

2002

JUDICIAL COUNCIL OF VIRGINIA

*REPORT TO THE GENERAL ASSEMBLY
AND SUPREME COURT OF VIRGINIA*

2002

Judicial Council of Virginia

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

General Information for Individuals With Disabilities

The Court System has adopted a policy of non-discrimination in both employment and in access to its facilities, services, programs and activities. Individuals with disabilities who need accommodation in order to have access to court facilities or to participate in court system functions are invited to request assistance from court system staff. Individuals (not employed by the court system) with disabilities who believe they have been discriminated against in either employment or in access may file a grievance through local court system officials. Those who need printed material published by the court system in another format, those who have general questions about the court system in another format or those who have general questions about the court system's non-discrimination policies and procedures may contact the Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219. The telephone number is 804/786-6455; communication through a telecommunications device (TDD) is also available at this number.

**The Judicial Council of Virginia
2002 Report to the General Assembly and Supreme Court of Virginia
Supreme Court of Virginia, Richmond, 2003**



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REPORTER OF DECISIONS
KENT SINCLAIR

January 8, 2003

TO: Members of the General Assembly and Justices of the Supreme Court

Since 1981, I have had the pleasure of submitting to you this annual report summarizing the court system's major developments and activities. However, it is time for me to bid you adieu. On January 31st, I shall retire after serving for 42 years on the Supreme Court of Virginia, and the past 22 years as Chief Justice. In August, the Supreme Court elected Justice Leroy R. Hassell, Sr. to be my successor. For me, there is no higher honor than to have served in the Virginia judiciary. For this, I express deep appreciation to members of the General Assembly, past and present, for the privilege and for the steadfast support we have received over the years to establish and maintain an excellent judicial system.

As I contemplate my time as Chief Justice, I am amazed at the transformation achieved in the past few decades alone. This year marks the 30th anniversary of the reorganization of the court system. That landmark legislation resulted in all of Virginia's courts being presided over by full-time, legally trained judges. The district court system was created. Salaried magistrates replaced fee-funded justices of the peace. Uniformity of practice and procedure was enhanced throughout the system and administration of the courts at the state level was strengthened. Then, in 1985, the critical lack of appellate capacity was addressed through legislation creating the Court of Appeals of Virginia. Automation and technology solutions have been implemented throughout the court system and have dramatically improved upon our efficiency and ability to provide cost-effective service to citizens. Judicial education and training for all court system personnel has enabled our workforce to stay current both with changes in the law and contemporary business management practices.

I am enormously proud of all that has been achieved within our system and by judges and court personnel whom I consider to be second to none. Yet, clear challenges remain as the judiciary fulfills its role as a core function of government. In this regard and on behalf of every judge and court employee, let me again express my appreciation to Governor Warner and the 2002 General Assembly for taking the difficult steps necessary to provide sufficient funding for the courts to remain open and accessible to citizens during the budget crisis. Please be assured that by taking additional voluntary reductions, we acknowledge our obligation to reduce expenditures to address the budget crisis. As one small means of doing so, this year we are submitting the *Report of the Judicial Council of Virginia* to you by electronic means. It is accessible on the judiciary's website and may be found at www.courts.state.va.us.

I send this letter to bid you farewell and sincere best wishes. For all that has been accomplished, much remains to be done. I leave with confidence that in the years to come we will maintain the cooperative spirit that exists today between the judiciary and the two other branches of government. Our citizens deserve no less, and working together, I am certain that we can provide a court system worthy of their respect.

Sincerely,



Harry L. Carrico



Judicial Council Report 2002

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The Judicial Council of Virginia

The Honorable Harry L. Carrico	Chief Justice of Virginia
The Honorable Johanna L. Fitzpatrick	Chief Judge, Court of Appeals of Virginia
The Honorable Charles E. Poston	Judge, Fourth Judicial Circuit
The Honorable Randall G. Johnson	Judge, Thirteenth Judicial Circuit
The Honorable Paul M. Peatross, Jr.	Judge, Sixteenth Judicial Circuit
The Honorable Joanne F. Alper	Judge, Seventeenth Judicial Circuit
The Honorable William N. Alexander, II	Chief Judge, Twenty-second Judicial Circuit
The Honorable Birg E. Sergent	Judge, Thirtieth Judicial Circuit
The Honorable William R. Moore, Jr.	Judge, Fifth Judicial District (J&DR)
The Honorable Suzanne K. Fulton	Judge, Thirtieth Judicial District (General)
The Honorable Kenneth W. Stolle	Member, Senate of Virginia
The Honorable James F. Almand	Member, Virginia House of Delegates*
The Honorable William J. Howell	Member, Virginia House of Delegates
William G. Broaddus, Esq.	Attorney-at-law
Allen C. Goolsby, III, Esq.	Attorney-at-law
Robert N. Baldwin, Esq.	Ex-officio Secretary

*By invitation of the Chief Justice of Virginia



Committees of the Judicial Council of Virginia

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The Honorable Harry L. Carrico, Chief Justice, Chair
The Honorable Johanna L. Fitzpatrick, Chief Judge
The Honorable Charles E. Poston, Judge

Information and Public Relations Committee

The Honorable Johanna L. Fitzpatrick, Chief Judge, Chair
The Honorable Paul M. Peatross, Jr., Judge
Mr. Allen C. Goolsby, III, Esquire

Ex-Officio:

The Honorable Colin R. Gibb, Judge, Chair, Information and Public Relations Committee,
Judicial Conference of Virginia
The Honorable Joi J. Taylor, Chief Judge, Chair, Information and Public Relation
Committee, Judicial Conference of Virginia for District Courts

Criminal Procedure Committee

The Honorable James F. Almand, Virginia House of Delegates

Ex-Officio:

The Honorable Leroy J. Millette, Jr., Chief Judge, Chair, Probation, Parole and Corrections
Committee, Judicial Conference of Virginia
The Honorable William D. Broadhurst, Judge, Chair, Probation, Parole and Corrections
Committee, Judicial Conference of Virginia for District Courts

Judicial Administration Committee

The Honorable Charles E. Poston, Chief Judge, Chair
The Honorable Suzanne K. Fulton, Judge
The Honorable Johanna L. Fitzpatrick, Chief Judge
Mr. William G. Broaddus, Esquire

Ex-Officio:

The Honorable James H. Chamblin, Judge, Chair, Judicial Administration Committee,
Judicial Conference of Virginia
The Honorable Bonnie C. Davis, Judge, Chair, Judicial Administration Committee, Judicial
Conference of Virginia for District Courts

Judicial Compensation, Retirement and Insurance Committee

The Honorable Suzanne K. Fulton, Judge, Chair

The Honorable William R. Moore, Jr., Judge

The Honorable Diane McQ. Strickland, Judge*

Ex-Officio:

The Honorable Marc Jacobson, Chief Judge, Chair, Judicial Compensation, Retirement and Insurance Committee, Judicial Conference of Virginia

The Honorable Vincent A. Lilley, Judge, Chair, Judicial, Compensation, Retirement and Insurance Committee, Judicial Conference of Virginia for District Courts

Judicial Conduct Committee

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Mr. Allen C. Goolsby, III, Esquire

Ex-Officio:

The Honorable J. Michael Gamble, Judge, Chair, Judicial Conduct Committee, Judicial Conference of Virginia

The Honorable R. Larry Lewis, Chief Judge, Chair, Judicial Conduct Committee, Judicial Conference of Virginia for District Courts

Judicial Education Committee

The Honorable Paul M. Peatross, Jr., Judge, Chair

The Honorable Charles E. Poston, Judge

Ex-Officio:

The Honorable Dennis J. Smith, Judge, Chair, Judicial Education Committee, Judicial Conference of Virginia

The Honorable Philip A. Wallace, Judge, Chair, Judicial Education Committee, Judicial Conference of Virginia for District Courts

Law Revision Committee

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The Honorable William R. Moore, Jr., Judge

The Honorable William J. Howell, Virginia House of Delegates

Ex-Officio:

The Honorable Archer L. Yeatts, III, Chief Judge, Chair, Law Revision Committee, Judicial Conference of Virginia for District Courts

