2013

Judicial Council of Virginia

Report to the General Assembly and Supreme Court of Virginia

The Judicial Council of Virginia
2013 Report to the General Assembly and Supreme Court of Virginia
Supreme Court of Virginia, Office of the Executive Secretary
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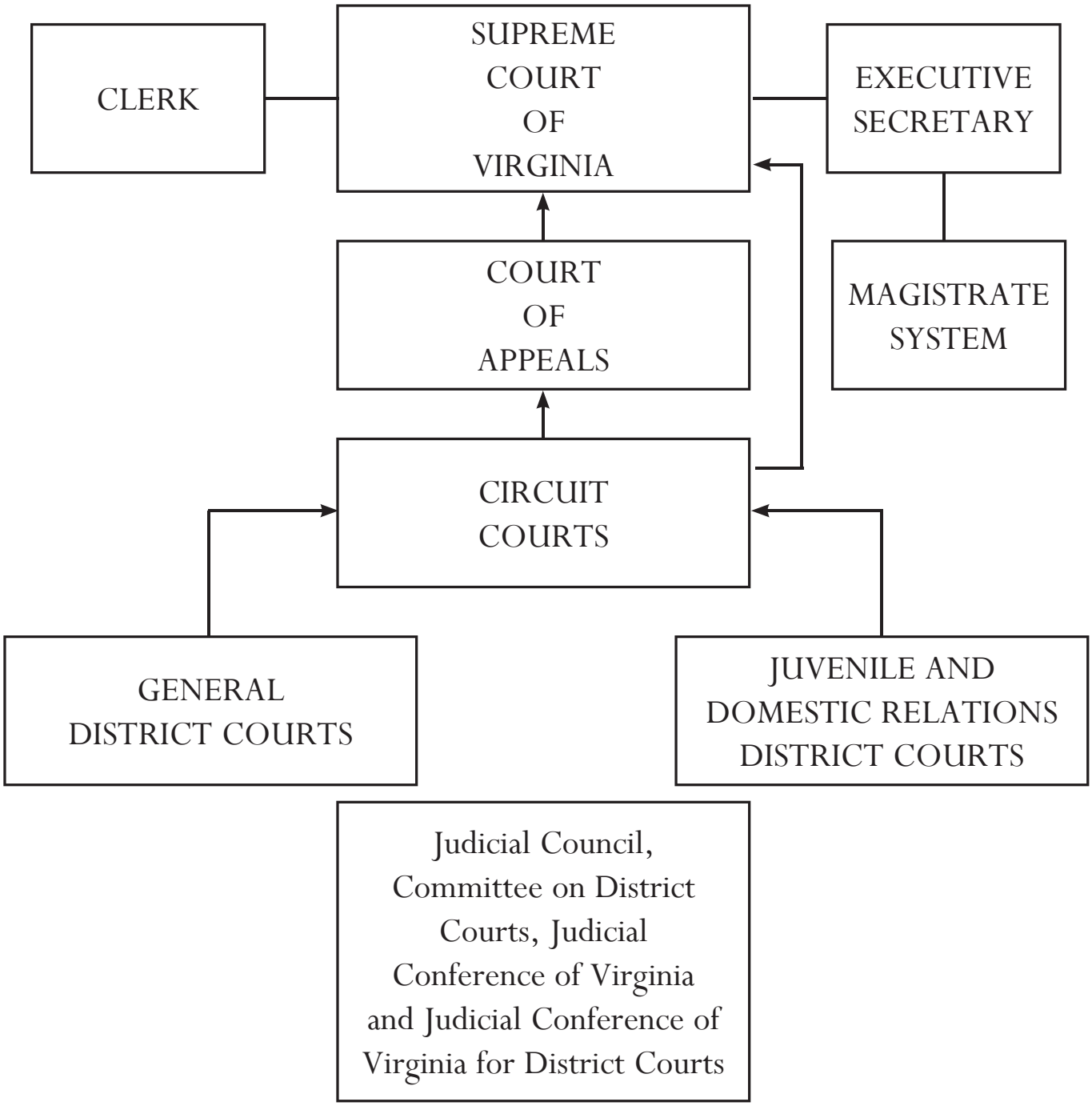
*By Invitation of the Chief Justice

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.

PROCEEDINGS OF THE JUDICIAL COUNCIL

Judicial Workload Assessment Study

Chapter 601, Virginia Acts of Assembly (2012), directed the Supreme Court of Virginia to "develop and implement a weighted caseload system to precisely measure and compare judicial caseloads throughout the Commonwealth on the circuit court, general district court, and juvenile and domestic relations district court levels" and to develop "a recommended plan for the realignment of the circuit and district boundaries." In response to the legislation, the Supreme Court of Virginia's Office of the Executive Secretary (OES) contracted with the National Center for State Courts (NCSC) to develop a weighted caseload system for Virginia's trial courts and to recommend a plan for the realignment of the circuit and district boundaries. The Virginia Judicial Workload Assessment Report was submitted to the Court by the NCSC on the basis of the workload assessment study it completed. The report details the weighted caseload system that was developed by the NCSC and includes the NCSC's recommendations regarding boundary realignment in Virginia.

