

CHAPTER 1 - INTRODUCTION TO THE MAGISTRATE SYSTEM OF VIRGINIA**I. INTRODUCTION**

The office of magistrate is probably more important today than it has been at any other time since the creation of the magistrate system. The enhanced standards for search and arrest warrants, as well as the changing philosophies about bail, have made the work increasingly more difficult, requiring responsible deliberation on the part of each magistrate. Moreover, the frequent contacts with the general public, make it necessary that every magistrate be fully informed of the mechanics of his or her job so there will be no doubt by others that they are being treated by fair-minded and competent officials.

The *MAGISTRATE MANUAL* is a general reference. It is designed to provide a basic guide to magistrates on their authority and on issues encountered in the performance of his or her magisterial duties. If properly utilized, it is a valuable resource. Its function is not to solve every problem that magistrates will encounter. Consequently, magistrates should work closely with his or her chief magistrate, magistrate regional supervisor, magistrate advisors and the Office of the Executive Secretary to solve any procedural or legal issues.

With the repeal of [Va. Code § 19.2-42](#), the attorney for the Commonwealth is no longer the legal advisor for magistrates. Magistrates must be careful to preserve the neutrality of the office when interacting with an attorney for the Commonwealth or a defense attorney, as both have a vested interest in the outcome of a decision.

There are other aspects to being a good magistrate that are not treated generally in this Manual. It is essential that magistrates realize that they are members of the State judiciary and his or her actions are a direct reflection on the quality of justice in Virginia, especially to tourists and non-residents who may never pass through Virginia again. Accordingly, magistrates are expected to conduct themselves at all times in a manner consistent with the responsibility and honor of the office. A professional appearance, a suitable place for conducting business, and a business-like, but courteous manner, are essential. Further, as judicial officers, magistrates occupy a position of public trust. Therefore, he or she is expected to meet an ethical standard considerably higher than that imposed on the average person.

The [Canons of Conduct](#) for Virginia Magistrates, as approved by the Committee on District Courts, set forth these ethical standards. Although the Canons are generally self-explanatory, if a magistrate is ever in doubt whether a certain conduct may be incompatible with the office, he or she should refrain from engaging in that conduct until the magistrate can secure advice from his or her chief magistrate, magistrate regional supervisor, magistrate advisor or the Office of the Executive Secretary.

II. HISTORY OF THE OFFICE OF THE MAGISTRATE

Like so many aspects of our law, the Office of Magistrate reflects many centuries of development. Although current Virginia magistrates are quite different from the

magistrates of early England, there are still passages in today's law that can only be understood by reference to the history of the office.

By the Twelfth Century in England, the idea of a national "King's peace" was well - established. The Crown, rather than giving its protection only to the church and certain royal officers, extended its protection from lawlessness and disorder to all subjects. Thus, in 1195 the King's Justiciar proclaimed that certain knights were to assist in keeping the King's peace. These knights summoned before them all men over 15 years of age in their district and required them to swear that they would not be criminals and that they would pursue, according to the ancient hue and cry, all offenders against the King's peace and would deliver them to the knight. The knight would then surrender the prisoners to the sheriff for safekeeping for trial. These knights were the origin of the keepers or conservators of the peace, who in turn are the ancestors of the justice of the peace and of the magistrate.

In the mid-Thirteenth Century first "custodians" and then "conservators" of the peace were appointed. Beginning with the reign of Edward III in 1327, the duties of the conservators were constantly expanded for a number of reasons. The times were generally lawless. The Black Death killed off much of the laboring population and added to the social disorder.

There was distrust of the power of the sheriff, and the justice began to assume some of his duties. When Edward III became King, he was only 14 years of age. Parliament, fearing an outbreak of lawlessness, immediately passed a statute declaring:

"For the better keeping and maintenance of the peace, the King will, that in every county good men and lawful which be (no maintainers of evil) shall be assigned to keep the peace." Beard, **The Office of Justice of the Peace in England**, (New York: Columbia University, 1904), p. 35.

By 1344, the conservator had the power not only to receive prisoners but also to try them. For the first time, the conservator acted as judge. Eventually, the continual need for a local office to stabilize society and to administer the King's law resulted in the basic Justice of the Peace Act of 1361. It was ordered that in every county there be assigned "one lord and with him three or four of the most worthy," who were to act as "justices" in administering the King's law and in arresting and punishing offenders.

For the next 300 years, Parliament continually expanded the office by adding administrative, police, and judicial duties. Justices, among other things, supervised the building of roads, suppressed riots and rebellions, enforced price and wage laws, and tried all sorts of criminal offenders. Justices of the peace even had the power to levy the death penalty when sitting together in their quarter session courts.

The office reached its pinnacle in the early Eighteenth Century when it became the exclusive province of the wealthy country gentlemen. Compensation was meager, but good

men could be found as people considered the office a great honor. The political advantages of the office also were numerous. Since that time the office has declined in importance. Local officials and the police have taken up the administrative duties of the former justices.

The justice of the peace remains in England today in the form of a magistrate. Like our own district court judge, the magistrate there can try only petty criminal cases. Unlike our district court judge, however, the magistrate remains for the most part untrained in the law.