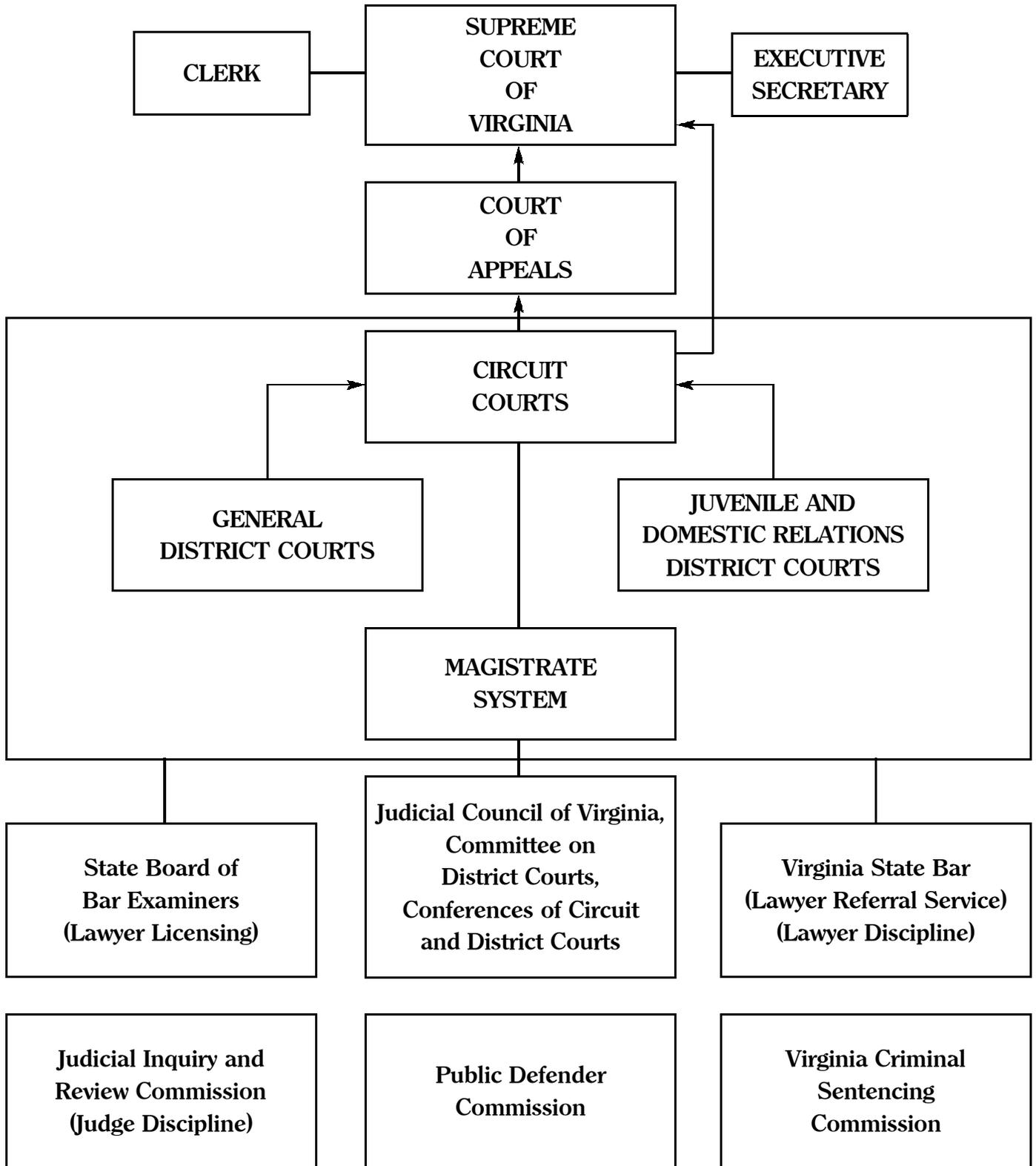
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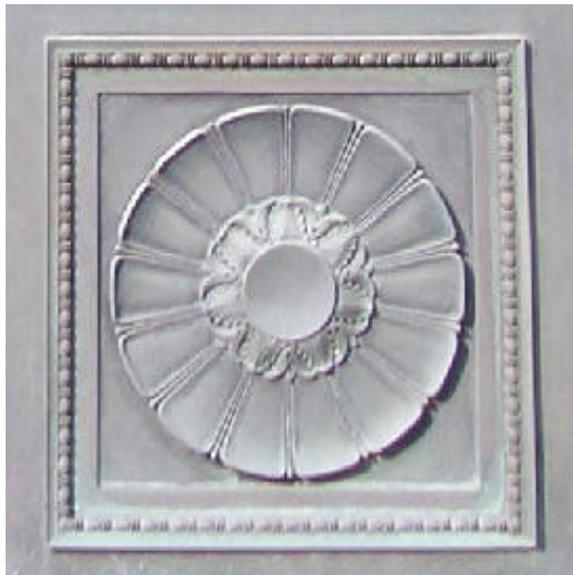
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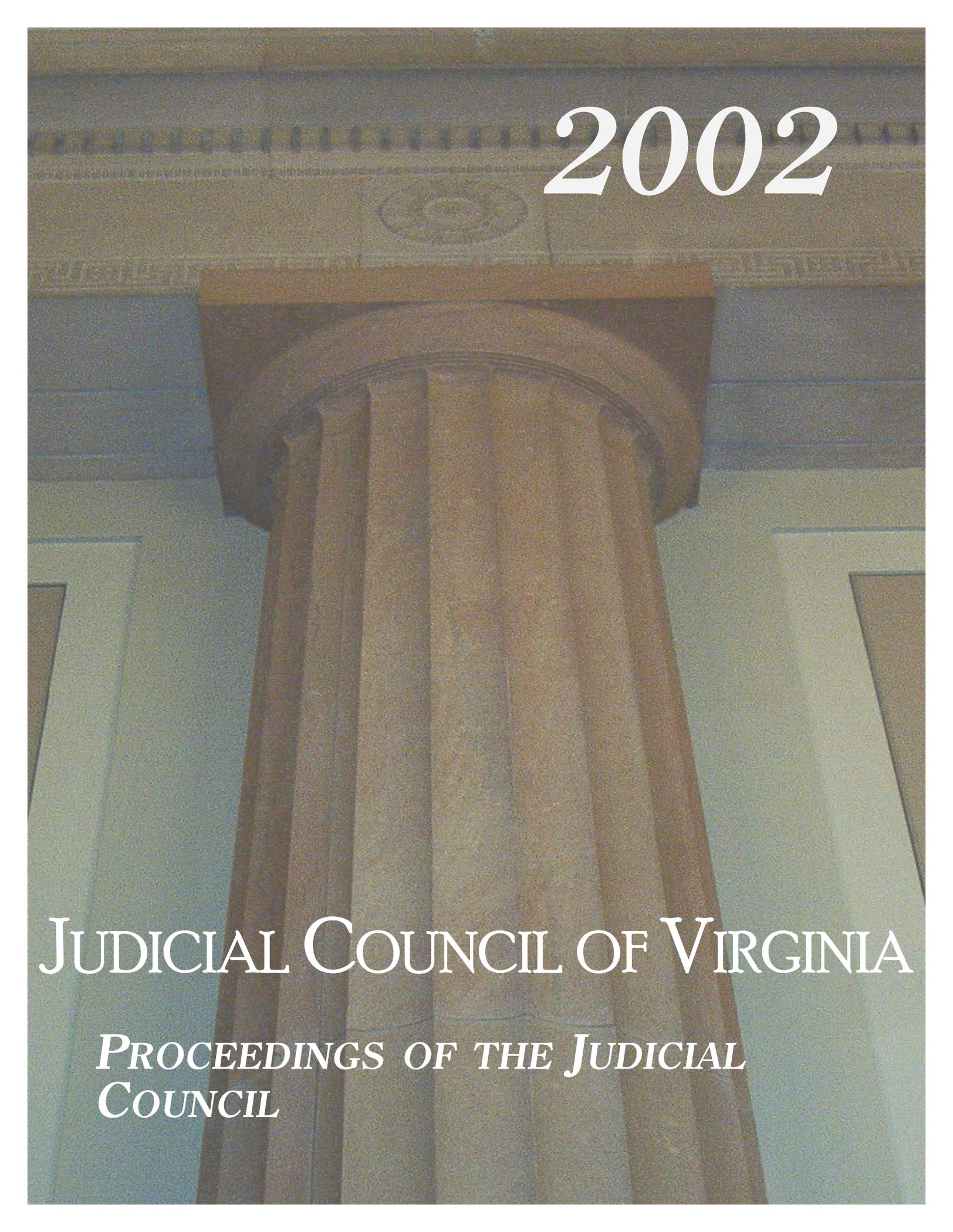
Virginia Judicial Branch



← Route of Appeal







2002

JUDICIAL COUNCIL OF VIRGINIA

*PROCEEDINGS OF THE JUDICIAL
COUNCIL*

Chapter 1

Proceedings of the Judicial Council of Virginia

INTRODUCTION

The Judicial Council of Virginia was established by statute in 1930 and is charged with the responsibility of making a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth of Virginia. It is responsible for examining the work accomplished and results produced by the judicial system and its individual offices and courts. Central to meeting these responsibilities is the preparation and publication of the court system's biennial comprehensive plan.

During 2002, the judiciary continued to make progress under the strategic plan for 2002-2004, *Bringing the Future to Justice: Charting the Course in the New Dominion*. The Judicial Council presents in this report a status report on the plan's implementation in order to inform members of the General Assembly, judges and court personnel, the Bar, media, and the public about the judiciary's efforts to better serve the citizens of Virginia.

This report also sets forth the legislative recommendations of the Judicial Council for the 2003 Session of the General Assembly and reviews various other activities of the Council throughout 2002.

LEGISLATIVE PROPOSALS FOR THE 2003 SESSION OF THE GENERAL ASSEMBLY

Petitions for Writs of Actual Innocence

The Judicial Council recommends an amendment to § 19.2-327.3. This code section provides that the Supreme Court of Virginia shall not accept Petitions for Writs of Actual Innocence unless they are accompanied by a duly executed return of service verifying that a copy of the petition has been served on certain officials. While the code section does not recognize acceptance of service as a means of this verification, such acceptance seems appropriate, efficient, and is not objected to by the Attorney General. The Council believes that the statute should specifically authorize such acceptance and that it should make clear that the Attorney General's response must be within 30 days after receipt of

I

Chapter 1

the record by the clerk of the Supreme Court. Currently, the statute merely provides "after receipt of the record." Given that the record does not actually go to the Attorney General, the statute should specify that receipt refers to receipt by the clerk.

Guidelines for Compensation of Court Foreign Language Interpreters

Pursuant to statutes regarding foreign language interpreter appointments, the compensation of an interpreter appointed by the court is currently fixed by the court. It is within the court's discretion to determine fair and reasonable rates of reimbursement for interpreters for non-English-speaking persons. The Judicial Council recommends amendments to § 19.2-164 and § 8.01-384.1:1 which would allow the Council to establish guidelines for the reimbursement of these interpreters in order to facilitate uniformity of compensation.