The weighted caseload model provides the Commonwealth of Virginia with a means to more precisely measure and compare judicial workload across circuits and districts. According to the NCSC's report, application of the weighted caseload model shows that the current judicial workload for the circuit, general district, and juvenile and domestic relations district courts in Virginia exceeds the capacity of the existing complement of judges. Additional judges are needed to enable Virginia's trial courts to manage and resolve court business effectively and without delay. The NCSC report recommends that the General Assembly begin to fill judicial vacancies, and in some instances create new authorized judicial positions. Addressing judicial boundaries, the NCSC report concluded that any change to existing circuit and district boundaries does not save money for the Commonwealth and that changing judicial boundaries, in and of itself, will not reduce the number of judges needed.

Virginia Code § 17.1-507 provides that the Judicial Council shall study and report on the number of new circuit court judgeships needed and the circuits for which they should be authorized. On December 2, 2013, in light of the detailed study conducted by the National Center for State Courts, the Executive Committee of the Judicial Council met and adopted the NCSC's report and recommendations regarding the need for the creation of new circuit judgeships.

Based on the Virginia Judicial Workload Assessment Report, the Judicial Council recommended the authorization of 20 new circuit court judgeships (one each in the Sixth, Seventh, Tenth, Twelfth, Sixteenth, Eighteenth, Twenty-second, Twenty-fifth, Twenty-eighth, Twenty-ninth, Thirtieth, and Thirty-first Judicial Circuits; two each in the Fifteenth and Twenty-seventh Judicial Circuits; and three additional judgeships in the Twenty-sixth Judicial Circuit). Additionally, the report concluded that seven judgeships currently authorized are not supported by the caseload in the circuits for which they are authorized (one each in the Second, Third, Fourth, Eighth, Seventeenth, Twenty-first, and Twenty-third Judicial Circuits). Six of these authorized judgeships (in the Second, Third, Fourth, Eighth, Seventeenth, and Twenty-third Judicial Circuits) can be reallocated if a current/announced judicial vacancy is left unfilled in each of these circuits.

Senior Judge Study

Chapter 413, Virginia Acts of Assembly (2013), authorized OES to contract with an independent entity such as the National Center for State Courts to study the feasibility and effect of implementing a senior judge system. Such a system would allow a number of retired circuit and district court judges to become senior judges who would sit for a specified amount of time each year in return for a portion of the current compensation of active judges. Use of senior judges would eliminate or reduce the need for attorney substitute judges and special justices. In the Virginia Judicial Workload Assessment Report, the NCSC concluded that the regular usage of substitute judges may compromise the efficiency and quality of case processing. The NCSC and OES have agreed upon the use of NCSC's technical assistance grant funds to support a study during 2014 that would address the substance of this recommendation. In compliance with the provisions of Chapter 413 of the 2013 Acts of Assembly, the Office of the Executive will submit an executive summary and report on the feasibility of implementing a senior judge system to the General Assembly by November 15, 2014.

Update on Implementation of Electronic Filing

In April of 2013, OES successfully launched the Virginia Judiciary Electronic Filing System (VJEFS) as a pilot in Norfolk Circuit Court. By the end of 2013, OES had installed VJEFS in ten circuit courts in addition to Norfolk (Portsmouth,

Chesapeake, Prince William, Dinwiddie, Rockingham/Harrisonburg, Richmond City, Smyth, Washington, Bedford, and Staunton). An additional 11 courts are planning to begin using VJEFS in early 2014.

At its meeting on May 20, 2013, the Judicial Council was provided with an implementation status update on VJEFS and a demonstration of the system. VJEFS was designed to seamlessly integrate with the Statewide Circuit Case Management and Financial Systems. Once a new filing has been accepted by the clerk in VJEFS, the system creates a new case in the court's Case and Financial Management Systems and securely stores the pleadings and any other documents submitted in the Case Imaging System without additional intervention by the clerk. The parties may use the system to electronically file responsive pleadings and other documents in the case. For the duration of the case, all parties in the case are automatically notified of subsequent document filings in the case as well as any other substantive developments.

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. In 2013, the Harry L. Carrico Outstanding Career Service Award was bestowed for the first time on a district court judge. The recipient, the Honorable Philip Trompeter, is a juvenile and domestic relations district judge in the 23rd Judicial District. In almost 30 years of service on the bench, Judge Trompeter has served as a leader of numerous community and professional organizations, including the Mental Health Association of Roanoke Valley and the Child Abuse Prevention Council. He founded the Roanoke Valley Court Appointed Special Advocate (CASA) Program, the first in Virginia, and has served as an advisory member to Virginia's Court Improvement Project in the OES since its inception. He served as a member of the Gender Bias in Virginia's Courts Task Force and the Interim Commission for Judicial Performance Evaluation and served 12 years on the Committee on District Courts from 2001 to 2013. In endorsing his nomination for this award, his colleagues in the Virginia Council of Juvenile and Domestic Relations District Court Judges noted that he is a "skillful manager, a community leader" with "unquestioned integrity," "a consistently even temperament, [and] keen insight" who "serves as an inspiration to his colleagues."

LEGISLATIVE PROPOSALS FOR THE 2014 SESSION OF THE GENERAL ASSEMBLY

Request for New Circuit and District Judgeships

This proposal increases and decreases the number of circuit, general district, and juvenile court judges authorized for each judicial circuit and district in accordance with the Virginia Judicial Workload Assessment Report from the NCSC. The Executive Committee of the Judicial Council adopted the NCSC's recommendations regarding the number of authorized circuit judgeships.