As a creation of the Crown, the justice served a valuable purpose in the administration of royal justice and government when travel was difficult. Since country gentlemen were generally the most educated of the populace, often with training in the law, the quality of justice by the contemporary standards was tolerable. Now, with the increased complexity of the law and the general decline in both the prestige and quality of the personnel, there has been a great deal of criticism of the magistrate in England and a push to reform the entire system.

Given the English heritage evident in Virginia, it is not surprising to find that the development of the justice of the peace occurred quite similarly to that in England. There was a gradual development of the office, an extension of duties, and then an even more complete decline. The flexibility and use of the office in establishing control and a measure of social order lent itself quickly to the struggling colonial government. The Virginia General Assembly of 1623 enacted a law requiring the commanders of the plantations to hold monthly courts in Charles City and Elizabeth City. The commander was empowered to try petty offenses and cases involving less than 100 pounds of tobacco. Later, judges called "commissioners" were appointed, and the name of the monthly court was changed to county court. In 1661, these commissioners were formally called "justices of the peace".

They were required to take the same oath as that of a justice in England and given the same duties, except that they could not sentence an offender to loss of life or limb. That power was reserved to the Governor and his council at Jamestown, later to the general court there, and then to the circuit court in 1818. During the colonial period and for many years following independence, the Governor and his council appointed the justice of the peace. His duties were quite extensive and varied, ranging from the trial of criminal cases to the supervision of building of warehouses and courthouses, the licensing of ferries, the regulation of the legal and medical professions, as well as the prices charged by innkeepers. In many respects, the justice of the peace was the local governing authority.

In 1851, the Virginia General Assembly made the office an elective position, which it remained until January 1, 1974. Also in 1851, the General Assembly reorganized the circuit courts. With this reorganization, many of the justices' powers dwindled in favor of the higher court and other local officials. For a short time during reconstruction, a justice of the peace was a township official, and the county court was presided over by a paid county judge. In 1902, the General Assembly abolished the county court. The justice of the peace court remained as a court of minor jurisdiction until 1934. In that year, the justice of the peace was stripped of the power to try cases. Trial jurisdiction was given to the trial justice, who was a forerunner of the present district court judge.

Two distinctions stand out in this brief comparison of the development in the two countries. One, the justice in Virginia never enjoyed the extensive criminal jurisdiction of a justice in England. And, more importantly, beginning in 1934 the justice of the peace in Virginia no longer could act as a trial judge. Consequently, the magistrate has no power or right to try cases today. This lack of power cannot be stressed too strongly, for the magistrate may act only when authorized by statute. Beard, fn. 1, at 14. See also Wall v. American Bank & Trust Co., 159 Va. 871, 167 S.E. 425 (1933). A magistrate who acts beyond these powers may be liable in damages to an aggrieved party. Beard, fn. 1. Williams v. Kozak, 280 Fed. 373 (4th Cir. 1922).

With the passage of the Trial Justice Act of 1934, the Virginia justice of the peace became primarily a committing and issuing official with limited civil and criminal jurisdiction. Effective January 1, 1974, the General Assembly of Virginia abolished the office of justice of the peace and replaced it with the office of magistrate. This position is similar to its predecessor in many respects. The remainder of the *MAGISTRATE MANUAL* will set forth the authority that Virginia statutes confer on magistrates.

III. THE JUDICIAL SYSTEM OF VIRGINIA

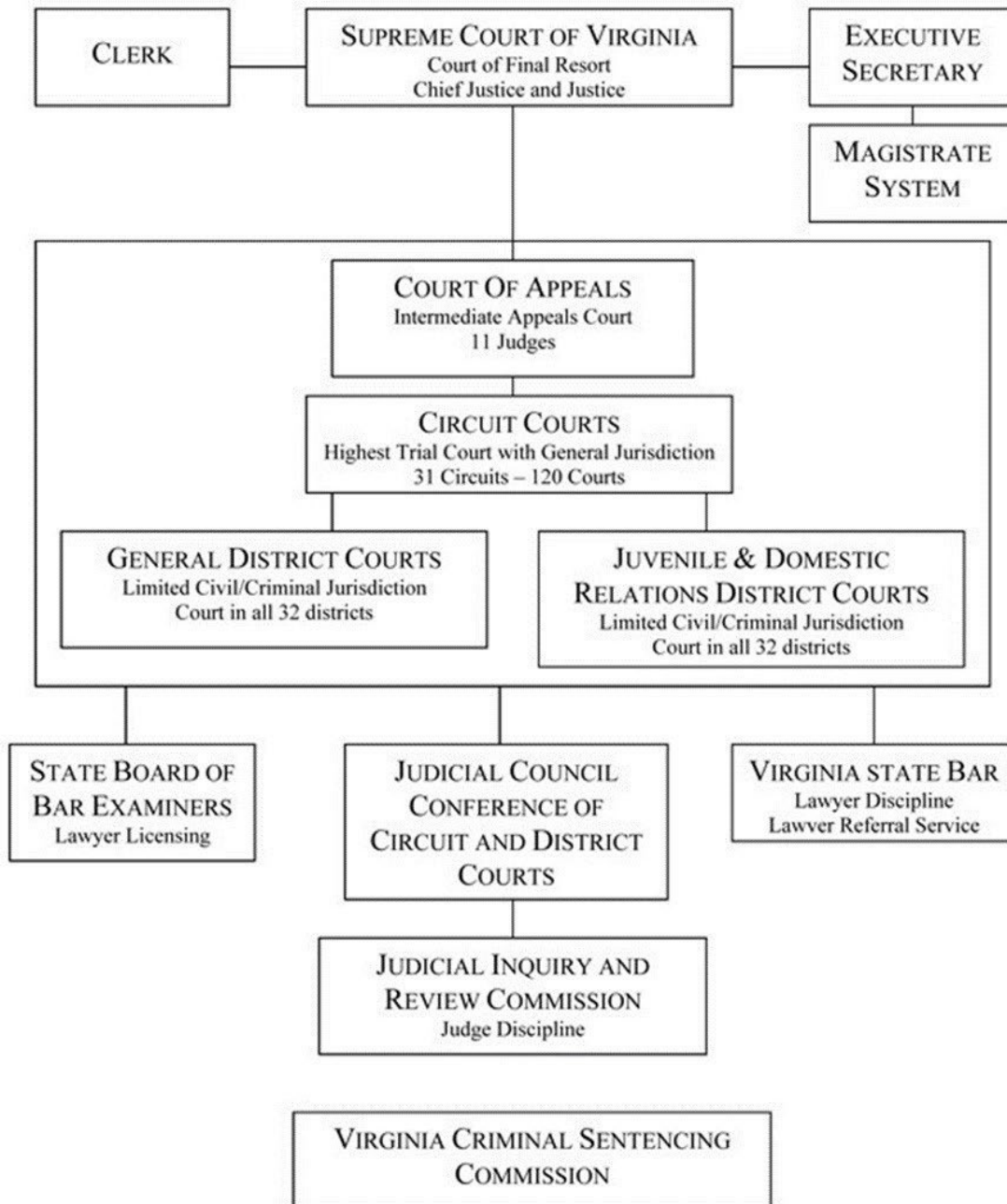
The United States' judicial branch of government is comprised of a system of courts, ranging from local and state to the federal level. These courts interpret the laws of localities, states, and the nation and provide forums for the settlement of disputes. Each court has designated responsibilities and jurisdiction limited by subject matter and geographical area.