Rules of Court on the Internet

Currently, amendments to the Rules of Court are placed on the Internet as soon as they are adopted. This is the primary source for the bench, Bar, and public to become aware of Rule changes. They are also published in the Virginia's Lawyer's Weekly and finally published in the Code of Virginia. The proposed amendments to § 8.01-3B and § 17.1-318 delete the printing and distribution requirement and substitutes that they will be made available to the courts, Bar, and public. The Council also recommends that the requirement of circuit court clerks to keep a special book of these amendments be deleted. Adoption of this proposal would require the repeal of § 17.1-318. The proposed changes would save approximately \$7,500 each year.

Payment of Juror Fees in Non-Suits

The Council recommends that § 8.01-380 be amended by inserting a new paragraph which allows the circuit court in its discretion, if notice to take a nonsuit of right is exercised at trial or within twenty-four hours prior to the beginning of trial, to assess against the nonsuiting party any costs actually incurred in summoning or impaneling jurors for the trial.

Designation of Circuit Court Judges to Sit in the District Courts

The Council recommends that the language of § 16.1-69.35 be amended to allow a chief district court judge to request that the Chief Justice of the Supreme Court designate a circuit judge to hear cases in the district court when no retired district court judge is available.

Commissioners of Accounts Legislation

After study and consideration of recommendations from the Standing Committee on Commissioners of Accounts, the Judicial

Council recommends to the General Assembly statutory amendments to the following sections:

§§ 8.01-606, 26-4, and 37.1-144. These sections pertain to the administration of small amounts held by fiduciaries. The dollar limits are increased to \$15,000, which is consistent with the changes that have been made to similar sections in the past three years. A few non-substantive clarifying changes are also recommended.

§ 58.1-1712. The proposed amendment raises the limit under which no probate tax will be assessed to \$15,000. Again, this is consistent with the changes in the last three years to deem "small estates" to be \$15,000 or less.

§ 26-8. The section is revised to require that a Commissioner of Accounts be an attorney-at-law. According to the Standing Committee on Commissioners of Accounts, all present Commissioners are attorneys.

§§ 26-13 and 26-15. Amendments recommended to these sections would require a Commissioner of Accounts to report to the Virginia State Bar any attorney/fiduciary who fails to file a proper Inventory or account of a foreclosure after being summoned to do so. This is consistent with the current obligation of a Commissioner to report an attorney/fiduciary who does not file a proper account for an estate, trust, guardianship, or conservatorship.

§ 26-20. Proposed amendments would correct language that is outdated because of recent statutory changes.



Chapter 2

Bringing the Future to Justice: Status Report on the Implementation of the Judiciary's 2002-2004 Strategic Plan

INTRODUCTION

In October 2001, the Judicial Council of Virginia adopted its FY 2002 - 2004 Strategic Plan for the judiciary. Entitled *Bringing the Future to Justice: Charting the Course in the New Dominion*, the Plan contains 132 action items to be undertaken during the biennium. This report describes the progress to date in implementing selected tasks within the Plan.

Vision 1

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

Objective 1.1

To utilize technology to make court records more accessible to the public in a manner consistent with legitimate expectations for privacy.

Task 1.1.1

Expand Internet access to trial and appellate court records.

A total of 84 circuit courts, 80 general district courts, and 52 of the general district side of combined courts now have abstracts of the court records on the internet. The Office of the Executive Secretary (OES) is placing the public version of the Case Management System for the Court of Appeals from the Law Office Public Access System onto the Internet. Planning for the placement of appellate court data on the Internet will begin in January, 2003.

Tasks 1.1.2

Participate in the legislative study on the protection of information contained in the records, documents and cases filed in the courts of the Commonwealth.

The joint subcommittees met throughout the summer and fall and will recommend four legislative proposals to the 2003 Session of the General Assembly. First, the group will propose that the study resolution be continued

Vision 1

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

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Chapter 2

The Judiciary's Mission

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

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Vision 1

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

Vision 2

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

Vision 3

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

Vision 4

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

Vision 5

The courts of Virginia will be administered in accordance with sound management practices which foster the efficient use of public resources and enhance the effective delivery of court services.

Vision 6

The court system will be adequately staffed by judges and court personnel of the highest professional qualifications, chosen for their positions on the basis of merit and whose performance will be enhanced by continuing education and performance evaluations. Lawyers, who constitute an essential element in the legal system, will receive a quality pre-professional and continuing education befitting the higher professional and ethical standards to which they will be held, and the need to become increasingly service-oriented in their relationships with clients.

Vision 7

Technology will increase the access, convenience and ease of use of the courts for all citizens, and will enhance the quality of justice by increasing the courts' ability to determine facts and reach a fair decision.

Vision 8

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

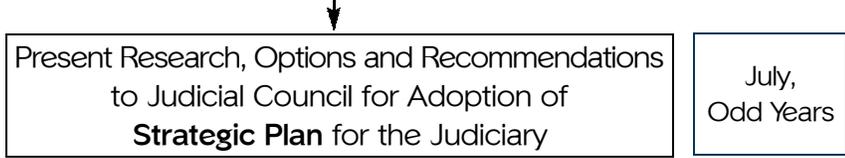
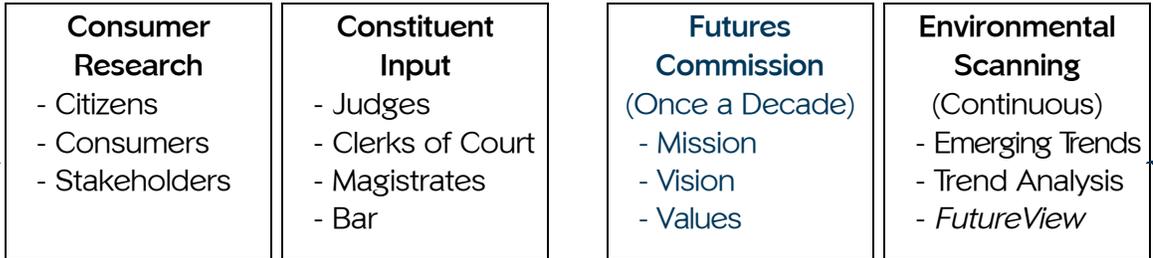
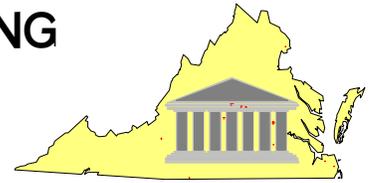
Vision 9

The impact of changing socio-economic and legal forces will be systematically monitored and the laws of Virginia will provide both the substantive and procedural means for responding to these changes.

Vision 10

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

THE JUDICIARY'S STRATEGIC PLANNING AND MANAGEMENT SYSTEM



Chapter 2

with a reporting date of the 2005 Session of the General Assembly. This will allow the Office of the Executive Secretary an opportunity to secure grant funds in order to conduct the legal research necessary for a comprehensive review of the issue. Second, legislation will be proposed creating a cover order in domestic relations cases which will provide that all sensitive information be in this order which would be sealed thus allowing the remaining portions of the file to continue as open. Third, legislation will be introduced requiring online access to land records to be through a system of registration and payment of a subscription fee. This procedure would serve as a gate-keeping mechanism to avoid general browser access to sensitive information in land records. Finally, legislation will be introduced to give circuit court clerks the authority to refuse to file any land record documents containing social security numbers.

Task 1.1.3

Establish Internet access to land records in the circuit courts.

Nine courts currently have data available in a pilot program. The data is being updated automatically from the court's Unix server through a replication function contained in the Informix database to the Internet Unix server. At their request, additional courts are being added to the pilot.

Objective 1.2

To provide for improved accessibility to court programs and facilities.

Task 1.2.2

Implement the use of computer technology for the visually impaired.

Oversize monitors have been made available for court personnel who require them. Much of the Court Home Page is text only format which allows the visually impaired to read the text version or with voice text reader software loaded on their personal computer. The judiciary will continue to make its Home Page available in text only format and provide oversize monitors for personnel when needed.

Task 1.2.6

Encourage courts to post multi-language signs in the courts and magistrate offices, where appropriate.

Circuit and district court clerks have been surveyed as to which types of signage they most need in a language other than English. Signs identified through this process are being translated into Spanish, and will be posted on the judicial branch's Intranet so that judges and court personnel can obtain the translated signs for use in their courthouses.

Task 1.2.9

Provide all courts with more efficient and cost-effective access to qualified foreign language interpreters by contracting for a statewide telephone interpreter service.

In August, 2002, the Office of the Executive Secretary signed a contract for the provision of telephone interpreter services statewide. The service offers interpretation in more than 160 languages and is available 24/7. Information on the services available through this contract and the means for accessing them was distributed to all judges, court clerks and magistrates. Generally, such services should be limited to emergency matters or short (about 30 minutes) non-emergency matters when no on-site interpreter is reasonably available. Since its initiation, the service has been used for 90 - 100 telephone interpretations each month.

Objective 1.3

To eliminate economic barriers to legal representation.

Task 1.3.1

Conduct a Pro Se Litigant Planning Committee to study issues relating to pro se litigation in Virginia and to create a statewide action plan for serving unrepresented persons.

This project has been completed. See Chapter 4 for details.

Task 1.3.2

Provide linkages on the court system's web page to relevant sites on legal aid offices and lawyer referral services throughout the state.

A link to the Legal Services Corporation of Virginia web site has been added to Virginia's Judicial System Home Page to provide an additional means for citizens to be referred to legal aid offices and services.

Objective 1.4

To facilitate the courts' resolution of disputes in a timely and efficient manner.

Task 1.4.1

Conduct a comprehensive statewide program to improve the docketing and calendar management procedures in circuit courts, including the development of an automated scheduling component to support segmented docketing procedures.

