly and are reviewed at its discretion.

Virginia should address judicial compensation by

- Providing judicial salaries and benefits sufficient to continue to attract and retain the best qualified people for the judiciary. *Recommendation 6.7.*
- 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. *Recommendation 6.8.*

Law Clerks. Some circuits have law clerks funded at the discretion of the locality. The Department of Legal Research in the Office of the Executive Secretary provides law clerk services to the District Court Judges as well as to Circuit Court Judges who request assistance.

Virginia should assist judges with legal research by

- Providing state funded law clerks for each circuit. *Recommendation 6.9.*

Substitute Judges. Substitute Judges are attorneys appointed for six year terms by the Chief Judge of each circuit. Substitute Judges and Retired, Recalled Judges serve when District Court Judges are not able to do so. There are approximately 240 Substitute Judges. The number of Retired, Recalled Judges varies. In 2005, Substitute and Retired, Recalled Judges were used on 6,607.5 days in District Courts, an amount equal to 26.4 full-time judges.

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

- Providing replacement judges for all courts. *Recommendation 6.10.*
- Designating a cadre of experienced judges who would be granted "senior status" with responsibility to serve as replacement judges. *Recommendation 6.11.*
- Developing a uniform statewide application for substitute judges and statewide criteria for selecting substitute judges. *Recommendation 6.12.*
- 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. *Recommendation 6.13.*

- Requiring substitute judges to participate in a specialized training program focused on practical issues. *Recommendation 6.14.*
- 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. *Recommendation 6.15.*
- Increasing compensation for substitute judges as needed to increase the number of qualified candidates. *Recommendation 6.16.*

Legal Education. Legal education in Virginia is governed by the various law faculties within the accreditation guidelines of the American Bar Association.

Virginia should contribute to the law school experience by

- 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. *Recommendation 6.17.*
- Requiring 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. *Recommendation 6.18.*

Attorney Regulation. The licensing and regulation of attorneys are governed by rules promulgated by the Supreme Court of Virginia.

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

- Requiring malpractice insurance for any attorney engaged in the private practice of law. *Recommendation 6.19.*

Attorney Discipline. All Virginia attorneys are subject to the Virginia Rules of Professional Conduct. In addition to providing general guidance on the ethical practice of law, these rules provide direct requirements for what attorneys must do and what they must not do. The attorney disciplinary system is run by the Virginia State Bar which annually provides every Virginia attorney with a copy of both the rules and a description of the disciplinary process.

Virginia should improve the attorney disciplinary system by

- 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. *Recommendation 6.20.*
- Eliminating three-judge panels. *Recommendation 6.21.*

- 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. *Recommendation 6.22.*
- 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. *Recommendation 6.23.*
- 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. *Recommendation 6.24.*
- Developing a system whereby each lawyer is assigned a universal number used in each jurisdiction where the lawyer is licensed to practice law. *Recommendation 6.25.*
- 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. *Recommendation 6.26.*

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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.

Potential of Technology. Funding for court technology is provided by the Court Technology Fund which is funded by a fee assessed on each case filed in the courts. Even with this funding, there is a wide variation in the technologies which are available in Virginia's courts. Some courts also receive funding for technology from their localities. Generally, as courts have increased their use of technology, they have become more efficient.

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

- 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. *Recommendation 7.1.*
- 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. *Recommendation 7.2.*
- Providing that all but the most personally sensitive court records are maintained in electronic form and are accessible by the public from remote locations. *Recommendation 7.3.*
- Permitting e-filing of legal pleadings. *Recommendation 7.4.*
- Developing an e-ticketing system for traffic infractions. *Recommendation 7.5.*
- Expanding the courts' e-payment system to permit all payments to be made electronically. *Recommendation 7.6.*
- Implementing the use of electronic forms using intelligent forms processing. *Recommendation 7.7.*
- Implementing a computer based electronic document management system in each level. *Recommendation 7.8.*
- Equipping all courtrooms for videoconferencing and promulgating statutes and rules to permit electronic appearances in all civil cases. *Recommendation 7.9.*
- 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. *Recommendation 7.10.*

- 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. *Recommendation 7.11.*
- Expanding Court webpages using nonproprietary technology, where appropriate. *Recommendation 7.12.*

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.