Article VI of the Virginia Constitution states: "the judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time establish. Trial courts of general jurisdiction, appellate courts, and such other courts as shall be so designated by the General Assembly shall be known as courts of record." It is the duty of the judiciary to hear and determine controversies involving law or fact between persons or between persons and government.

To perform their duties, courts must ascertain the law and apply it to particular cases. Courts, however, do not legislate. Law, which the judiciary must ascertain and apply in particular cases, is composed of three major divisions: constitutional law, civil law, and criminal law. There are various other subdivisions that are important to understand. Among those are, in the criminal law for example, procedural and substantive laws. Ascertain and applying "the law" occurs within all levels of the judiciary.

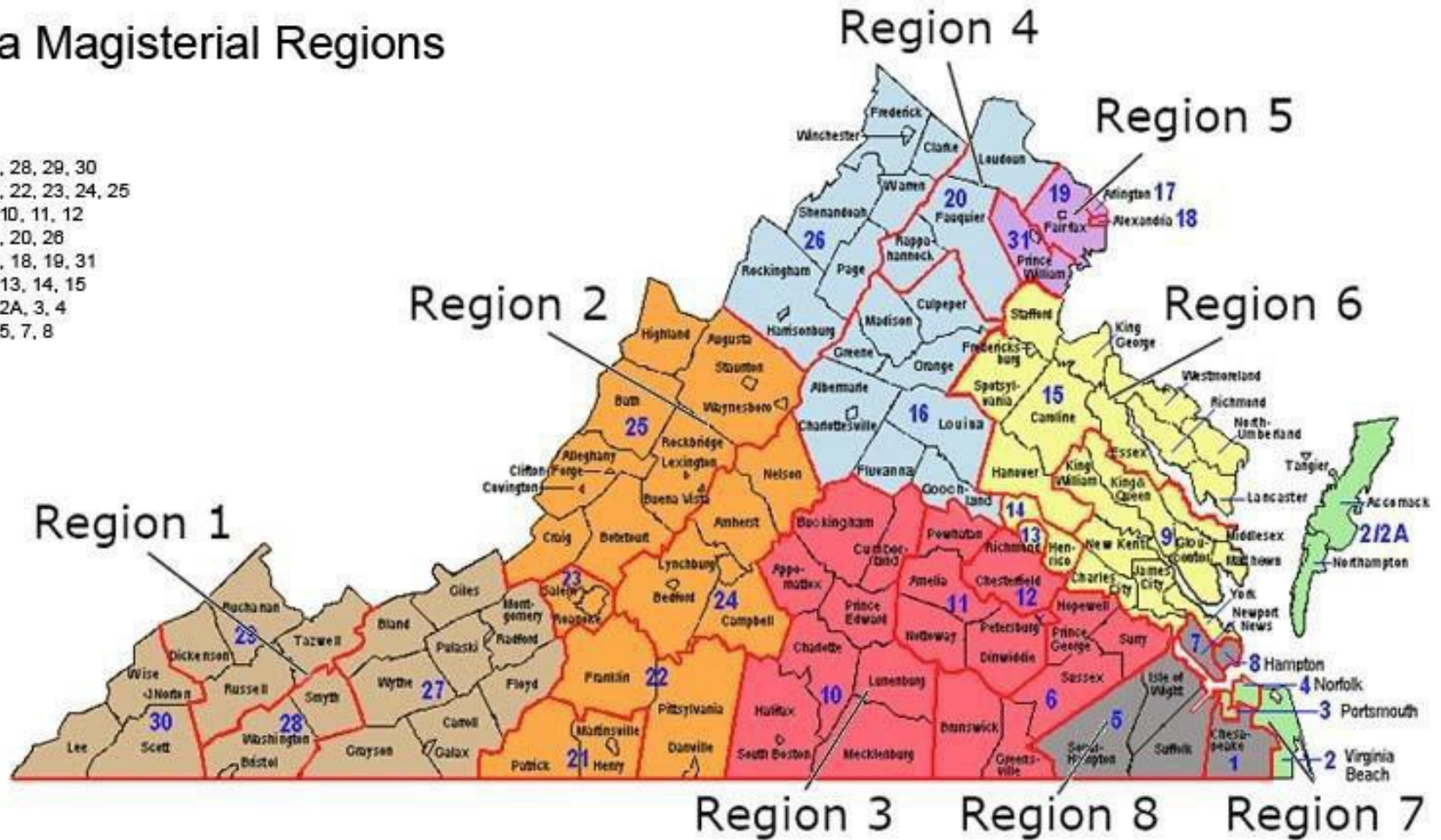
The various judicial functions of particular actors within the court system are carried out within a hierarchical framework. On the next page is a chart of the court structure in Virginia, followed by a map of Virginia outlining the judicial districts and the magisterial regions, which are of particular note to the magistrate.