Three major components comprise the statewide program to improve the docketing and calendar management in the circuit courts: multi-court training conferences on the calendar management and delay reduction con-

Chapter 2

cepts and techniques, technical assistance to individual courts, and development of automated scheduling programs and management information resources to support circuit court calendar management programs. An eleven member Advisory Committee was established to design and develop the training conferences, to review calendar management reports and to define requirements for an automated scheduling system for circuit courts. In 2001, teams from eight circuit courts participated in an intensive, three day calendar management and delay reduction training conference. During 2002, the Advisory met to develop general design requirements for an automated scheduling component in circuit courts. Funding is being sought to continue and to expand programs to improve circuit court docketing and calendar management procedures, including conducting two additional calendar management conferences.

Task 1.4.2

Implement time-segmented dockets statewide in the district courts in order to reduce waiting time and inconvenience for the public and enhance the dignity of all court proceedings.

A calendar management component has been incorporated into all management analysis visits made to general district courts. Extended support services are offered if courts select to undergo a comprehensive calendar management initiative. Additionally the use of segmented dockets is promoted in all routine technical assistance visits.

Objective 1.5

To improve the quality of the court system's handling of juvenile and family law matters.

Task 1.5.1

Continue to support the courts' efforts to comply with the Adoption and Safe Families Act of 1997.

Extensive training is being provided to support the courts' efforts to comply with the Adoption and Safe Families Act of 1997, which requires the expedited placement of abused, neglected and foster children in safe, permanent homes and to promote the well-being of children in agency care. A collaborative, cross-disciplinary training program has been developed and is delivered upon request to local court teams. This course provides the information, tools and resources necessary to practitioners for implementation of state laws, procedures and best practices that are predicated on the requirements of the federal law and designed to improve court processes and practices in child dependency cases.

Task 1.5.2

Implement a management information system to track child abuse and neglect and foster care cases, including a related-case cross-referencing capability.

The database modeling effort has been completed as part of the conversion of the existing J&DR case management to a new DB2 database. Work is in progress for the designing of detail screens and reports as part of first phase effort.

Task 1.5.5

Conduct six regional training conferences for staff of the juvenile and domestic relations district courts focusing on needed improvements for case processing in child dependency cases.

This task was completed as of 11/01/01.

Task 1.5.6

Evaluate Parent Education Seminars throughout the Commonwealth.

The Office of the Executive Secretary (OES) was requested by the 2000 General Assembly, pursuant to House Bill 1178, to develop and disseminate information to the 2003 General Assembly regarding: 1) the number and geographic availability of parent education seminars, 2) the actual cost of providing such seminars as reported by the participating programs, and 3) any feedback from judges regarding the effect of mandating seminar participation by court order.

Following the passage of HB 1178, the OES developed a list of parent education programs with information provided from the courts and placed it on the judiciary's home page. Several training sessions were held to inform judges about the new parent education mandate. Parent education programs were requested to give parents attending the seminar an exit survey developed by OES in order to capture information on parent satisfaction with the course. In the fall of 2002, a survey was sent to the parent education providers to determine the cost of conducting such seminars. A separate survey was sent to all juvenile and domestic relations district court judges and circuit court judges to determine their impressions of the effect of the parent education mandate.

A report detailing the results of the surveys, fiscal information submitted by the parent education providers and the names and locations of the programs were delivered to the General Assembly in November 2002.

Highlights from the report include the following:

- *Responses from parents were overwhelmingly positive with more than 90% of the parents agreeing that the course taught them parenting and co-parenting skills and how to reduce parental conflict*

Chapter 2

- *More than two-thirds of the programs providing parent education seminars lost money over the last year in offering the program.*
- *More than two thirds of responding judges believe that the parent education mandate should continue as it exists. About one-third found that the seminar had no noticeable effects, while nearly 30 percent found that there is an increase in mediated agreements and less parental hostility in court.*

Task 1.5.7

Oversee the development of three pilot Dependency Mediation Programs, evaluate these pilots, and create Guidelines for Dependency Mediation Programs.

In the interest of exploring the benefits of child dependency mediation, the Office of the Executive Secretary funded three pilot dependency mediation projects for the 2001-2002 fiscal year. These projects were implemented in the City of Alexandria, Fairfax County and City of Lynchburg Juvenile and Domestic Relations District Courts. Each program experienced difficulties in obtaining cases. The main program challenge was obtaining the endorsement, or "buy-in," from all the parties, such as lawyers for the parents, and representatives from the department of social services. As one would expect with any new program, each party questioned if dependency mediation was in his best interest. Each site indicated that additional time in the planning stage would have been helpful. Each site experienced a significant increase in referred cases in the second half of the grant, but at that point the sites were too far into the grant to reach their caseload goals.

Despite these limitations, preliminary analysis revealed that approximately 77 percent of the mediated cases reached either full or partial agreement. This success rate is on the high end of what other studies have reported. Also, even when cases that did not reach a settlement were included, 96 percent of mediation participants indicated that they would use mediation again and would recommend mediation to others. Regarding the length of mediation, approximately 71 percent of mediated cases took only one session, and 65 percent took three hours or less to resolve.

In addition, the project generated valuable observations and recommendations for future child dependency mediation efforts in Virginia. These include the vital importance of judicial leadership and support as a catalyst for success. Another recommendation is that child dependency mediation be a permanent part of the court's infrastructure with a court coordinator assigned to assist judges with identifying appropriate cases for mediation. A planning phase of adequate length is seen as necessary to provide education about the benefits of mediation for judges, lawyers, department of social service representatives and others involved in the mediation process. Education

is important to get the endorsement of all parties involved before any actual mediation occurs. Education should continue after the planning stage to accommodate new professionals in the courts, bar and social services who become involved with the mediation process. Finally, mediators should be required to receive specific training and certification regarding issues and policy considerations important to child protection cases.

The Child Dependency Mediation pilot program was discussed during the Best Practices Conference sponsored by the Court Improvement Program in December, 2002. A report with suggested guidelines for courts considering a dependency program will be posted on the judiciary's Intranet.

Task 1.5.8

Secure funding to provide expanded technical assistance to local court improvement teams.

Grant funding to provide expanded technical assistance to local court improvement teams was pursued unsuccessfully from the State Justice Institute. However, the purpose of the funding is being satisfied through a new initiative entitled "Best Practice Courts," which utilizes existing OES staff and resources in partnership with the National Council of Juvenile and Family Court Judges to support local teams with directed technical assistance.

Task 1.5.9

Assess the handling of child dependency cases in the circuit courts to determine the extent and impact of delay on permanency for children.

In meeting and conference settings, initial feedback has been obtained on circuit court practices from professionals representing various child dependency case stakeholder groups: judges, court clerks, state and local departments of social services and their counsel, private child-placing agencies, Court Appointed Special Advocate Programs, and guardians ad litem for children. Possible sources of delay in circuit court handling of these cases have been identified and will be given particular focus in the development of an assessment model during 2003.

Task 1.5.11

Provide greater access to a broader range of dispute resolution options in family matters.

Pursuant to Section 20-124.4 of the Code of Virginia, mediation services are actively being provided in custody, visitation and support cases around the state. In fiscal year 2001-2002, approximately 6,000 court-connected family mediations were conducted.

Chapter 2

Vision 2

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

Objective 1.6

Enhance the security of courthouses both for the general public and all personnel who work within them.

Task 1.6.1

Establish a committee to study the security needs within courthouses and to issue minimum-security measures for all courthouses.

Documentation on guidelines or standards concerning the security of court facilities in all other states has been requested, including information they have developed or promulgated. Once gathered, this information will be reviewed and specific security measures, guidelines or standards will be developed for approval and incorporation into every court's Contingency Planning Manual.

Vision 2

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

Objective 2.2

To assist the trial courts in the development, implementation and evaluation of specialized criminal case management programs.

Task 2.2.1

Evaluate the cost effectiveness of drug court programs in Virginia and their impact on recidivism rates.

In 2002 the Office of the Executive Secretary received grant funding from the Department of Justice to conduct a comprehensive evaluation of Virginia drug court treatment programs. Four different types of evaluations are being conducted: 1) Process evaluations which describe the characteristics of the drug court programs and participants; 2) Impact evaluations which compare factors such as recidivism, drug usage rates, and family unification for drug court graduates in one jurisdiction with the same factors for drug offenders in another jurisdiction that does not have a drug court program; 3) Qualitative evaluations which define therapeutic components in drug court programs and develop research measures to allow scientific inquiry of therapeutic progress in drug courts; and 4) Cost benefit analysis which quantify cost savings resulting from drug court programs.

Process evaluations for the adult felony drug courts are being updated, and initial evaluations of the juvenile drug courts are underway. The evaluations provide a "snap shot" of the programs as they exist at the present time.

Rudimentary impact evaluations of several of the courts have been completed, and indicate that recidivism rates are unusually low for drug court graduates. Results from one juvenile drug court indicate that while higher than for graduates, the recidivism rate for individuals who entered but did not graduate from the program also are considerably lower than for similar offenders who were adjudicated and sentenced in the traditional way.

Five areas have been identified for cost benefit analysis: costs of drug court participation vs. incarceration; cost of children remaining in the family vs. placement in foster care; health care cost savings for babies born drug free to drug court participants, costs of lost work productivity due to incarceration vs. working drug court participants; and positive financial benefits for family and society stemming from work or school attendance requirements of drug court programs. Information on national cost benefit efforts is being gathered prior to developing a model for Virginia.

Task 2.2.2

Develop and implement a comprehensive drug court management information and evaluation system, including a drug case management component of the Courts Automated Information System.

A pc-based Virginia Drug Court Management Information System has been developed. The system was piloted in the Richmond Juvenile Drug Court. This system is now being refined in Roanoke and Charlottesville for use in circuit drug court programs. The system will be implemented in other drug court programs in 2003.

Task 2.2.4

Educate the judiciary, the bar, governmental agencies and the public on drug court programs and their effectiveness in resolving drug and alcohol related offenses.