Juror Experience. Although jury trials are being requested with less frequency, they are a cherished and valuable part of the judicial system. In 2005, there were 2,162 jury trials in Virginia, compared with 2,268 in 2004 and 2,389 in 2003. Jurors have not been regularly or systematically surveyed about their experiences as jurors, but the anecdotal evidence is that jurors have positive experiences from their service.

Virginia should improve the experience of jurors by

- 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. *Recommendation 8.1.*
- 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. *Recommendation 8.2.*
- Providing guidelines and “best practices” to minimize the need for multiple appearances by jurors during a court term. *Recommendation 8.3.*
- Providing guidelines and “best practices” for use by courts and clerks to encourage juror engagement and comprehension of the matters before them. *Recommendation 8.4.*
- Devising a meaningful system of follow-up for those prospective jurors who do not complete the uniform background document. *Recommendation 8.5.*
- Implementing an automated jury management system to enable courts to inform and to manage their jury panels more effectively. *Recommendation 8.6.*
- 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 courthouse. 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. *Recommendation 8.7.*
- 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. *Recommendation 8.8.*

- 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. *Recommendation 8.9.*
- Eliminating all automatic exemptions from jury service. *Recommendation 8.10.*
- Paying jurors at least the national median for jury service and providing supplements to jurors who are required to serve more than five days. *Recommendation 8.11.*
- Providing for service of summons for jury service by mail and eliminating the option of service by the sheriff. *Recommendation 8.12.*
- Devising and using a standardized exit survey for jurors to be administered after each trial in each jurisdiction. *Recommendation 8.13.*

Public Education about the Court System. Public respect for the court system and confidence in the administration of justice require that the public have access to information and education about the courts. Most of the information about courts has been provided in schools through civics instruction and by the media. The courts have recently begun to provide substantive information about the court system directly to the public.

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

- 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. *Recommendation 8.14.*
- Encouraging the Office of Public Education to collaborate with the public law libraries to improve the delivery of information to the public. *Recommendation 8.15.*
- Sponsoring public judicial education forums and seminars in every circuit. *Recommendation 8.16.*
- Partnering the court system with media to produce informative and interactive programming about the legal system. *Recommendation 8.17.*
- 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. *Recommendation 8.18.*

- Increasing funding for public law libraries statewide in order to increase the resources available to the public. *Recommendation 8.19.*

Public Support for the Court System. The Virginia Judicial System has never been fully funded and the public does not appear to support making court funding a priority.

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

- 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. *Recommendation 8.20.*

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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.

Demographic Changes. The population of Virginia was approximately 7,460,000 as of July 1, 2004. This was a 5.4% increase from April 2000; nationally the average increase for the same time was 4.3%. As of the 2000 Census, there were over 570,000 foreign-born residents in Virginia including an estimated 103,000 illegal immigrants, giving Virginia the 12th largest population of illegal immigrants. In 2000, 11.2% of Virginia's population was 65 or older and in 2006, the first of the baby boomers turned 60.

Virginia should respond to anticipated demographic changes by

- Establishing a Multicultural Liaison Office within the court system.
Recommendation 9.1.

Alternative Dispositions and Specialty Dockets. For nearly a decade in Virginia, there has been growing interest in and use of restorative justice (RJ). One facet of RJ is bringing together victims and offenders for a dialogue that fosters the emotional healing process. RJ processes have proven records of reducing recidivism, increasing victim satisfaction in the judicial process, decreasing victim trauma, and increasing community satisfaction. There have been periodic requests that new specialty dockets be set up as pilot programs. The requests have been supported by anecdotal evidence that they have been effective in other states.

Virginia should support effective alternative dispositions by

- Adopting legislation to authorize referrals of appropriate cases to a restorative justice process. *Recommendation 9.2.*
- Evaluating and developing guidelines, certification standards, and procedures for the use of parent coordinators in high-conflict family disputes.
Recommendation 9.3.
- Developing guidelines, certification standards, and procedures for parent educators who provide court-ordered parent education. *Recommendation 9.4.*
- 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. *Recommendation 9.5.*
- Examining the current tax appeal process to determine whether a new forum or process should be created to address tax disputes. *Recommendation 9.6.*
- Evaluating business courts and dockets. *Recommendation 9.7.*

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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.

The Commission respectfully submits that all of its recommendations are founded on this premise and support the vision that the judicial system will fulfill its role within our constitutional system by maintaining its distinctiveness and independence as a separate branch of government.