A BILL to amend and reenact §§ 16.1-69.6:1 and 17.1-507 of the Code of Virginia, relating to number of judges.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.6:1 and 17.1-507 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.6:1. Number of judges.

For the several judicial districts there shall be full-time general district court judges and juvenile and domestic relations district court judges, the number as hereinafter set forth, who shall during their service reside within their respective districts, except as provided in § 16.1-69.16, and whose compensation and powers shall be the same as now and hereafter prescribed for general district court judges and juvenile and domestic relations district court judges.

The number of judges of the districts shall be as follows:

	General District Court Judges	Juvenile and Domestic Relations District Court Judges
First	4	~~3~~4
Second	7	7
Two-A	1	1
Third	~~3~~ 2	3
Fourth	6	5
Fifth	~~3~~2	2
Sixth	4	2
Seventh	4	4
Eighth	3	3
Ninth	3	~~3~~4
Tenth	3	~~3~~4
Eleventh	~~2~~3	~~2~~3
Twelfth	~~4~~5	~~5~~6
Thirteenth	~~8~~6	~~5~~4
Fourteenth	~~4~~5	5

Fifteenth	~~6~~8	~~7~~10
Sixteenth	4	~~4~~6
Seventeenth	~~4~~3	2
Eighteenth	2	2
Nineteenth	11	~~8~~7
Twentieth	4	3
Twenty-first	~~2~~1	2
Twenty-second	2	~~3~~4
Twenty-third	~~5~~4	~~4~~5
Twenty-fourth	~~4~~3	~~5~~6
Twenty-fifth	~~5~~3	~~4~~5

~~The general district court judges of the twenty-fifth district shall render assistance on a regular basis to the general district court judges of the twenty-sixth district by appropriate designation.~~

Twenty-sixth	~~4~~ 5	~~5~~7
Twenty-seventh	5	~~4~~5
Twenty-eighth	2	~~2~~3
Twenty-ninth	~~3~~2	~~2~~3
Thirtieth	2	2
Thirty-first	~~4~~5	5

The election or appointment of any district judge shall be subject to the provisions of § 16.1-69.9:3.

§ 17.1-507. Number of judges; residence requirement; compensation; powers; etc.

A. For the several judicial circuits there shall be judges, the number as hereinafter set forth, who shall during their service reside within their respective circuits and whose compensation and powers shall be the same as now and hereafter prescribed for circuit judges.

The number of judges of the circuits shall be as follows:

First — 5

Second — ~~10~~9

Third — ~~5~~4

Fourth — ~~9~~8

Fifth — 3

Sixth — ~~2~~3

Seventh — ~~5~~6

Eighth — ~~4~~3

Ninth — 4

Tenth — ~~3~~4

Eleventh — 3

Twelfth — ~~5~~6

Thirteenth — 8
Fourteenth — 5
Fifteenth — ~~9~~11
Sixteenth — ~~5~~6
Seventeenth — ~~4~~3
Eighteenth — ~~3~~4
Nineteenth — 15
Twentieth — ~~4~~5
Twenty-first — ~~3~~2
Twenty-second — ~~4~~5
Twenty-third — 6~~5~~
Twenty-fourth — 5
Twenty-fifth — ~~4~~5
Twenty-sixth — ~~5~~8
Twenty-seventh — ~~5~~7
Twenty-eighth — ~~3~~4
Twenty-ninth — ~~4~~5
Thirtieth — ~~3~~4
Thirty-first — ~~5~~6

B. No additional circuit court judge shall be authorized or provided for any judicial circuit until the Judicial Council has made a study of the need for such additional circuit court judge and has reported its findings and recommendations to the Courts of Justice Committees of the House of Delegates and Senate. The boundary of any judicial circuit shall not be changed until a study has been made by the Judicial Council and a report of its findings and recommendations made to said Committees.

C. If the Judicial Council finds the need for an additional circuit court judge after a study is made pursuant to subsection B, the study shall be made available to the Compensation Board and the Courts of Justice Committees of the House of Delegates and Senate and Council shall publish notice of such finding in a publication of general circulation among attorneys licensed to practice in the Commonwealth. The Compensation Board shall make a study of the need to provide additional courtroom security and deputy court clerk staffing. This study shall be reported to the Courts of Justice Committees of the House of Delegates and the Senate, and to the Department of Planning and Budget.

2. That the provisions of this act reducing the number of authorized judgeships in the Twenty-first Judicial Circuit shall become effective upon the death, resignation, or retirement on or after January 1, 2014, of any judge of that court.

3. That the provisions of this act reducing the number of authorized

judgeships in the General District Court of the Third Judicial District shall become effective upon the death, resignation, or retirement on or after January 1, 2014, of any judge of that court.
4. That the provisions of this act reducing the number of authorized judgeships in the General District Court of the Fifth Judicial District shall become effective upon the death, resignation, or retirement on or after January 1, 2014, of any judge of that court.
5. That the provisions of this act reducing the number of authorized judgeships in the General District Court of the Thirteenth Judicial District shall become effective upon the death, resignation, or retirement on or after January 1, 2014, of any judge of that court; except that the number of authorized judgeships in the General District Court of the Thirteenth Judicial District shall be reduced to seven on the effective date of this act.
6. That the provisions of this act reducing the number of authorized judgeships in the General District Court of the Twenty-fifth Judicial District shall become effective upon the death, resignation, or retirement on or after January 1, 2014, of any judge of that court; except that the number of authorized judgeships in the General District Court of the Twenty-fifth Judicial District shall be reduced to four on the effective date of this act.
7. That the provisions of this act reducing the number of authorized judgeships in the Juvenile and Domestic Relations District Court of the Thirteenth Judicial District shall become effective upon the death, resignation, or retirement on or after January 1, 2014, of any judge of that court.
8. That the provisions of this act reducing the number of authorized judgeships in the Juvenile and Domestic Relations District Court of the Nineteenth Judicial District shall become effective upon the death, resignation, or retirement on or after January 1, 2014, of any judge of that court.