Presentations on drug courts have been made to groups within and outside the judicial system, including Tidewater judges, Virginia Beach Court Appointed Special Advocates (CASAs), two public forums in Southwest Virginia, juvenile and domestic relations district court judges in Fairfax, and through programs at the Judicial Conference of Virginia. In addition, meetings have been held with judges and others in several jurisdictions considering or developing drug court programs.

Objective 2.3

To strengthen the jury system by improving the selection process and the jury's method of operation.

Chapter 2

Vision 3

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

Task 2.3.2

Develop a jury management system for smaller circuit courts.

OES will review the needed functions contained in the current vendor supplied system, as well as those in a smaller jury system that is currently being used by one Virginia circuit court.

Task 2.3.3

Update existing jury orientation materials to include guidance for the jury deliberation process.

Jury handbooks and videotapes are being updated.

Vision 3

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

Objective 3.1

To establish a comprehensive range of dispute resolution services in Virginia's circuits and districts.

Task 3.1.2

Revise and update the dispute resolution proceedings statutes.

Revisions to the Mediation and Dispute Resolution Proceedings statutes were proposed to the 2002 General Assembly and enacted. The primary substantive revisions included additional exceptions to the confidentiality provisions and a narrowing of immunity to only certified mediators. The changes went into effect July 1, 2002.

Task 3.1.3

Enhance understanding of the mediation process and its possible uses and encourage the referral of cases to mediation by the judiciary and the bar.

A presentation entitled Mediation Techniques for Judges was presented at the Judicial Institute in June. The Department of Dispute Resolution Services within the OES has been working in collaboration with the Virginia Mediation Network to develop a mediation info-disk. The disk provides information on: 1) the general use and benefits of mediation in many types of conflicts, 2) the role of the mediator, and 3) a description of the mediation process. The info-disk will be available in January 2003. It will be provided to courts around the state to describe to litigants the dispute resolution options available to them. It will also be made available to Virginia State Bar members to use to educate clients about mediation.

Task 3.1.4

Explore the feasibility and advisability of legislation allowing judges to refer minor criminal offenses to mediation or restorative justice programs.

The coalition of restorative justice providers has recently been formalized as Restorative Justice Association of Virginia (RJAVa). The Department of Dispute Resolution Services has been supporting the development of new restorative justice programs through mediation grants. There is a need for further education and information on restorative justice before efforts at legislation will be pursued.

Task 3.1.5

Explore the need for training and/or certification for neutrals providing services in specialized areas, including dependency mediation, adult guardianships, and restorative justice efforts.

Mediators have an ethical obligation to ensure that they are competent to handle the matter(s) before them in mediation. The need for additional training to conduct certain types of mediation is acknowledged. A decision as to whether special certification requirements are necessary to ensure mediators are competent to provide services in certain case types has not yet been made. The dependency mediation pilot project recommendations note specifically that mediators conducting dependency mediation should have specialized training.

Task 3.1.6

Seek funding to expand the number of dispute resolution coordinators in the trial courts in order to screen appropriate cases to mediation and to provide effective management of such cases.

Through funding from the General Assembly, in fiscal year 2002-2003, 57 contracts for mediation services were established. In addition, 23 contracts for mediation coordination services were secured.

Task 3.1.7

Support the provision of peer mediation and conflict resolution programs in the schools.

The Department of Dispute Resolution Services is exploring with the Young Lawyers Peer Mediation Committee and the VSB-VBA Section on Alternative Dispute Resolution the possibility of applying for a Virginia Law Foundation grant to support peer mediation training in the schools.

Chapter 2

Vision 4

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

Vision 4

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

Objective 4.1

To structure the judicial system in a manner that best enables the prompt, fair and cost-effective resolution of disputes.

Task 4.1.1

Propose legislation to authorize the Chief Justice to designate and temporarily assign any judge, with his or her consent, to sit at any trial court level.

Legislation to this effect was introduced but defeated at the 2002 Session of the General Assembly. A proposal will be submitted to the 2003 Session allowing the Chief Justice to designate circuit court judges to sit in district courts.

Objective 4.2

To simplify legal procedures to enhance judicial effectiveness and efficiency.

Task 4.2.3

Examine the feasibility of designing and implementing a model court order that addresses mental health services at the time of adjudication in cooperation with relevant executive branch agencies.

A report has been prepared and presented to the General Assembly's Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders. The report outlines the necessary precedent conditions to develop an appropriate model court order and concludes that the development of such an order is feasible.

Vision 5

The courts of Virginia will be administered in accordance with sound management practices which foster the efficient use of public resources and enhance the effective delivery of court services.

Objective 5.1

To enhance the administration of the courts by clarifying and reinforcing lines of authority and responsibility.

Task 5.1.2

Conduct a study on the effect of eliminating or limiting the use of Commissioners in Chancery on court caseloads.

The Pro Se Litigation Planning Committee recommended a study of the use of Commissioners in Chancery and the advisability of limiting and/or abolishing their use in domestic relations cases. In December 2002, the Judicial Council authorized a study of the use of Commissioners in Chancery in all cases to be completed under the auspices of the Council's Judicial Administration Committee.

Objective 5.2

To obtain full state funding of the court system.

Task 5.2.2

Secure increased funding to modernize the judicial system's technology infrastructure and service delivery systems.

Requests for these funds were not approved by the 2002 Session of the General Assembly due to severe revenue shortfalls.

Vision 6

The court system will be adequately staffed by judges and court personnel of the highest professional qualifications, chosen for their positions on the basis of merit and whose performance will be enhanced by continuing education and performance evaluations. Lawyers, who constitute an essential element in the legal system, will receive a quality pre-professional and continuing education befitting the higher professional and ethical standards to which they will be held, and the need to become increasingly service-oriented in their relationships with clients.

Objective 6.1

To ensure that the judicial system attracts and retains the most qualified persons for service on the bench.

Task 6.1.1

Secure legislative adoption of merit selection of judges in order to recruit and to elect the most qualified judiciary.

Legislation creating a Judicial Nomination Commission process was defeated by the General Assembly.

Task 6.1.2

Secure increases in salaries for judges and justices in order to maintain compensation levels which are attractive enough to encourage qualified

Vision 5

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Chapter 2

Vision 6

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individuals to choose a judicial career.

Requests for judicial salary increases were not approved by the 2002 Session of the General Assembly due to the dire budget situation of the state.

Task 6.1.3

Seek funding to pilot the use of the judicial performance evaluation system endorsed by the Supreme Court of Virginia.

In September 2000, the Supreme Court of Virginia convened a 27-member Task Force "to study the creation of a judicial performance evaluation program" for Virginia's judges. Ten months later the Task Force presented recommendations for a comprehensive evaluation system, including the piloting of that system, to the Supreme Court. The Court endorsed the Task Force recommendations. Funding for the pilot was sought from the General Assembly in the 2002 Session, but was not received. The Judicial Council remains committed to implementing judicial performance evaluations, and will continue to seek funding.

Objective 6.2

To provide education delivery options which will ensure expanded and career-long training opportunities for all persons in the judicial system's workforce.

Task 6.2.1

Develop and implement on-line learning resources and courses and train all judges and court personnel in the use of such resources.

Through Learn2 University, 76 on-line courses such as Word, Access, Excel, Discover the Internet, and Internet Explorer are available to court personnel. Approximately 150 court users have been enrolled within the past year.

In another effort to provide convenient on-line learning opportunities, OES contracted with the Federal Department of Transportation. Through this partnership, some 850 on-line courses from the vendor Skillsoft are now available to 100 court users. The courses comprise curricula categories such as Administrative Support, Business Law, Communication, Customer Service, Human Resources, Knowledge Management, Leadership, Management, Teambuilding, and Information Technology. Additional user "slots" will be purchased before the end of the year to accommodate court personnel on the waiting list for these on-line courses.

Eight on-line threaded discussion boards are now available for various court user groups: Circuit Judges (184), General District Judges (243), JDR Judges (240), Substitute Judges (241), Circuit Clerks (198), General District Clerks (151), JDR Clerks (125), and Magistrates (453). The number in paren-

theses represents the number of users that have been registered for that board. Participation is varied amongst the boards, but should increase as more users learn about the boards and their capabilities as communication tools.

In terms of training all judges and court personnel in the use of such resources, the Educational Services Department made presentations regarding the online learning opportunities at the various conferences throughout the year. One-on-one training in the use of WebBoard was also available at the August District Court Judges' Conference. Magistrates were sent packets of information regarding the online tools, and a video tape describing the opportunities was produced and distributed at regional meetings for clerks and at the Substitute Judges training in fall 2002.

Task 6.2.2

Secure and install a distance learning infrastructure for the court system.

While the second year of federal grant funding allowed for a basic, "starter" distance learning infrastructure, the third year allowed for more advanced, supplemental infrastructure development. For example, the Accord Bridge purchased during the second year and used to connect 3 video conferencing sites is being upgraded. OES will then have the ability to perform multipoint video conferencing with up to 12 sites, using the "new" bridge. A mobile instructional console was also purchased to enhance the instructional capabilities of persons using OES as the source for a video conferencing presentation or training session.

Seven additional video conferencing units were purchased to increase the number of educational sites in the field. Some of the new units will go to new locations, and others will serve as "back-up" systems should locations experience problems with existing equipment.

OES also has the ability to broadcast presentations or training sessions via satellite, through a contract with the Virginia Department of Education. Fourteen hours of satellite time have been purchased. High schools around the state will be chosen to receive the satellite transmission, based on the locations of court personnel participating in the session.

