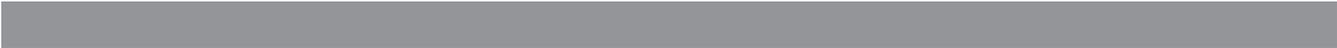


2012

# Judicial Council of Virginia



## Report to the General Assembly and Supreme Court of Virginia



**The Judicial Council of Virginia**  
**2012 Report to the General Assembly and Supreme Court of Virginia**  
**Supreme Court of Virginia, Office of the Executive Secretary**  
**Richmond, Virginia**  
**Published January 2013**



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The Honorable Joseph W. Milam, Jr., Chief Judge

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The Honorable William J. Howell\*, Speaker, Virginia House of Delegates

The Honorable Walter A. Stosch\*, Member, Senate of Virginia

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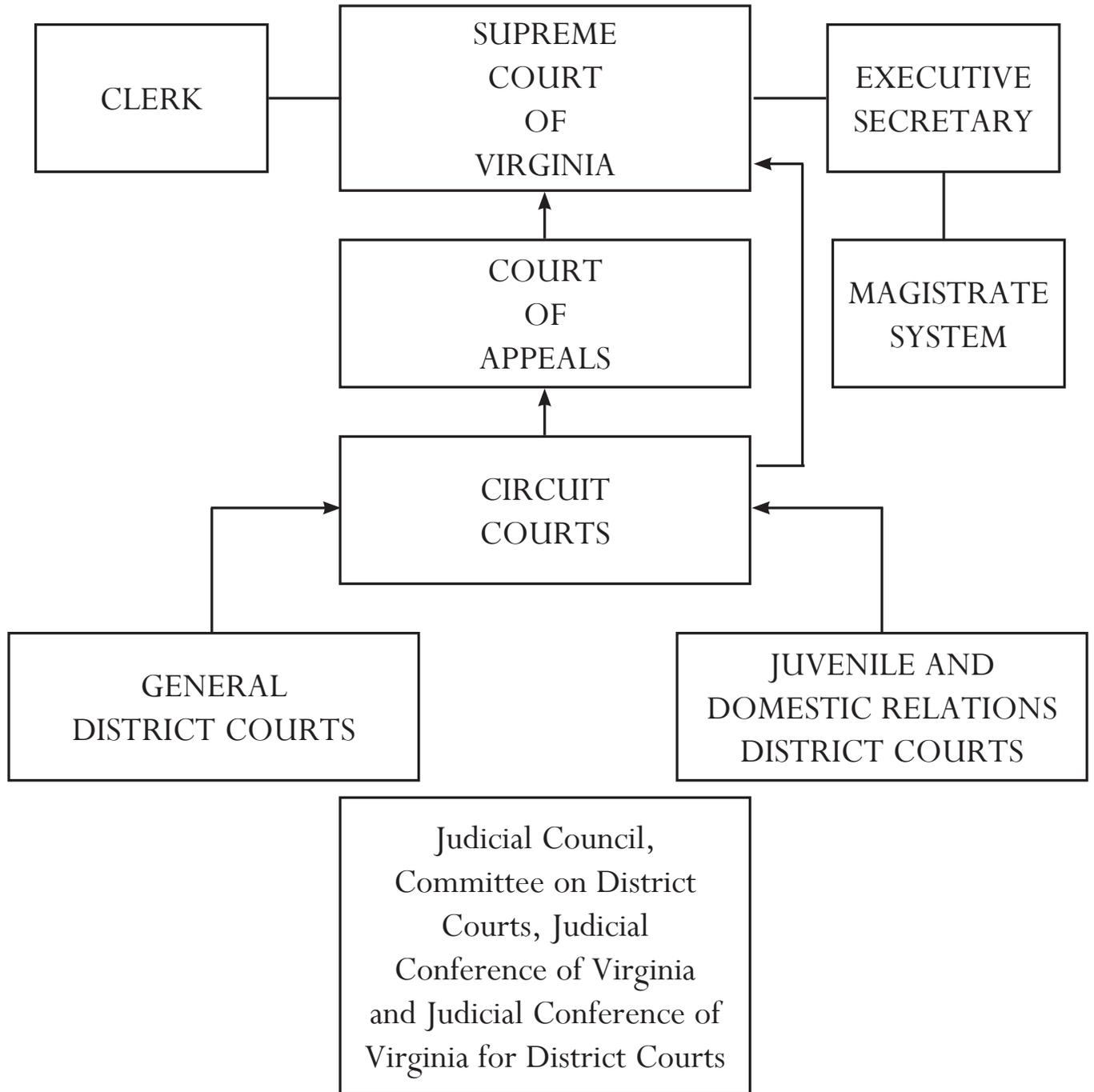
Richard Cullen, Esquire

Leisa K. Ciaffone, Esquire

Karl R. Hade, Executive Secretary

\*By Invitation of the Chief Justice

## VIRGINIA'S JUDICIAL SYSTEM



# I. Proceedings of the Judicial Council of Virginia

## INTRODUCTION

The Judicial Council of Virginia was established by statute in 1930. Council is charged with making a continuous study of the organization and the rules and methods of procedure and practice of the judicial system of the Commonwealth of Virginia, including examining the work accomplished and results produced by the judicial system. See Va. Code § 17.1-703. Providing guidance to the judicial system's comprehensive planning process is a central component of these responsibilities.