THE VIRGINIA JUDICIAL SYSTEM



Virginia Magisterial Regions

- Region 1 27, 28, 29, 30
- Region 2 21, 22, 23, 24, 25
- Region 3 8, 10, 11, 12
- Region 4 16, 20, 28
- Region 5 17, 18, 19, 31
- Region 6 9, 13, 14, 15
- Region 7 2, 2A, 3, 4
- Region 8 1, 5, 7, 8



At the apex of the court structure is the Supreme Court. The Supreme Court is a court of record and is Virginia's highest court. The primary function of the Supreme Court is to review decisions of lower courts. These decisions are of two distinct types: decisions of lower courts in which questions of proper application of Common or Statutory law to particular cases are raised, and, decisions of lower courts based on statutes, the constitutionality of which is questioned. The Supreme Court consists of seven justices. Pursuant to [Va. Code § 17.1-300](#), the Chief Justice is elected to a four-year term by a majority vote of the justices of the Supreme Court. The General Assembly elects the justices of the Supreme Court (including the justice who becomes Chief Justice) for a term of 12 years. In order to qualify for appointment as justice of the Supreme Court, a person must be a resident of the Commonwealth and must have been admitted to the Virginia State Bar at least five years prior to appointment or election.

The Court of Appeals provides for intermediate appellate review of all decisions of the circuit courts in traffic infractions and in criminal cases, except where a sentence of death has been imposed, decisions of the circuit courts involving domestic relations matters and appeals from administrative agencies. The Court of Appeals also hears appeals from decisions of the Industrial Commission. While appellate review of criminal and traffic infraction cases are requested by a petition for appeal, all other appeals to the Court of Appeals are as a matter of right. Other civil decisions of the circuit courts are appealed directly to the Supreme Court by petition for appeal. The Court of Appeals also has original jurisdiction to issue writs of mandamus, prohibition, and habeas corpus in any case over which the court would have appellate jurisdiction.

The decisions of the Court of Appeals are final in traffic infraction and misdemeanor cases where no incarceration is imposed, in cases originating before administrative agencies or the Industrial Commission, and in domestic relations cases. Except in those cases where the decision of the Court of Appeals is final, any party aggrieved by a decision of the Court of Appeals may petition the Supreme Court for a review.

In order to provide convenient access to the various geographic areas of the Commonwealth, the Court of Appeals sits at various locations as designated by the chief judge. This Court sits in panels of at least three judges, and the membership of the panels rotate.

Below the Court of Appeals are the circuit courts, which are also courts of record. Virginia has 31 circuits as shown on the map on page six. Currently, there are at least two judges in each circuit. In most types of civil cases, the circuit court has concurrent jurisdiction with the general district court over claims from \$4,500.01 to \$25,000.00 and exclusive original jurisdiction over claims exceeding \$25,000.00. The circuit court also has jurisdiction over all equity matters, including divorce cases, disputes concerning wills and estates, and controversies involving property. In criminal cases, the circuit court has jurisdiction over the trial of all felonies and those misdemeanors that are before the circuit court on direct indictments.

The circuit court has appellate jurisdiction over all cases from general district court, both civil and criminal, and from the juvenile and domestic relations district court in all matters originating in that court. Appeals from these district courts are heard *de novo*, that is, the cases are again tried from the beginning, as though there had been no prior trial.