"Capturing" training sessions digitally and distributing them via CD-ROM or streaming them via the Intranet (when bandwidth allows) is one of the judiciary's distance learning goals. Given that goal, a digital video editing station and laptop were purchased to work in conjunction with the digital camcorder purchased during the second year of the grant. This equipment was used for the first time to record various sessions at the Best Practices Court Meeting in December with the intention of producing a CD-ROM or

Chapter 2

VHS tape for meeting participants. Recording future sessions, presentations, and other training opportunities is planned, with the intent to distribute the information to individuals unable to attend the original meetings.

Task 6.2.3

Integrate the long-term training curriculum for Virginia's judicial system with the distance education plan.

Over the past year, hundreds of course descriptions have been added to the course lists drafted in the Supreme Court of Virginia's Curriculum Development Project. After the course lists were drafted, they were disseminated to the various education committees for review. Committee members then selected those courses they believed to be 1) core, 2) elective, or 3) unnecessary. Before the end of the year, those results will be re-analyzed and methods of "distant" delivery for a select number of "core" courses chosen.

All of the course listings for judges, clerks, and magistrates can be found on-line at <http://www.courts.state.va.us/ed/courseinfo/home.html>, in the Educational Services section of the Court's home page. Listings include a brief course description, along with links to the existing Skillsoft and Learn2 on-line courses (see Task 6.2.1). Offering some of these courses on-line through vendors such as Skillsoft and Learn2 is one way of expanding the Court's course offerings; other methods previously described such as video conferencing and satellite broadcasting will aid in additional course distribution.

Objective 6.3

To develop advanced and specialized training opportunities for all judges, clerks and magistrates.

Task 6.3.4

Increase the options for providing technical assistance services to the courts to include on-site support for strategic planning efforts, caseload management projects and building collaborative relations within and between the trial courts and the magistrate offices.

On site assistance has been provided to several circuit and district courts throughout 2002, particularly in developing and implementing calendar management plans.

Objective 6.5

To ensure that the judicial system provides a compensation, reward and benefit system and a working environment which will attract and retain highly-qualified career personnel for service in the courts.

Task 6.5.1

Address the personnel shortages that exist in the district court and magistrate systems by seeking funding for additional positions and salary increases that will enable the judicial system to successfully attract and retain highly qualified clerks and magistrates.

Based upon current staffing models, using 2001 data, the district court system is understaffed by more than 170 positions. Requests for funding for these positions are incorporated into each budget cycle.

Objective 6.6

To implement the recommendations of the Gender Bias in the Courts Task Force.

Task 6.6.4

Encourage the Compensation Board in conjunction with the Virginia Circuit Court Clerks' Association to require that all circuit court clerks adopt written sexual harassment policies and procedures.

Plans are under way to add a section to the Circuit Court Manual to encourage all circuit court clerks to develop a written sexual harassment policy and procedures like those currently incorporated into the District Court Management Manual.

Vision 7

Technology will increase the access, convenience and ease of use of the courts for all citizens, and will enhance the quality of justice by increasing the courts' ability to determine facts and reach a fair decision.

Objective 7.1

To use technology to increase communication and access for all court users.

Task 7.1.1

Create web-accessible versions of selected public use forms.

During the past calendar year, 27 district court forms were placed on the website of the Virginia judicial system in a PDF format which enables the would-be litigant to complete the court form on-line and print it for filing with the clerk of the court. A total of 37 district court forms and 27 circuit court forms are available to the public in this format.

In addition, 95 district court forms and 14 circuit court forms, as well as accompanying instructions for the forms' use, were placed on the web site of the Virginia judicial system in a scanned format which permits viewing the forms for reference purposes.

Vision 7

Technology will increase the access, convenience and ease of use of the courts for all citizens, and will enhance the quality of justice by increasing the courts' ability to determine facts and reach a fair decision.

Chapter 2

Task 7.1.2

Develop and pilot a capability to permit electronic payment of fines and costs and make recommendations regarding the implementation of e-payment in all courts statewide.

Through a joint effort of the OES and the Virginia Information Providers Network (VIPNet), a system to allow the prepayment of fines and costs has been programmed and is being tested. A pilot court has been selected and pilot testing in this general district court is scheduled for January 2003. Following successful implementation of the pilot, other general district courts will be added. Collection of post trial payments will be considered and planned after the review of the prepayment system has been completed.

Task 7.1.3

Implement electronic filing in the circuit courts, including integration with the Courts Automated Information System, a docket management system and e-commerce.

A Request for Information from vendors offering e-filing systems was issued and the responses have been reviewed. The e-filing system currently used in Colorado has been reviewed and discussed with personnel in Colorado's administrative office of the courts. Information concerning the initial e-filing programs in both Georgia and Texas also has been reviewed. A Request for Proposal has been drafted and is currently under review. Release of the RFP is expected in early 2003.

Task 7.1.4

Conduct a requirements study for electronic filing in the appellate courts.

This has been reviewed as a part of Task 7.1.3. Electronic filing in the appellate courts will follow the establishment of an initial installation and pilot testing of e-filing in the circuit courts.

Objective 7.2

To maximize the use of technology within the judicial system to enhance the quality of justice rendered by courts.

Task 7.2.2

Implement a Technology Advisory Committee composed of public and private sector information technology specialists to advise and assist the Office of the Executive Secretary in implementing new and innovative technology applications for the courts.

This project has been included in the current planning year and is in progress.

Task 7.2.3

Design, develop and implement a new capability within the Case Management System to track key events in a case in order to alert both clerks and judges of required activities or events based on the type of case.

As existing Case Management Systems are moved to a relational database, these enhancement will be added. Some of the detail work has been completed for abuse and neglect cases but additional detail needs to be completed for other types of cases. This work would need to be completed as part of an Executive Information System (EIS) (see Task 7.4.3) to be completed after each case management system is converted to DB2.

Task 7.2.4

Complete migration to a modern relational database and fourth generation computer programming languages in order to expand the capabilities of the Courts Automated Information System to include additional cross-referencing, tracking of key events, enhanced search capabilities, and to provide additional data for the Integrated Criminal Justice Information System.

The database conversion for two of the three existing case management systems is underway. The first one is the pilot inactive database for circuit courts. Three circuit courts already have inactive data stored in this database. The J&DR courts database has been modeled and has been built for programming. The existing applications are currently being written for this database. Work on the active circuit court data base applications also is underway.

Task 7.2.5

Develop and distribute electronic version of benchbooks for all judges and manuals for clerks and magistrates.

The following manuals for court system employees and benchbooks for judges are now accessible on the Internet, as well as on the Court's Intranet:

- *Magistrate Manual*
- *Personnel Policy Manual*
- *District Court Manual (Text and Forms versions)*
- *General District Judges Benchbook*
- *Juvenile & Domestic Relations Judges Benchbook*
- *Court-Appointed Counsel - Public Defender Procedures*
- *Indigency Guidelines for Court Appointed Counsel*
- *Circuit Court Clerks Manual (Civil and Criminal)*
- *Circuit Court Clerks Duties List*
- *VA Courthouse Facility Guidelines*

Chapter 2

Updates of these publications are scheduled annually. In addition, updates are made during the year when changes mandate. Instructions and tips on using these on-line resources were offered at the various conferences for judges, clerks, and magistrates throughout the year.

Objective 7.3

To expand collaborative relationships between the courts, state and local governments, and the private sector to facilitate greater ease in the electronic exchange of information and in the conduct of judicial proceedings.

Task 7.3.1

Seek funding to participate in the phased implementation of an Integrated Criminal Justice Information System to provide access to and tracking of information on criminal defendants.

The first phase of the Integrated Criminal Justice Information System is the Charge Standardization Project (CSP). The OES sought and received federal grant funding for calendar years 2003 and 2004 and will begin phase one when the funding becomes available in January 2003.

Task 7.3.3

Develop and implement an updated automated magistrate information system with a centralized magistrate database.

Work for this system is included in the Charge Standardization Project to begin in calendar year 2003. (See Task 7.3.1)

Task 7.3.4

Provide magistrates and courts direct connectivity to the Virginia Criminal Information Network administered by the State Police, where requested.

Partial funding for fifteen magistrate offices is included in the CSP Project. (See Task 7.3.1)

Task 7.3.5

Expand electronic information exchange among courts and other justice agencies by enhancing interfaces with the Departments of Corrections, State Police, and Juvenile Justice and the Division of Child Support Enforcement.

Additional interfaces with State Police and the Department of Juvenile Justice will be included as part of ICJIS. Additional interfaces with the other criminal justice agencies will be included as federal or other funding sources are secured to support both Charge Standardization Project and ICJIS. The Division of Child Support Enforcement currently has a two-way interface with

the courts in production. This interface can be expanded after a joint design document has been produced by the two offices.

Task 7.3.6

Implement the automated interface between the Central Criminal Records Exchange and the juvenile and domestic relations courts.

This project is included as a phase two project of the Charge Standardization Project. It will be included following completion of phase one.

Task 7.3.7

Develop the capability to provide for the Integrated Criminal Justice Information System an offense-based tracking number, a uniform code description, and an interface to the Compensation Board to provide jail commitment data from the magistrates.

This work is included in the Charge Standardization Project, which is funded by a federal grant in calendar year 2003 and 2004. (See Task 7.3.1)

Task 7.3.8

Establish the capability to directly download warrants to Public Defender offices.

All warrants in the new magistrate system will have 2-D bar coding which will allow the information on the warrant to be faxed or copied including the 2-D bar code to the Public Defenders office. The commonwealth attorneys' offices will also be able to read and store the data on warrants using the 2-D bar coded warrants.

Objective 7.4

To facilitate the use of technology and automated systems by judicial system personnel.

Task 7.4.1

Provide to and train court personnel on the use of e-mail, Internet and Intranet access, and local area networks.

Court personnel are receiving training on the use of the new e-mail package, Lotus Notes, when the system is installed in their courts. The Judicial Intranet (OESINET) has been established and includes news, publications, forms and training courses for judges, clerks, and magistrates.