Service of Process Requirements for Pro Se Petitioners Filing Writs of Actual Innocence

Currently, there are different service of process requirements for pro se petitioners filing writs of actual innocence in the Court of Appeals and the Supreme Court of Virginia. In the Court of Appeals, a petition for a writ of actual innocence filed by a pro se petitioner will be accepted by the Court if there is a certificate attached indicating a copy was sent by certified mail to the Commonwealth's Attorney and the Attorney General. In the Supreme Court, a pro se petitioner must submit

proof of actual service of process on the Commonwealth's Attorney and the Attorney General before the petition is accepted. This proposal makes the service of process requirements for pro se petitioners filing writs of actual innocence in the Supreme Court of Virginia consistent with the current requirements for pro se petitioners filing such writs in the Court of Appeals. This proposal is a recommendation of the Judicial Council.

A Bill to amend and reenact § 19.2-327.3 of the Code of Virginia, relating to service of process for writs of actual innocence.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-327.3 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-327.3. Contents and form of the petition based on previously unknown or untested human biological evidence of actual innocence.

A. The petitioner shall allege categorically and with specificity, under oath, the following: (i) the crime for which the petitioner was convicted or the offense for which the petitioner was adjudicated delinquent, and that such conviction or adjudication of delinquency was upon a plea of not guilty or that the person is under a sentence of death or convicted of (a) a Class 1 felony, (b) a Class 2 felony, or (c) any felony for which the maximum penalty is imprisonment for life; (ii) that the petitioner is actually innocent of the crime for which he was convicted or adjudicated delinquent; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence; (iv) that the evidence was not previously known or available to the petitioner or his trial attorney of record at the time the conviction or adjudication of delinquency became final in the circuit court, or if known, the reason that the evidence was not subject to the scientific testing set forth in the petition; (v) the date the test results under § 19.2-327.1 became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney of record has filed the petition within 60 days of obtaining the test results under § 19.2-327.1; (vii) the reason or reasons the evidence will prove that no rational trier of fact would have found proof of guilt or delinquency beyond a reasonable doubt; and (viii) for any conviction or adjudication of delinquency that became final in the circuit court after June 30, 1996, that the evidence was not available for testing under § 9.1-1104. The Supreme Court may issue a stay of execution pending proceedings under the petition. Nothing in this chapter shall constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to clause (iii) or (iv) of § 53.1-232.1.

B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing and shall enumerate and include all previous

records, applications, petitions, and appeals and their dispositions. A copy of any test results shall be filed with the petition. The petition shall be filed on a form provided by the Supreme Court. If the petitioner fails to submit a completed form, the Court may dismiss the petition or return the petition to the prisoner pending the completion of such form. The petitioner shall be responsible for all statements contained in the petition. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution and conviction of perjury as provided for in § 18.2-434.

C. In cases brought by counsel for the petitioner, ~~T~~the Supreme Court shall not accept the petition unless it is accompanied by a duly executed return of service in the form of a verification that a copy of the petition and all attachments has been served on the attorney for the Commonwealth of the jurisdiction where the conviction or adjudication of delinquency occurred and the Attorney General, or an acceptance of service signed by these officials, or any combination thereof. In cases brought by petitioners pro se, the Supreme Court shall not accept the petition unless it is accompanied by a certificate that a copy of the petition and all attachments have been sent, by certified mail, to the attorney for the Commonwealth of the jurisdiction where the conviction or adjudication of delinquency occurred and the Attorney General. The Attorney General shall have 30 days after receipt of the record by the clerk of the Supreme Court in which to file a response to the petition. The response may contain a proffer of any evidence pertaining to the guilt or delinquency or innocence of the petitioner that is not included in the record of the case, including evidence that was suppressed at trial.

D. The Supreme Court may, when the case has been before a trial or appellate court, inspect the record of any trial or appellate court action, and the Court may, in any case, award a writ of certiorari to the clerk of the respective court below, and have brought before the Court the whole record or any part of any record.

E. In any petition filed pursuant to this chapter, the petitioner is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10.

Responsibility for Maintaining the Files of Executed Administrative Search Warrants, Investigation Warrants, and Inspection Warrants

This proposal, recommended by the Judicial Council, would shift the responsibility for maintaining the files of executed administrative search warrants, investigation warrants, and inspection warrants from the issuing magistrate or judge to the circuit court.