The General Assembly elects judges of circuit courts for terms of eight years. To qualify for appointment as judge of a circuit court, a person must be a resident of the Commonwealth and must have been admitted to the Virginia State Bar at least five years prior to election. Upon election, the judge must reside within the circuit that he or she serves. The Governor of Virginia may fill circuit court judicial vacancies by interim appointment between sessions of the General Assembly. The General Assembly may change the number of judges at any session. If the workload increases to a point where another judge is needed, the General Assembly may add an additional judge to that circuit. Also, if for some reason litigation decreases, the General Assembly may reduce the number of judges in a particular circuit. The courts below the circuit courts are district courts, which are courts not of record. Virginia has thirty-one districts and, with one exception, these districts correspond to the circuits. The Eastern Shore counties of Accomack and Northampton constitute District 2A, but are part of the Second Judicial Circuit.

The General Assembly elects general district court judges for six-year terms. The circuit court judges collectively fill judicial vacancies in the district courts within their circuits by interim appointment when the General Assembly is in recess. The Committee on District Courts not only certifies vacancies and has a direct role in the administration of the district courts, but the Committee also administers the magistrate system.

The district courts consist of general district courts and juvenile and domestic relations district courts. The general district courts have jurisdiction over misdemeanors and limited civil claims. The general district courts have exclusive original jurisdiction over many types of civil cases when the claim does not exceed \$4,500.00, and concurrent original jurisdiction with the circuit court in cases where the amount in controversy is at least \$4,500.01 but is not in excess of \$25,000.00. Pursuant to [Va. Code § 16.1-123.1](#), the general district court also has exclusive original jurisdiction over misdemeanors committed by adults, with the exception of those committed by an adult against a family or household member. However, pursuant to [Va. Code § 16.1-126](#), circuit courts have jurisdiction to try misdemeanor offenses upon a presentment, indictment, or information. The juvenile and domestic relations district courts have jurisdiction over those cases, as well as cases involving abused, dependent, neglected, and delinquent children, delinquent acts committed by juveniles, offenses committed against the person of juveniles and cases involving a crime committed by one family or household member against another. Both types of district courts have jurisdiction to conduct preliminary hearings in felony cases.

Significant changes have occurred in Virginia's judicial system. The vehicle that effected these changes was the Court Reorganization Act of 1973. This legislation radically restructured Virginia's judicial system. The Act gave circuit and district courts jurisdiction throughout certain geographic areas. Former county and municipal courts became general district courts and the system of regional juvenile and domestic relations courts was

converted to the juvenile and domestic relations district court system. On July 1, 1974, the General Assembly abolished the justice of the peace system that had operated under a fee system. In its stead, the legislature created the magistrate system. From July 1, 1974 until December 31, 1975, the law allowed certain magistrates to operate on a fee basis. On January 1, 1976, all Virginia magistrates became salaried employees.

Another change that occurred with the court reorganization was the naming of the Executive Secretary of the Supreme Court as the state court administrator. The Executive Secretary, who is appointed by and holds office at the pleasure of the Supreme Court, is the state court administrator and assists the Chief Justice in executing the policies and programs of the judicial branch of government. Under the direction of the Chief Justice, the Executive Secretary is responsible for the development and maintenance of the personnel classification system for court personnel. The Office of the Executive Secretary also serves as the financial management center for the judicial branch, acts as the payroll and accounting office for the court system, and prepares the budget for the judicial system.

This office generally is responsible for the compilation of all statistics regarding the judiciary and has the duty of evaluating the state judicial system and planning for changes in organization and procedure. In addition, the Office of the Executive Secretary offers legal research, technical and management assistance to the judges, magistrates, and clerks, as well as providing data processing support services to the courts. The Executive Secretary serves as secretary of the Judicial Council, both Judicial Conferences, the Committee on District Courts, and acts as a general liaison between the court system, the Legislature, the Executive Branch, the bar, the news media, and the general public. In discharging these duties, the primary mission of the Office of the Executive Secretary is to assist the judicial system in improving the quality and efficiency of the administration of justice in Virginia. The Office of the Executive Secretary employs two major approaches to accomplish this objective. One approach is to stress better management practices to the judiciary. The other approach is to modernize and unify the legal procedures within the judicial system.

The General Assembly created the Judicial Inquiry and Review Commission in 1971. This Commission has the power to investigate judges, but not magistrates or clerks, for misconduct, wrongdoing, or disability. It also has the power to make removal and disciplinary recommendations to the Supreme Court of Virginia. The Supreme Court may dismiss the charges or may retire, censure, or remove a judge. The Commission also has the power to correct errant behavior on the part of a judge through counseling sessions. The Judicial Inquiry and Review Commission is a separate entity from the rest of the judicial system. The Commission acts as a check on the misuse of judicial power. It exists to provide an individual with a procedure by which to make a judicial complaint. The Commission acts discreetly, so as not to harm the reputation of judges under investigation or to cause unnecessary embarrassment to their families. Complaints filed with the Commission are kept confidential. If a case is certified to the Supreme Court, it then becomes a matter of public record.

Members of the Commission are appointed for four-year terms. The membership consists of one active circuit court judge, one active general district court judge, one active juvenile and domestic relations district court judge, two attorneys, and two public members.

IV. MAGISTRATE ELIGIBILITY AND APPOINTMENT

The procedure by which a magistrate now assumes office has changed considerably from the historical procedure by which a justice of the peace came into office. Prior to 1960, all justices of the peace were elected. Between 1960 and 1973, justices of the peace were elected in some localities, and appointed in others. From January 1, 1974 until July 1, 2008, the only method of selection of a magistrate was through appointment by the chief circuit court judge having jurisdiction within the district the magistrate was appointed to serve. The appointment process was designed to enable the appointing authorities to exercise more control over the magistrates in order to better prepare and train the magistrates to fulfill their proper function as part of the judicial process in Virginia.