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Task 7.4.3

Develop an Executive Information System for the juvenile and domestic relations district courts to track and report management information and allow ad hoc queries of the juvenile and domestic relations district courts' database. OES offers Learn2 and Skillsoft distance learning courses off the Internet.

This project is included as part of the migration of the existing J&DR database to the new DB2 database, which is currently underway.

Task 7.4.5

Enhance the Financial Management System to automatically assess all appropriate misdemeanor convictions fees upon the updating of a misdemeanor conviction in the Case Management System.

Work has been completed with the OES's Department of Judicial Information Technology to alert them to the enhancements needed to complete this project. The enhancements will be implemented if the fixed misdemeanor statute to be introduced in the 2003 General Assembly is adopted.

Task 7.4.6

Develop individual court access to databases of other courts via the Courts Automated Information System.

Data will be made available through the use of the Offense Tracking Number database once phase one of the Charge Standardization Project is completed. Using the Offense Tracking Number (OTN) database, searches for offenders will be available state-wide. Most courts already have access to other courts database through the judiciary's Internet home page. Courts can also request a user ID and password to use the existing judicial Intranet connection for access to other courts data, which is available to both other court users or criminal justice agencies.

Task 7.4.7

Study the development of data exchange between trial and appellate courts.

An initial review of circuit and appellate court data indicates there are not many data fields in the circuit court that would help the appellate courts. In order to be more effective for the appellate courts, additional data concerning the actual case papers and orders needs to be stored electronically. This task will be reviewed again once e-filing has been established for the circuit courts.

Task 7.4.8

Create a centralized Help Desk capability to assist judges and judicial system personnel with questions and problems pertaining to the use and operation of their automated systems.

A new centralized Help Desk was established in late 2002. This Help Desk is staffed during normal weekday work hours. The Help Desk personnel can handle user problems, determine if the problem is software or hardware related and, if necessary, refer the information so that maintenance can be performed, or a field specialist can come and correct or reload any system software.

Task 7.4.10

Develop and implement an Intranet for the judicial system for the automated transmission of internal forms, personnel communications, and training.

The judiciary's Intranet was established in the fall of 2002 and continues to grow. Some items currently on the Internet site, such as internal court forms, will be moved to the Intranet. Judicial training information will also be moved to the Intranet.

Task 7.4.11

Install 24 LANs in J&DR courts and seek funding for additional LANS.

The 24 federally funded local area networks (LANs) were installed prior by the fall of 2002. Additional funds will be sought when federal or state funding is available.

Vision 8

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

Objective 8.1

To improve service quality by increasing the courts' awareness of and responsiveness to the needs of the citizens they serve.

Task 8.1.4

Evaluate the use of technologies and equipment to permit easier viewing of court dockets in the courthouse and make recommendations regarding the expansion of such systems statewide.

The existing oversize court docket display monitors used in two courts have been reviewed. OES has developed software which would support the expansion to other J&DR and general district courts. Expansion of this technology to other courts would require additional funding, as would the development of software for the circuit courts.

Vision 8

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

Chapter 2

Vision 9

The impact of changing socio-economic and legal forces will be systematically monitored and the laws of Virginia will provide both the substantive and procedural means for responding to these changes.

Vision 9

The impact of changing socio-economic and legal forces will be systematically monitored and the laws of Virginia will provide both the substantive and procedural means for responding to these changes.

Objective 9.1

To expand the strategic planning capabilities of the judicial system.

Task 9.1.2

Provide regular assessments of new technologies and their applicability in the court environment to all judges and court system personnel.

A number of newer areas of technology with applicability to the courts have been identified, and will continue to be watched as they grow and mature. Several examples follow:

- *One of the newer technologies that shows promise is the use of 2-D bar coding on magistrate forms, which allows an interface with other criminal justice agencies.*
- *The use and adoption of Adobe PDF forms for printing and of revisable PDF forms are underway.*
- *Newer, multifunction printers will allow courts to issue orders, have them signed, and distribute them in the court, as well as fax them to distant parties or agencies.*
- *Video conferencing has grown and still aids in providing magistrate services in both large and small localities. In large localities where magistrates are available, the video conferencing cuts the time needed to transport defendants. In small jurisdictions where magistrates are on call, videoconferencing enables the use of a distant magistrate and the printing of processes at the local police agency.*
- *The use of both the Internet and the Intranet will continue to grow. The use by the public to obtain services such as the payment of fines and costs and the filing of court papers will increase. The ability for the courts to serve a notice on parties to a case using e-service through e-mail will be helpful.*
- *More standards on the use of XML tags will make documents and smart forms, which will allow computer systems to read the data and provide the ability to insert the data into case management system, which will assist by reducing data entry.*
- *The use of relational databases will make more data available to assist in evaluating changes in sentencing, fines, costs and the current status of defendants.*

Chapter 3

Progress Report on the Court Improvement Program - Foster Care and Adoption

INTRODUCTION

The Court Improvement Program - Foster Care and Adoption, Office of the Executive Secretary, Supreme Court of Virginia, worked during 2002 to facilitate judicial leadership, local collaboration, compliance with federal and state law and recommended best practices throughout the Commonwealth. These efforts built on the findings of the report on Safety and Permanency for Dependent Children Before the Courts of the Commonwealth: Court Improvement Activities 1997-2000 completed in August of 2001. Strategies by the court system to improve how child dependency cases are processed, adjudicated and resolved continue to rely upon the support and active involvement of the Virginia Department of Social Services and its local agencies, the bar, Court-Appointed Special Advocates and other stakeholder community programs and advocates for children and families. The contribution of each of these professional groups remains pivotal to the success of these endeavors.

STATUTORY CHANGES

Two legislative proposals were developed for the 2002 Session of the Virginia General Assembly. These proposals were written in consultation with the Advisory Committee for the Court Improvement Program and introduced with the support of the Committee on District Courts, the policy-making body for the district court system, and the Virginia Department of Social Services. Review of the requirements and policy direction embodied in the Adoption and Safe Families Act identified additional statutory amendments needed to bring Virginia's laws into compliance with the federal framework for child dependency proceedings. A bill embodying these requirements was passed unanimously by the 2002 Session of the Virginia General Assembly, signed by the Governor and became law July 1, 2002. This legislation featured substantive changes predicated on the requirements of the Adoption and Safe Families Act and related federal regulations that were issued in March of 2000. The revisions focused on permanency planning hearings and findings for children in foster care.

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The Court Improvement Program worked during 2002 to facilitate judicial leadership, local collaboration, compliance with federal and state law and recommended best practices throughout the Commonwealth.

A second legislative initiative followed-up on findings of the evaluation of Court Improvement Program efforts as identified in the August 2001 report. While nearly all courts consistently appoint counsel for parents whose children are the subject of abuse or neglect petitions, Virginia law was not clear that such appointments are required. Consequently, a legislative proposal was developed in consultation with the Advisory Committee for the Court Improvement Program and introduced with the support of the Committee on District Courts and the Virginia Department of Social Services. This bill was also passed unanimously by the 2002 Session of the Virginia General Assembly, signed by the Governor and became law July 1, 2002

Enactment of these legislative changes necessitated revisions in court forms, procedures and policy manuals. Properly constructed petitions and orders prompt litigants to request and judges to document substantive and complete determinations in each at-risk child's case. CIP staff works with the Virginia Department of Social Services to coordinate changes in the court forms included on its Online Automated Information System (OASIS). A detailed schematic of the court process and applicable court forms, the Time Line and Related Forms - Juvenile and Domestic Relations District Courts - Child Abuse, Neglect and Foster Care Cases continues to be updated and widely disseminated as a popular means of understanding this complex legal process. The Virginia District Court Manual contains chapters explaining child dependency case processing and is updated annually.

TRAINING INITIATIVES

During 2002, the Court Improvement Program sponsored or participated in more than a dozen training events reaching over 1,000 people. These educational programs involved routine training efforts through the Office of the Executive Secretary's Department of Education for judges, substitute judges, and court clerks and their staffs. They also occurred as a result of collaboration with the educational arm of the Virginia State Bar, Virginia CLE, to meet the continuing legal education requirements of attorneys. Lastly, they have been sponsored by CIP in conjunction with local courts in their efforts to provide interdisciplinary training and dialogue with the professionals in their communities who handle child dependency cases. Each of these occasions was supported with presentations by Court Improvement Program staff and appropriate written materials for each person in attendance.

Of particular note in this series of training events are programs conducted in conjunction with the judges and court staff. Many of these events involved all of the courts and agencies for an entire judicial district. One-third of the judicial districts in Virginia has now sponsored these events. Invited by the courts to attend these day-long sessions are:

- Staff of the local department of social services, to include the director of the agency, supervisor and line staff who work in the program areas of child protective services, foster care and adoption.
- Members of the local bar who serve as guardians ad litem, counsel for parents and counsel for the local department of social services.
- Representatives of the Court Appointed Special Advocates (CASA) program that serves the court.
- Regional consultants for of the Virginia Department of Social Services for the program areas of foster care and child protective services.

These sessions provide an opportunity for professionals engaged in the frontline work of meeting the needs of the communities' children and families to come together to better understand the court process and to discuss their hopes and concerns for the effectiveness of how they serve their constituents. These meetings include training that is provided at no charge to the attendees. Continuing education credit is made available for the applicable court personnel in the clerks' offices and for attorneys and guardians ad litem for children through the Office of the Executive Secretary and the Virginia State Bar. These court-sponsored events involving non-court personnel generated in-kind match for the Court Improvement Program's federal grant and eliminated the need for any General Fund support during the past grant fiscal year.