A Bill to amend and reenact §§ 3.2-3942, 3.2-6568, 10.1-610, 15.2-2286,

19.2-394, 19.2-395, 27-32.2, 27-37.1, 27-98.2, 27-98.3, 27-98.5, 36-105, 40.1-49.9, 40.1-49.10, 40.1-49.12, and 63.2-1718 of the Code of Virginia, relating to maintenance of executed administrative search warrants, investigation warrants, and inspection warrants.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3942, 3.2-6568, 10.1-610, 15.2-2286, 19.2-394, 19.2-395, 27-32.2, 27-37.1, 27-98.2, 27-98.3, 27-98.5, 36-105, 40.1-49.9, 40.1-49.10, 40.1-49.12, and 63.2-1718 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-3942. Right of entry; warrant requirements; procedure.

A. The Commissioner may enter any public or private premises operating as a pesticide business at reasonable times, with the consent of the owner or tenant thereof, and upon presentation of appropriate credentials for carrying out the purposes of this chapter.

B. If the Commissioner is denied access, he may apply for an administrative search warrant from a judge with authority to issue criminal warrants or a magistrate whose jurisdiction encompasses the premises.

1. No warrant shall be issued except upon probable cause and supported by an affidavit particularly describing: (i) the place, things, or persons to be inspected or tested; and (ii) the purpose for which the inspection, testing, or collection of samples is to be made.

2. Probable cause shall exist if either: (i) reasonable legislative or administrative standards for conducting inspection, testing, or collection of samples are satisfied with respect to the particular place, thing, or person;, or (ii) there is cause to believe that a condition, object, activity, or circumstance legally justifies the inspection, testing, or collection of samples.

3. The supporting affidavit shall contain either: (i) a statement that consent to inspect, test, or collect samples has been sought and refused; or (ii) facts or circumstances reasonably justifying the failure to seek consent. If probable cause is based upon legislative or administrative standards for selecting places of business for inspection, the affidavit shall contain factual allegations sufficient to justify an independent determination by the court that the inspection program is based on reasonable standards and that the standards are being applied to a particular place of business in a neutral and fair manner. <u>After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54.</u>

C. Any administrative search warrant shall be effective for a period of not more than 15 days unless extended or renewed by the judicial officer who issued the original warrant. The warrant shall be executed and returned to the issuing officer <u>clerk of the circuit court of the city or county wherein the search was made</u> within the time specified or within the extended or renewed time. The return shall list any records

removed or samples taken pursuant to the warrant. The warrant shall be void after the expiration of time unless executed or renewed.

D. No warrant shall be executed in the absence of the owner, tenant, operator, or custodian of the premises unless the issuing judicial officer specifically authorizes that such authority is reasonably necessary to affect the purposes of the law or regulation. Entry pursuant to such a warrant shall not be made forcibly. The issuing officer may authorize a forcible entry where the facts: (i) create a reasonable suspicion of an immediate threat to the health and safety of persons or to the environment; or (ii) establish that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the Commissioner and to a law-enforcement officer who shall accompany the Commissioner during the execution of the warrant.

E. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return ~~to the issuing judicial officer~~, except as a defense in a contempt proceeding or if the owner or custodian of the place to be inspected submits a substantial preliminary showing by affidavit and accompanied by proof that: (i) a statement included by the affiant in his affidavit for the administrative search warrant was false and made knowingly and intentionally or with reckless disregard for the truth;, and (ii) the false statement was necessary to the finding of probable cause. The court may conduct in camera review as appropriate.

F. After the warrant has been executed and returned to the issuing judicial officer, the validity of the warrant may be reviewed either as a defense to any Notice of Violation or by declaratory judgment action brought in a circuit court. The review shall be confined to the face of the warrant, affidavits, and supporting materials presented to the issuing judicial officer. If the owner or custodian of the place inspected submits a substantial showing by affidavit and accompanied by proof that: (i) a statement included in the warrant was false and made knowingly and intentionally or with reckless disregard for the truth~~;~~, and (ii) the false statement was necessary to the finding of probable cause, the reviewing court shall limit its inquiry to whether there is substantial evidence in the record supporting the issuance of the warrant and shall not conduct a de novo determination of probable cause.

§ 3.2-6568. Power of search for violations of statutes against cruelty to animals.

When ~~a sworn complaint~~ an affidavit is made ~~to any proper authority~~ under oath before a magistrate or court of competent jurisdiction by any animal control officer, humane investigator, law-enforcement officer, or State Veterinarian's representative that the complainant believes and has reasonable cause to believe that the laws in relation to cruelty to animals have been, are being, or are about to be violated in any particular building or place, such ~~authority~~ magistrate or judge, if satisfied

that there is reasonable cause for such belief, shall issue a warrant authorizing any sheriff, deputy sheriff, or police officer, to search the building or place. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the animal control officer, humane investigator, law enforcement officer, or State Veterinarian's representative shall return the warrant to the clerk of the circuit court of the city or county wherein the search was made.

§ 10.1-610. Right of entry.

A. The Board and its agents and employees shall have the right to enter any property at reasonable times and under reasonable circumstances to perform such inspections and tests or to take such other actions it deems necessary to fulfill its responsibilities under this article, including the inspection of dams that may be subject to this article, provided that the Board or its agents or employees make a reasonable effort to obtain the consent of the owner of the land prior to entry.

B. If entry is denied, the Board or its designated agents or employees may ~~apply to~~ make an affidavit under oath before any magistrate whose territorial jurisdiction encompasses the property to be inspected or entered for a warrant authorizing such investigation, tests or other actions. Such warrant shall issue if the magistrate finds probable cause to believe that there is a dam on such property which is not known to be safe. After issuing a warrant under this section, the magistrate shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the Board or its designated agents or employees shall return the warrant to the clerk of the circuit court of the city or county wherein the investigation was made.