As of July 1, 2008, magistrates are still appointed pursuant to [Va. Code § 19.2-35](#). However, the Executive Secretary of the Supreme Court of Virginia now appoints the magistrate in consultation with the chief judges of the circuit courts within the magisterial region for which the magistrate is appointed to serve. Furthermore, the Executive Secretary has full supervisory authority over magistrates. Magistrates are at will employees who serve at the pleasure of the Executive Secretary. As such, magistrates may be terminated with or without cause or notice and have no entitlement or property rights to their positions or continued employment. Although magistrates are appointed and supervised by the Executive Secretary of the Supreme Court of Virginia, magistrates need to be cognizant that the Virginia Constitution states that all power is vested in, and derived from, the people of the Commonwealth. Consequently, magistrates are the people's trustees and servants. (Virginia Constitution, Article I, Section 2).

The Executive Secretary may appoint chief magistrates to assist in the training, supervision, and discipline of magistrates within a region. [Virginia Code § 19.2-36](#). Pursuant to [Va. Code § 19.2-36](#), as of July 1, 2008, to be eligible as a candidate for appointment to chief magistrate, the candidate must meet all of the qualifications for appointment as a magistrate under [Va. Code § 19.2-37](#). Additionally, the candidate for chief magistrate must also be a member in good standing of the Virginia State Bar.

The Committee on District Courts authorizes magistrate positions sufficient for the effective administration of justice in each district. Pursuant to [Va. Code § 19.2-46.1](#) the salaries of magistrates and other personnel in the office of the magistrate shall be fixed by the Executive Secretary of the Supreme Court of Virginia. [Virginia Code § 19.2-46.2](#) requires the Committee to certify the names of all full-time magistrates to the Virginia Retirement System. This certification qualifies magistrates as state employees for purposes [Va. Code §§ 51.1-124.3](#) and [51.1-152](#) of the Virginia Retirement System.

To be eligible for appointment as a magistrate, a person must be a United States citizen and a resident of the Commonwealth of Virginia. Furthermore, a person seeking appointment

as a magistrate on or after July 1, 2008, must have a bachelor's degree from an accredited institution of higher education. No person shall be appointed until he or she submits his or her fingerprints to be used to conduct a national criminal records search and a Virginia criminal history records search. No person who has been convicted of a felony shall be appointed as a magistrate. Furthermore, [Va. Code § 24.2-231](#) requires a magistrate who is convicted of a felony or an offense that requires registration in the Sex Offender and Crimes Against Minors Registry to forfeit the office of magistrate.

[Virginia Code § 19.2-37](#) sets forth other eligibility requirements and limitations. A person seeking appointment as a magistrate will not be eligible for appointment if such person is a law-enforcement officer. Furthermore, a person seeking appointment as a magistrate will not be eligible for appointment if such person or his spouse is a clerk, deputy or assistant clerk, or employee of any such clerk of a district court or circuit court. However, the Committee on District Courts may authorize a magistrate to assist in the district court clerk's office on a part-time basis. A person shall not be eligible for appointment as a magistrate if the parent, child, spouse, or sibling of such person is a district or circuit court judge in the magisterial region where he will serve, or if such person is the chief executive officer, or a member of the board of supervisors, town or city council, or other governing body for any political subdivision of the Commonwealth of Virginia.

Pursuant to [Va. Code § 2.2-2800](#), no person may hold the office of magistrate if he or she holds any position with the Federal government. Furthermore, upon acceptance of such a position, a magistrate must vacate the position. [Virginia Code § 2.2-2801](#) sets forth exceptions to this general rule. Pursuant to [Va. Code § 2.2-3110](#) neither a spouse nor a relative, living in the same household, may work for a supervising official, including a chief magistrate, if such supervisee's salary is \$35,000 or more.

V. PROCEDURES UPON APPOINTMENT

When appointed, a magistrate must take an oath of office. Article II, Section 7 of the Virginia Constitution requires the magistrate to take the following oath: ***“I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as (a magistrate), according to the best of my ability (so help me God).”***

[Virginia Code § 19.2-35](#) requires magistrates to serve one or more of the magisterial regions created by the Executive Secretary and each magisterial region shall be comprised of one or more judicial districts. In accordance with [Va. Code § 19.2-38.1](#), magistrates must comply with the minimum training standards established by the Committee on District Courts. Newly appointed magistrates must complete these training standards before the end of his or her nine-month probationary employment period in order to continue to serve as a magistrate. [Virginia Code § 19.2-38](#) states, *“Any magistrate who fails to successfully pass the certification examination shall not serve beyond the nine-month probationary period.”*

Upon completion of the training, the Committee on District Courts requires magistrates to undergo additional training throughout their careers. All magistrates must obtain twenty mandatory continuing legal education credits each year.

[Virginia Code § 19.2-39](#) requires that each magistrate enter into a performance bond to secure the faithful performance of his or her duties. The Commonwealth of Virginia has procured a blanket faithful performance of duty bond that covers all magistrates. This bond indemnifies the Commonwealth against losses incurred due to a magistrate's failure to perform the duties of office.