2012 was another busy year. In response to House Joint Resolution 111, the Judicial Council began a study of the jurisdictional capacity of the Court of Appeals of Virginia. After careful review by Judicial Council and the Supreme Court of Virginia and years of effort by interested entities, Rules of Evidence were approved by the Court and codified by the legislature to be effective July 1. The Council heard reports regarding commissioners of accounts and continuing educational opportunities for guardians *ad litem*. The Judicial Council also recommended one legislative proposal for the 2013 Session of the General Assembly. Finally, the Circuit Court Forms Advisory Committee became a standing committee of Judicial Council during 2012, assuring the judicial policy-making body an oversight role in the process for the creation and revision of uniform circuit court forms.

## PROCEEDINGS OF THE JUDICIAL COUNCIL

### Court of Appeals Study

During its 2012 Regular Session, the General Assembly passed House Joint Resolution No. 111 (HJR 111) requesting that the Judicial Council of Virginia study the jurisdictional capacity of the Court of Appeals of Virginia. The Judicial Council's study will include a review of the respective caseloads of the Supreme Court of Virginia and the Court of Appeals of Virginia, which have been compiled by the Office of the Executive Secretary, to determine whether the quality of appellate review would be served by expanding the jurisdictional capacity of the Court of Appeals of Virginia. The Judicial Council will report its findings and recommendations to the Governor and the General Assembly by the first day of the 2014 Session of the General Assembly.

### **Report of the Standing Committee on Commissioners of Accounts**

In 1993, the Judicial Council established the Standing Committee on Commissioners of Accounts as an advisory body to assist in improving performance among Virginia's Commissioners of Accounts. The Committee's duties include improving oversight of commissioners by the courts, promoting uniformity, developing training programs and materials, and handling complaints and inquiries related to the performance of commissioners. In order to update the Council on the work of the Committee, its chair gave a report to the Council in 2012 which consisted of a review of the Committee's duties and current members; an overview of the *Manual for Commissioners of Accounts*, which may be revised and made available online; a discussion of recommended fee schedules and compensation for commissioners of accounts; a summary of the procedures for handling complaints against commissioners; and an explanation of resources available to commissioners.

### **Report on the Continuing Educational Opportunities for GALs for Children**

In 2010, the Judicial Council directed the OES to track the attendance of qualified guardians *ad litem* (GALs) for children at continuing education programs encompassing mental-health-related topics relevant to children. This initiative was intended to ensure that attorneys who serve as GALs for children obtain a basic knowledge of mental health issues that could affect their young clients. Council considered a recommendation that GALs for children be required to complete, on an ongoing basis, continuing education programs with a specific mental-health-related focus. The OES report was requested to identify current programs and practice. The OES concluded in its 2012 report to Council that the GALs who serve in Virginia's courts and represent children and adolescents already have access to, and benefit from, practical, substantive training on mental-health-related matters.

### **Proposed Circuit Court Forms**

At the June meeting of the Judicial Council, Chief Justice Kinser announced that the Circuit Court Forms Advisory Committee would become a standing committee of the Council. OES staff presented a report from the Committee consisting of proposed revisions to existing forms and the creation of a new form. Most of the revisions were prompted by the recodification of Title 64.1 as Title 64.2.

### **Rules of Evidence**

This year, after a number of years of drafting, editing, and review by individual practitioners, the Boyd-Graves Conference and various bar associations, the Advisory Committee on Rules of Court, and the Judicial Council, the Supreme Court of

Virginia adopted Rules of Evidence and the General Assembly passed legislation codifying the Rules. The Rules of Evidence bring together in one, organized document the existing common law and statutory evidentiary rules, drafted in neutral language. The leadership of the Virginia Bar Association and the Virginia Trial Lawyers Association was invaluable in highlighting the need for the Rules and in supporting passage of the legislation by the General Assembly.

### **The Honorable Harry L. Carrico Outstanding Career Service Award**

In 2004, the Judicial Council of Virginia created the Outstanding Career Service Award in honor of the Honorable Harry L. Carrico, former Chief Justice of Virginia. This award is presented annually to one who, over an extended career, has demonstrated exceptional leadership in the administration of the courts while exhibiting the traits of integrity, courtesy, impartiality, wisdom, and humility. The 2012 Harry L. Carrico Outstanding Career Service Award was bestowed on the Honorable Ford C. Quillen, former delegate and retired circuit judge, Scott County.