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.

2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects

specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time. The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may

prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by § 15.2-2314.

The zoning administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than $10 nor more than $1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than $10 nor more than $1,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not less than $100 nor more than $1,500.

However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to $2,000. Failure to abate the violation within the specified time

period shall be punishable by a fine of up to $5,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to $7,500. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § 15.2-2201.

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

14. For the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws.

15. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent ~~may present sworn testimony to~~ make an affidavit under oath before a magistrate or court of competent jurisdiction and, if such ~~sworn testimony~~ affidavit establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the zoning administrator or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the

inspection was made. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the locality and have been properly assessed against the subject property, have been paid.

§ 19.2-394. Issuance of warrant.

An inspection warrant may be issued for any inspection, testing or collection of samples for testing or for any administrative search authorized by state or local law or regulation in connection with the presence, manufacturing or emitting of toxic substances, whether or not such warrant be constitutionally required. Nothing in this chapter shall be construed to require issuance of an inspection warrant where a warrant is not constitutionally required or to exclude any other lawful means of search, inspection, testing or collection of samples for testing, whether without warrant or pursuant to a search warrant issued under any other provision of the Code of Virginia. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, things or persons to be inspected or tested and the purpose for which the inspection, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting such inspection, testing or collection of samples for testing are satisfied with respect to the particular place, things or persons or there exists probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such inspection, testing or collection of samples for testing. The supporting affidavit shall contain either a statement that consent to inspect, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the state or local law or regulation which authorizes such inspection, testing or collection of samples for testing. The issuing judge may examine the affiant under oath or affirmation to verify the accuracy of any matter indicated by the statement in the affidavit. After issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by § 19.2-54.

§ 19.2-395. Duration of warrant.

An inspection warrant shall be effective for the time specified therein, for a period

of not more than ten days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such warrant shall be executed and returned to the ~~judicial officer by whom it was issued~~ clerk of the circuit court of the city or county wherein the inspection was made within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed shall be void.

§ 27-32.2. Issuance of fire investigation warrant.

A. If, in undertaking such an investigation, the fire marshal or investigator appointed pursuant to § 27-56 makes an affidavit under oath that the origin or cause of any fire or explosion on any land, building, or vessel, or of any object is undetermined and that he has been refused admittance thereto, or is unable to gain permission to enter such land, building, or vessel, or to examine such object, within 15 days after the extinguishing of such, any magistrate serving the city or county where the land, building, vessel, or object is located may issue a fire investigation warrant to the fire marshal or investigator appointed pursuant to § 27-56 authorizing him to enter such land, building, vessel, or the premises upon which the object is located for the purpose of determining the origin and source of such fire or explosion. After issuing a warrant under this section, the magistrate shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the fire marshal, or investigator appointed pursuant to § 27-56, shall return the warrant to the clerk of the circuit court of the city or county wherein the investigation was made.

B. If the fire marshal or investigator appointed pursuant to § 27-56, after gaining access to any land, building, vessel, or other premises pursuant to such a fire investigation warrant, has probable cause to believe that the burning or explosion was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained pursuant to § 27-32.1, or consent to conduct the search has otherwise been given.

§ 27-37.1. Right of entry to investigate releases of hazardous material, hazardous waste, or regulated substances.

A. The fire marshal shall have the right, if authorized by the governing body of the county, city, or town appointing the fire marshal, to enter upon any property from which a release of any hazardous material, hazardous waste, or regulated substance, as defined in § 10.1-1400 or 62.1-44.34:8, has occurred or is reasonably suspected to have occurred and which has entered into the ground water, surface water or soils of the county, city or town in order to investigate the extent and cause of any such release.

B. If, in undertaking such an investigation, the fire marshal makes an affidavit under oath that the origin or cause of any such release is undetermined and that he

has been refused admittance to the property, or is unable to gain permission to enter the property, any magistrate serving the city or county where the property is located may issue an investigation warrant to the fire marshal authorizing him to enter such property for the purpose of determining the origin and source of the release. After issuing a warrant under this section, the magistrate shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the fire marshal shall return the warrant to the clerk of the circuit court of the city or county wherein the investigation was made.

C. If the fire marshal, after gaining access to any property pursuant to such investigation warrant, has probable cause to believe that the release was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained or consent to conduct the search has otherwise been given.

§ 27-98.2. Issuance of warrant.

Search warrants for inspections or reinspection of buildings, structures, property, or premises subject to inspections pursuant to the Code, to determine compliance with regulations or standards set forth in the Code, shall be based upon a demonstration of probable cause and supported by affidavit. Such inspection warrants may be issued by any judge or magistrate having authority to issue criminal warrants whose territorial jurisdiction encompasses the building, structure, property or premises to be inspected or entered, if he is satisfied from the affidavit that there is probable cause for the issuance of an inspection warrant. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, thing or property to be inspected, examined or tested and the purpose for which the inspection, examination, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if such inspection, examination, testing or collection of samples for testing are necessary to ensure compliance with the Fire Prevention Code for the protection of life and property from the hazards of fire or explosion. The supporting affidavit shall contain either a statement that consent to inspect, examine, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the fire safety laws, regulations or standards of the Commonwealth which authorize such inspection, examination, testing or collection of samples for testing. In the case of an inspection warrant based upon legislative or administrative standards for selecting buildings, structures, property or premises for inspections, the affidavit shall contain factual allegations sufficient to justify an independent determination by the judge or magistrate that the inspection program is based on reasonable standards and that the standards are being applied to a particular place in a neutral and fair manner. The issuing judge or magistrate may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit. After issuing

the warrant, the judge or magistrate shall file the affidavit in the manner prescribed by § 19.2-54.