VI. QUARTERS FOR MAGISTRATES

Each county and city served by a magistrate or magistrates is required, in accordance with [Va. Code § 19.2-48.1](#), to provide suitable quarters for such magistrates. The quarters shall be located in a facility open to the public and appropriate to conduct the affairs of a judicial officer, as well as to 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 those for the general public. The quarters shall provide for the physical security of the magistrate and shall include controlled access to interior spaces or intrusion detection, a secure physical barrier between the magistrate and the public, and an accessible duress button. The county or city is required to provide all furniture and other equipment necessary for the efficient operation of the office. Wherever practical, the magistrate's office should be located in the county seat. Offices may be located, however, at other locations in an adjacent county or city whenever such locations are necessary for the efficient administration of justice.

VII. AUTHORITY OF MAGISTRATES

A. Jurisdiction

1. Jurisdiction defined

The word "jurisdiction" as used in the *MAGISTRATE MANUAL* means the power and authority of a magistrate to take legal action.

2. Limited authority

a. In general

A magistrate's jurisdiction is limited

b. Statutory basis

A magistrate has no power to take any legal action unless a statute expressly has conferred such authority

c. Geographic limit

As a general rule, a magistrate may exercise the power set forth in Title 19.2 of the Code of Virginia only in the magisterial region that he or she serves. However, a magistrate may issue search warrants to be executed throughout the Commonwealth.

B. Statutory Authority

1. In General

[Virginia Code § 19.2-45](#) authorizes magistrates:

- a. To issue process of arrest in accord with the provisions of [Va. Code §§ 19.2-71](#) to 19.2-82. [Virginia Code § 19.2-37](#) prohibits a magistrate from issuing a warrant or other process in complaint of the magistrate's spouse, child, grandchild, parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, first cousin, guardian, or ward;
- b. To issue search warrants in accord with the provisions of [Va. Code §§ 19.2-52](#) to 19.2-60;
- c. To issue warrants and subpoenas under the same power conferred upon district courts. (Rule 3A:12 authorizes magistrates to issue witness subpoenas returnable to district courts only);
- d. To issue civil warrants directed to the sheriff or constable of the county or city wherein the defendant resides, together with a copy thereof, requiring him to summons the person against whom there is a claim, to appear before a district court on a certain day, not exceeding thirty days from the date thereof to answer such claim. If there be two or more defendants and any defendant resides outside the jurisdiction in which the warrant is issued, the summons for such defendant residing outside the jurisdiction may be directed to the sheriff of the county or city of his residence, and such warrant may be served and returned as provided in [Va. Code § 16.1-80](#);
- e. To administer oaths and take acknowledgments;
- f. To act as conservators of the peace;
- g. To perform such other acts or functions specifically authorized by law.

2. Specific Authority

- a. To issue emergency custody orders pursuant to [Va. Code §§ 37.2-808, 19.2-182.9](#), and [37.2-913](#);
 - b. To issue temporary detention orders, pursuant to [Va. Code §§ 37.2-809, 19.2-169.6, 19.2-176, 19.2-177.1](#), and [19.2-182.9](#);
 - c. To issue emergency protective orders pursuant to [Va. Code §§ 16.1-253.4](#) and [19.2-152.8](#);
 - d. To issue attachment summonses pursuant to [Va. Code § 8.01-540](#), distress warrants pursuant to [Va. Code §§ 55-230](#) and [55-232](#), and detinue seizure orders pursuant to [Va. Code § 8.01-114](#);
 - e. To issue subpoenas duces tecum pursuant to [Va. Code §§ 16.1-69.25](#) and [19.2-45](#), and;
 - f. To issue surety's capias and bailpiece releases returnable to district courts pursuant to [Va. Code § 19.2-149](#).
3. Authority in federal cases

Federal officials may call upon Virginia magistrates to conduct probable cause and bail hearings in federal criminal cases. The United States Code specifically allows state judicial officers to issue warrants for federal crimes and conduct bail hearings in federal cases. Because the United States Code gives this authority, [Va. Code § 2.2-2801](#) specifically allows Virginia magistrates to perform acts and functions with respect to United States criminal proceedings.

Such requests from federal officers are rare, and the Virginia magistrate is not obligated to conduct a federal hearing. Federal procedures may differ considerably from Virginia procedure. For this reason, it is recommended that magistrates not conduct hearings involving federal cases. If the magistrate chooses to act, the magistrate must have the necessary federal forms and knowledge of specific federal procedures.

This manual does not address any aspect of federal procedure. Statutes sometimes limit the magistrate's exercise of authority. As a general rule, a magistrate may not act outside the borders of his or her magisterial region. A magistrate may not issue a criminal process unless the offense was committed within the magistrate's magisterial region. In cases of close pursuit, however, a magistrate may issue an arrest warrant for an offense committed in another magisterial region pursuant to [Va. Code § 19.2-77](#) if the accused is physically present before the magistrate. A magistrate also may admit a person to bail pursuant to [Va. Code § 19.2-131](#), though the crime was committed in another jurisdiction.

VIII. OUTSIDE EMPLOYMENT

Subsection E of [Va. Code § 19.2-37](#) states, “A magistrate may not engage in any other activity for financial gain during the hours that he is serving on duty as a magistrate. A magistrate may not be employed outside his duty hours without the prior written approval of the Executive Secretary.”