## **LEGISLATIVE PROPOSAL FOR THE 2013 SESSION OF THE GENERAL ASSEMBLY**

### **Notice of Testimony in Open Court in Divorce Cases**

The Judicial Council of Virginia recommends a proposal allowing testimony in open court in divorce cases without further notice of such testimony when the defendant has been personally served and has failed to file an answer to the suit or otherwise appear within the time allowed by law. This proposal was recommended to Council by the Judicial Conference of Virginia.

A BILL to amend and reenact § 20-99 of the Code of Virginia, relating to testimony in open court in divorce cases; notice.

#### **Be it enacted by the General Assembly of Virginia:**

#### **1. That § 20-99 of the Code of Virginia is amended and reenacted as follows:**

##### **§ 20-99. How such suits instituted and conducted; costs.**

Such suit shall be instituted and conducted as other suits in equity, except as otherwise provided in this section:

1. No divorce, annulment, or affirmation of a marriage shall be granted on the uncorroborated testimony of the parties or either of them.
2. Whether the defendant answers or not, the cause shall be heard independently of the admissions of either party in the pleadings or otherwise.

3. Process or notice in such proceedings shall be served in ~~this~~ the Commonwealth by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-293. Service may be made on a nonresident by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-320.

4. In cases where such suits have been commenced and an appearance has been made on behalf of the defendant by counsel, then notices to take depositions and of hearings, motions, and other proceedings except contempt proceedings, may be served by delivering or mailing a copy to counsel for opposing party, the foot of such notices bearing either acceptance of service or a certificate of counsel in compliance with the Rules of Supreme Court of Virginia. "Counsel for opposing party" shall include a pro se party who (i) has entered a general appearance in person or by filing a pleading or endorsing an order of withdrawal of that party's counsel or (ii) has signed a pleading in the case or who has notified the other parties and the clerk that he appears in the case.

5. In cases where such suits have been commenced, the defendant has been served pursuant to the provisions of subdivision 1 of § 8.01-296, and the defendant has failed to file an answer to the suit or otherwise appear within the time allowed by law, no further notice to take depositions or testimony in court is required to be served on the defendant and the court may enter any order or final decree without further notice to the defendant.

6. Costs may be awarded to either party as equity and justice may require.

## II.

# Recommended Changes to Rules of Court

### BACKGROUND

Article VI, Section 5 of the Constitution of Virginia and Code § 8.01-3 authorize the Supreme Court of Virginia to promulgate rules governing the practice and procedures in the courts of the Commonwealth.

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

The Advisory Committee on Rules of Court presented a number of recommendations to the Judicial Council at Council's June 2012 meeting. Two proposals originated with the Boyd-Graves Conference. The proposals included one to add a new rule, Rule 3:22A, to govern voir dire in civil cases. The new rule directly parallels the provisions of Rule 3A:14 which have proved successful in assisting with jury selection in criminal cases in Virginia. The second proposal resulted in language being added to Rule 4:5(c) to clarify that any objection during depositions must be stated concisely and in a nonargumentative and nonsuggestive manner.

In response to suggestions from the E-Filing Study Group, the Advisory Committee presented a set of recommendations intended to clarify certain provisions of the Rules governing or implicating the E-Filing process. The proposed rules revisions:

- Provide that pleadings shall contain the Virginia State Bar number and e-mail address of the attorney of record.
- Clarify who may have remote electronic access to documents electronically filed.
- Clarify the time constraints governing the hours during which one may electronically file.
- Streamline the procedure for addressing filing defects.
- Address myriad system response issues that have surfaced during the development of the E-Filing infrastructure.

Another Advisory Committee recommendation that was approved by the Council, amends Rule 5:21 to conform its provisions to those of 5:17 to provide a more clear and direct indication of the necessary specificity with which assignments of error must be designated. Additionally, the amendments to Rule 5:21 bring its text into conformity with the wording of the preservation of error principles found in Rule 5:25.

Lastly, Council approved a proposed revision to Rule 3A:17.1 to bring it into conformity with changes made to Virginia Code § 19.2-295.1 by 2012 Acts of Assembly, Chapter 134.

## SUMMARY

In 2012, the Judicial Council recommended and the Supreme Court of Virginia adopted the following as a new rule in Part Three of the Rules of the Supreme Court of Virginia:

Rule 3:22A                      Examination of Prospective Trial Jurors (Voir Dire)

In addition, the Judicial Council recommended and the Supreme Court of Virginia adopted amendments to the following rules:

Rule 3A:17.1                  Proceedings in Bifurcated Jury Trials of Non-Capital Felonies and Class 1 misdemeanors

Rule 4:5                        Depositions Upon Oral Examination

Rule 5:21                      Special Rules Applicable to Certain Appeals of Right

Rules that were amended to incorporate proposals from the E-Filing Study Group were:

Rule 1:4                        General Provisions as to Pleadings

Rule 1:17                      Electronic Filing and Service

Rule 3:3                        Filing of Pleadings; Return of Certain Writs

Rule 3:4                        Copies of Complaint

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