§ 27-98.3. Duration of warrant.

An inspection warrant shall be effective for the time specified therein, for a period of not more than seven days, unless extended or renewed by the judicial officer who signed and issued the original warrant. The judicial officer may extend or renew the inspection warrant upon application for extension or renewal setting forth the results which have been obtained or a reasonable explanation of the failure to obtain such results. The extension or renewal period of the warrant shall not exceed seven days. The warrant shall be executed and returned to the ~~judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time~~ clerk of the circuit court of the city or county wherein the inspection was made. The return shall list any samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

§ 27-98.5. Review by courts.

A. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the ~~issuing judge or magistrate~~ clerk of the circuit court of the city or county wherein the inspection was made except as a defense in a contempt proceeding, unless the owner or custodian of the building, structure, property or premises to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the inspection warrant and (ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera view as the court may deem appropriate.

B. After the warrant has been executed and returned to the ~~issuing judge~~ clerk of the circuit court of the city or county wherein the inspection was made, the validity of the warrant may be reviewed either as a defense to any citation issued by the fire official or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge unless the owner, operator, or agent in charge of whose building, structure, property or premises has been inspected makes a substantial showing by affidavit accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The review shall only determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of

elevators; issuance of permits.

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Any person aggrieved by the local building department's application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town situated within their respective boundaries.

B. New construction. Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than $2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. A building official may issue an annual permit for any construction regulated by the Building Code. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

C. Existing buildings and structures.

1. Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

2. Complaints by tenants. However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such

provisions.

3. Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may ~~present sworn testimony to~~ make an affidavit under oath before a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the local building official or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

4. Transfer of ownership. If the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement action shall continue to be enforced against the owner.

5. Elevator, escalator, or related conveyance inspections. The local governing body shall, however, inspect and enforce the Building Code for elevators, escalators, or related conveyances, except for elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an agency or department designated by the local governing body.

6. A locality may require by ordinance that any landmark, building or structure that contributes to a district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board unless the local maintenance code official consistent with the Uniform Statewide Building Code, Part III Maintenance, determines that it constitutes such a hazard that it shall be razed, demolished or moved.

For the purpose of this subdivision, a contributing landmark, building or structure is one that adds to or is consistent with the historic or architectural qualities, historic associations, or values for which the district was established pursuant to §

15.2-2306, because it (i) was present during the period of significance, (ii) relates to the documented significance of the district, and (iii) possesses historic integrity or is capable of yielding important information about the period.

7. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals. For purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business hours established by the locality. Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the maintenance code official for the locality.

D. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a building permit as otherwise provided under this chapter, however, notwithstanding any provision of law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on the owner's property, such applicant shall not be denied a permit under the Building Code solely upon the basis that the property owner has financial obligations to the locality that constitute a lien on such property in favor of the locality. If such applicant is the property owner, in addition to payment of the fees for issuance of a building permit, the locality may require full payment of any and all financial obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For purposes of this subsection, "property owner" means the owner of such property as reflected in the land records of the circuit court clerk where the property is located, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent.

§ 40.1-49.9. Issuance of warrant.

Administrative search warrants for inspections of workplaces, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued by any judge having authority to issue criminal warrants whose territorial jurisdiction encompasses the workplace to be inspected or entered, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the issuance of an administrative search warrant. No administrative search warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, things or persons to be inspected or tested and the purpose for which the inspection, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if either (i) reasonable legislative or administrative standards for conducting such inspection, testing or collection of samples for testing are satisfied

with respect to the particular place, thing, or person, or (ii) there is cause to believe that there is a condition, object, activity, or circumstance which legally justifies such inspection, testing or collection of samples for testing. The supporting affidavit shall contain either a statement that consent to inspect, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the occupational safety and health laws, regulations or standards of the Commonwealth which authorize such inspection, testing or collection of samples for testing. In the case of an administrative search warrant based on legislative or administrative standards for selecting workplaces for inspection, the affidavit shall contain factual allegations sufficient to justify an independent determination by the judge that the inspection program is based on reasonable standards and that the standards are being applied to a particular workplace in a neutral and fair manner. For example, if a selection is based on a particular industry's high hazard ranking, the affidavit shall disclose the method used to establish that ranking, the numerical basis for that ranking, and the relevant inspection history of the workplace to be inspected and the status of all other workplaces within the same territorial region which are subject to inspection pursuant to the legislative or administrative standards used by the Commissioner. The affidavit shall not be required to disclose the actual schedule for inspections or the underlying data on which the statistics were based, provided that such statistics are derived from reliable, neutral third parties. The issuing judge may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit. After issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by § 19.2-54.

§ 40.1-49.10. Duration of warrant.