Before accepting any outside employment, magistrates must submit a Request for Approval of Outside Employment form and receive approval from the Executive Secretary of the Supreme Court of Virginia. Furthermore, if a magistrate receives such approval, the magistrate must submit a new request if his or her position or duties change from the originally submitted request.

IX. REQUESTS FOR INFORMATION FROM THE NEWS MEDIA OR OTHERS

In the event a magistrate receives a request for information from a representative of the media or other person, the magistrate should ask for the following information:

- Name and contact information (including the media outlet or, other organization represented);
- Details of the topic of discussion; and
- In the case of a reporter, his or her deadline.

If the person requests to view or confirm the issuance of a warrant, the magistrate should explain that, if a warrant was issued, the paperwork will be filed with the clerk’s office after it has been served, and refer the person to the clerk’s office. However, if the warrant has been served and the paperwork is in the clerk’s designated file in the magistrate’s office waiting to be picked up by or delivered to the clerk’s office, the person may view the warrant in the magistrate’s office provided that the person’s viewing of the warrant does not interfere with the work of the office.

Neither the local magistrate’s office nor the Office of the Executive Secretary can provide information, including confirmation of issuance, regarding warrants that have not been served.

If the person is requesting only general information, which is otherwise publicly available (such as information about the magistrate system that is posted on Virginia’s Judicial System Web site), the magistrate may provide that information or direct the person to the information on the Website.

Anytime general information is provided to any person, please email the person’s name, the media outlet or organization represented, if any, and a summary of what information was provided to the Department of Legislative and Public Relations with the Office of the Executive Secretary, at apadden@vacourts.gov. In addition, please copy Jonathan Green, the Director of the Department of Magistrate Services, your magistrate regional supervisor

and your chief magistrate on any such email sent to the Department of Legislative and Public Relations.

If a magistrate is unsure about whether the requested information should be provided, the magistrate should advise the person that the request needs be reviewed by the Office of the Executive Secretary's Legislative and Public Relations Department. The magistrate should then contact the Department by phone at 804-786-6455 or via email at apadden@vacourts.gov to provide details regarding the request.

Magistrates may not give legal advice.

NOTE: If an individual is requesting records, please refer to the guidance in the section below, "Requests For Records."

X. REQUESTS FOR RECORDS

Magistrates occasionally receive requests for public records. As a part of the Office of the Executive Secretary, the Department of Magistrate Services follows the procedures found in Part Eleven of the Rules of the Supreme Court of Virginia, which governs access to judicial records.

When a request for records or documents is received orally, magistrates should ask that the request be submitted in writing to avoid any misunderstanding about what is being requested. If the requestor declines to put the request in writing, magistrates should obtain the name and contact information of the requestor and, in as much detail as possible, describe what information is being requested.

If the person requests to view or receive a copy of a warrant, the magistrate should explain that, if a warrant was issued, the paperwork will be filed with the clerk's office after it has been served, and refer the person to the clerk's office. However, if the warrant has been served and the paperwork is in the clerk's designated file in the magistrate's office waiting to be picked up or delivered to the clerk's office, the person may view or receive a copy of the warrant in the magistrate's office provided that the person's viewing or receipt of a copy of the warrant does not interfere with the work of the office.

Neither the local magistrate's office nor the Office of the Executive Secretary can provide information, including confirmation of issuance, regarding warrants that have not been served.

Any other oral or written requests for records or documents should be provided or forwarded (on the same day received) to the Department of Legislative and Public Relations with the Office of the Executive Secretary by phone (804-786-6455) or email (apadden@vacourts.gov).

NOTE: If an individual is simply asking questions and is not seeking records or documents, please refer to the guidance found in the section on, “Requests for Information from the News Media or Others” above.

XI. PROCEDURE WHEN MAGISTRATE SERVED WITH LEGAL PROCESS

When magistrates are served with a lawsuit or other legal action in connection with employment, magistrates must notify and seek guidance from either Liam A. Curry or Mason D. Williams, Assistant Attorneys General. In addition, magistrates must make a copy of all the documents and mail the originals to the Assistant Attorneys General respected offices. Magistrates should also advise their chief magistrate of the suit as soon as possible. Their contact information is:

Liam A. Curry
Assistant Attorney General
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 786-9531 Office
LCurry@oag.state.va.us

Mason D. Williams
Assistant Attorney General
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 786-9642 Office
MWilliams@oag.state.va.us

In the event a magistrate is subpoenaed to appear in court as a witness in a criminal or civil proceeding, the magistrate must notify his or her chief magistrate and the Office of the Attorney General.

Pursuant to [Va. Code § 19.2-271](#), a magistrate, in most situations, is incompetent to testify as a witness to any matters that came before the magistrate in the course of official duties. Subsection A of [Va. Code § 8.01-407](#) states that unless a judge has issued the subpoena, a subpoena requiring a magistrate to appear in a Virginia court is without legal force or effect if the subpoena is executed on the magistrate less than five calendar days before the required appearance date. In other words, the magistrate is not legally bound to appear at the hearing under such circumstances. Therefore, if the state witness subpoena is executed on the magistrate five days or more from the hearing or trial date, the magistrate is required to appear unless the court quashes the subpoena. Please note, [Va. Code § 8.01-407](#) only applies to subpoenas issued in state court. This statute is not applicable to federal subpoenas.