Any administrative search warrant issued shall be effective for the time specified therein, but not for a period of more than fifteen days, unless extended or renewed by the judicial officer who signed and issued the original warrant. The warrant shall be executed and shall be returned to the ~~judicial officer by whom it was issued~~ clerk of the circuit court of the city or county wherein the inspection was made within the time specified in the warrant or within the extended or renewed time. The return shall list any records removed or samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

§ 40.1-49.12. Review by courts.

A. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return ~~to the issuing judge~~, except as a defense in a contempt proceeding, unless the owner or custodian of the place to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the administrative search warrant and

(ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera review as the court may deem appropriate.

B. After the warrant has been executed and returned ~~to the issuing judge~~, the validity of the warrant may be reviewed either as a defense to any citation issued by the Commissioner or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge unless the employer whose workplace has been inspected makes by affidavit a substantial showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The reviewing court shall not conduct a de novo determination of probable cause, but only determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

§ 63.2-1718. Inspection of unlicensed child or adult care operations; inspection warrant.

In order to perform his duties under this subtitle, the Commissioner may enter and inspect any unlicensed child or adult care operation with the consent of the owner or person in charge, or pursuant to a warrant. Administrative search warrants for inspections of child or adult care operations, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued ex parte by any judge having authority to issue criminal warrants whose territorial jurisdiction includes the child or adult care operation to be inspected, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the inspection. The affidavit shall contain either a statement that consent to inspect has been sought and refused, or that facts and circumstances exist reasonably justifying the failure to seek such consent. Such facts may include, without limitation, past refusals to permit inspection or facts establishing reason to believe that seeking consent would provide an opportunity to conceal violations of statutes or regulations. Probable cause may be demonstrated by an affidavit showing probable cause to believe that the child or adult care operation is in violation of any provision of this subtitle or any regulation adopted pursuant to this subtitle, or upon a showing that the inspection is to be made pursuant to a reasonable administrative plan for the administration of this subtitle. The inspection of a child or adult care operation that has been the subject of a complaint pursuant to § 63.2-1728 shall have preeminent priority over any other inspections of child or adult care operations to be made by the Commissioner unless the complaint on its face or in the context of information known to the Commissioner discloses that the complaint has been brought to harass, to retaliate, or otherwise to achieve an improper purpose, and that the improper purpose casts serious doubt on the veracity of the complaint. After issuing a warrant under this section, the judge shall file the affidavit in the manner

prescribed by § 19.2-54. Such warrant shall be executed and returned to the clerk of the circuit court of the city or county wherein the inspection was made.

II.
Recommended Changes to Rules of Court

BACKGROUND

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

In 1974, the Judicial Council of Virginia established the Advisory Committee on Rules of 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.

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

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

Virginia Code § 8.01-3 addresses the Court's rulemaking authority and makes clear that enactments of the General Assembly trump any contrary provisions of rules of court. At its meeting on May 20, 2013, the Judicial Council voted to support the following recommendations from the Advisory Committee on Rules of Court to bring specific rules into conformity with changes to the Code of Virginia made by the 2013 Acts of Assembly:

Rule 2:706	Use of Learned Treatises with Experts (Rule 2:706(a) derived from Code § 8.01-401.1), amended to conform to Senate Bill 983, 2013 Acts of Assembly, Ch. 379.
Rule 2:804	Hearsay Exceptions Applicable Where the Declarant Is Unavailable (Rule 2:804(b)(5) derived from Code § 8.01-397),

amended to conform to House Bill 1477, 2013 Acts of Assembly, Ch. 61, and Senate Bill 1122, 2013 Acts of Assembly, Ch. 637.

Rule 3:20 Summary Judgment, amended to conform to House Bill 1708, 2013 Acts of Assembly, Ch. 76.

Rule 4:7 Use of Depositions in Court Proceedings, amended to conform to House Bill 1708, 2013 Acts of Assembly, Ch. 76.

Rule 5:7B and Form 12 Petition for a Writ of Actual Innocence (Supreme Court of Virginia), amended to conform to House Bill 1308, 2013 Acts of Assembly, Ch. 170, and House Bill 1432, 2013 Acts of Assembly, Ch. 180.

Rule 5A:5 and Form 12 Petition for a Writ of Actual Innocence (Court of Appeals of Virginia), amended to conform to House Bill 1308, 2013 Acts of Assembly, Ch. 170, and House Bill 1432, 2013 Acts of Assembly, Ch. 180.

These rules were amended by Orders of the Supreme Court of Virginia dated June 21, 2013, effective July 1, 2013.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL IN 2013 PENDING ACTION BY THE SUPREME COURT OF VIRGINIA

The Advisory Committee on Rules of Court presented another recommendation to the Judicial Council at its meeting on November 4, 2013. The proposed changes are the product of the Rule 1:18 Study Group of the Boyd-Graves Conference. The rationale behind the proposal is to remove the awkward and time-consuming procedure currently in place for entering a Uniform Pretrial Scheduling Order while still preserving the rights of the parties to object or to submit an agreed to Scheduling Order. To that end, the proposed revision to Rule 1:18 eliminates the current requirement of 14 days advance notice to counsel before the court may enter a Uniform Pretrial Scheduling Order, while preserving the discretion of counsel to submit an agreed to order or object to the terms of an order issued sua sponte by the court. The Judicial Council voted to recommend these proposed changes to the Supreme Court of Virginia.

Rule 1:18 Pretrial Scheduling Order