Each participant receives a notebook with the applicable current district court forms, portions of the Virginia District Court Manual, and the Time Line and Related Forms, Juvenile and Domestic Relations District Courts, Child Abuse, Neglect and Foster Care Cases, which form the basis of the training delivered by CIP staff. Other resources, including a listing of demographic data for the children in foster care in each participating locality and A Handbook for Parents and Guardians in Child Abuse and Neglect Cases, are also provided and support a discussion of local court practice and available community resources.

In addition to detailed and specific training by CIP staff on the law, process and use of forms applicable to child dependency cases in the court, these sessions involve local, cross-disciplinary discussions of what works and does not work in the permanency planning process for

During 2002, the Court Improvement Program sponsored or participated in more than a dozen training events reaching over 1,000 people.

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During early 2002, the Court Improvement Program began development of a new initiative entitled "Best Practice Courts." This initiative involves the commitment by a juvenile court to a series of local activities and the provision of specialized training and technical support to these courts over and above normal CIP staff efforts.

children in foster care. The participants are encouraged to establish follow-up CIP team meetings, continue their collaborative educational efforts and make concrete plans for improving at the local level their resolution of child dependency cases. Opportunities for these local CIP team meetings will continue to be made available to local courts in 2003.

THE PERMANENCY PLANNING PROCESS

The prime challenges to the full accomplishment of permanency for foster children identified in Virginia's 2001 evaluation report of Court Improvement efforts focused on the post-permanency planning process and local collaboration. To assist courts and their communities in these areas, the Court Improvement Program has supported several initiatives during the past year. These include technical support to a local court improvement group, known as the Richmond Millennium Team, in a large urban court; assistance with an innovative grant program for child dependency mediation in three Virginia juvenile and domestic relations district courts; establishment of a program to recognize and support Best Practice Courts in the Commonwealth; and participation in Virginia's preparation for the Child and Family Services Review scheduled for July 2003. In addition, CIP staff is cooperating with efforts by the U.S. Department of Health and Human Services to assess the effectiveness of CIP initiatives.

Best Practice Courts

During early 2002, the Court Improvement Program began development of a new initiative entitled "Best Practice Courts." This program is designed to build on the significant efforts of many Virginia juvenile and domestic relations district courts to follow the Resource Guidelines: Improving Court Practices in Child Abuse and Neglect Cases, published by the National Council of Juvenile and Family Court Judges, Spring 1995. This initiative involves the commitment by a juvenile court to a series of local activities and the provision of specialized training and technical support to these courts over and above normal CIP staff efforts.

The first of several occasions planned to introduce the concept of Best Practice Courts was held in June 2002 at the Virginia Judicial Institute. This training event was supported by staff from the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges; Virginia's own Model Court for the Child Victims Model Courts Project, the Alexandria Juvenile and Domestic Relations District Court; and the American Bar Association Center on Children and the Law. The CIP-sponsored session focused on the challenges of permanency planning for children and the practical issues associated with accomplishing a permanent goal for a foster child. A description of this new initiative followed the

Chapter 3

substantive educational session. Twenty-one judges representing sixteen different localities in Virginia attended the Judicial Institute program.

Twelve courts with judges who attended the Judicial Institute have made the commitment to the following activities in order to be recognized as Best Practice Courts:

- identification of a lead judge and of a core group of stakeholders in the community.
- regular periodic meetings of the core group to address unique local issues and to foster community collaboration.
- examination of the strengths and challenges of the court and community services system to meeting the needs of children and families involved in child dependency cases.
- incorporation in court processes of selected best practices from the Resource Guidelines: Improving Court Practices in Child Abuse and Neglect Cases, published by the National Council of Juvenile and Family Court Judges, Spring 1995.
- exploration of data collected on local court proceedings in child dependency cases and examination of its implications for improved practice.
- sharing with other Virginia courts and courts nationwide the best practice techniques of the participating court and community.

In return for this enhanced level of activity by the juvenile and domestic relations district court, recognized Best Practice Courts are being supported by the National Council of Juvenile and Family Court Judges and the Court Improvement Program in the Virginia Office of the Executive Secretary with these functions:

- a special session for judges in recognized Best Practice Courts and stakeholders from their communities at a meeting December 9-10, 2002 for targeted training in judicial leadership and decision-making with a speaker provided by NCJFCJ.
- subsequent periodic meetings in Virginia of the Best Practice Court participants to share approaches to the court management, trial, and community collaboration associated with child dependency caseloads.
- technical assistance and training tailored for the Best Practice Court at its local site.
- opportunities for Best Practice Court judges with demonstrated speaking ability and court experience to serve as faculty and trainers in other states for the NCJFCJ and to benefit from networking with members of the judiciary in other court systems who are addressing the same challenges.
- participation with other Model Courts on the national level

Twelve courts with judges who attended the Judicial Institute have made the commitment to follow specified activities in order to be recognized as Best Practice Courts.

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Effective court processing of child dependency cases and enhanced community collaboration can have positive effects on the rest of the court's docket.

Effective court processing of child dependency cases and enhanced community collaboration can have positive effects on the rest of the court's docket. Many of the same children and their families are involved in other disputes before the court, such as truancy, child in need of services, custody, support and visitation and domestic violence. There are numerous avenues for the court to pursue to impact its service to the public and institute long-term, institutional change. The opportunity to share ideas and local initiatives with and learn from fellow judges in the Commonwealth and in courts of similar jurisdiction in other states is a prime reason for a local court to consider the Best Practice Court designation. This initiative will be continued during 2003, with an additional "Best Practice Court" class of juvenile and domestic relations district courts anticipated in early summer of 2003.

Child and Family Services Review

The U.S. Department of Health and Human Services will conduct the Child and Family Services Review in Virginia the week of July 7, 2003. Court Improvement Program staff and representatives of its State Advisory Committee for Court Improvement - Foster Care and Adoption are participating in the preparation for this review at the invitation of the Virginia Department of Social Services. CIP staff, juvenile court judges and a juvenile court clerk are serving on the Statewide Stakeholders Committee established by the Virginia Department to guide the CFSR effort. CIP staff is also participating on the Case Review System Subcommittee, the group that is primarily responsible for considering issues of court compliance with the Adoption and Safe Families Act. Participation in these review activities and the development of the statewide assessment will assist the Court Improvement Program with an identification of any practice areas requiring further attention by the Virginia court system.

Support for National CIP Evaluation

Lessons learned from the operation and evaluation of Virginia's Court Improvement Program aimed at more effective permanent planning for children in foster care have been shared with the U.S. Department of Health and Human Services during the past year. Staff from the Virginia Court Improvement Program serves on the technical work group for a federal study to assess the feasibility of evaluating federal Court Improvement Program projects. In the spring of 2002, Virginia hosted a one-day preliminary site visit by the contractor of the Children's Bureau, James Bell Associates, and a second several day multi-site visit in September 2002. These efforts assist in presenting the statewide systemic reform approach of Virginia's Court Improvement Program as one of the styles of state CIP operations as

well as to highlight the good work being done in Virginia courts.

The Virginia Court Improvement Program through the Office of the Executive Secretary, Supreme Court of Virginia, looks forward to continuing to work during 2003 with the court system, bar, social services agencies, CASA programs and other community stakeholders in improving the services courts provide to children and families. The integration of best practices in the handling of child dependency cases in Virginia courts will remain the core focus of these efforts in order to expedite permanency for children in the foster care system.



Chapter 4

Self-Represented Litigants in Virginia's Court System: Enhancing Access to Justice

SYNOPSIS OF THE 2002 REPORT OF THE PRO SE LITIGANT PLANNING COMMITTEE

Self-represented citizens are appearing more frequently in both the trial and appellate courts. Numerous surveys conducted throughout the country document the substantial growth in the number of self-represented litigants, particularly in family law cases. In order to address the challenges that increasing numbers of self-represented litigants are presenting for Virginia's courts, Chief Justice Harry L. Carrico appointed a 24-member Pro Se Litigation Planning Committee in September, 2001. A diverse group of Bar members, clerks of court, trial and appellate judges, and a law professor served on the body.

The Committee's charge was to review policies, practices, and protocols for Virginia's court system to use in the handling of cases in which the parties are self-represented. Chaired by Justice Elizabeth B. Lacy, the Committee provided a forum for identifying and addressing the issues involved in attempting to provide improved access to the courts for litigants who cannot afford legal services. Included among these issues are the legal, ethical, and operational challenges faced by judges and court personnel in serving self-represented litigants. The Committee's research agenda included an extensive review of research materials, consideration of efforts undertaken in other states, demonstrations and presentations on successful initiatives, and analysis of the results of surveys of Virginia judges and court staff on a range of pro se litigant issues and assistance needs.

The Committee's report was published in September, 2002 and can be found on the court system's website at www.courts.state.va.us. Based upon its research, the Committee concluded that substantial needs and opportunities exist for improving the accessibility to Virginia's courts in ways that can enhance the fairness and integrity of the judicial process. In considering recommendations for enhanced access to justice for self-represented litigants, the Committee first articulated the following policy statement as a guide:

The Committee believes that justice in the individual case is best achieved when both parties are represented by qualified legal counsel.

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The Council adopted sixteen proposals for improving the handling of cases involving self-represented litigants.

Litigants are encouraged to obtain legal representation. However, the Committee found that various aspects of the court system's services and procedures can and should be revised to allow self-represented litigants better access to the courts. Thus, the Committee's recommendations address measures to make the courts easier to use, as well as actions designed to expand access to legal services.

The Committee then adopted and submitted to the Judicial Council of Virginia eighteen proposals for improvement the handling of cases involving self-represented litigants. The Council adopted sixteen of the proposals and they appear below. The Committee on District Courts concurred with the adoption of these proposals.

Recommendation 1

Adopt a Rule of Court that specifically enables clerks of court and staff to fulfill their duties, as public servants, to assist those using or interested in the court system and its processes without improperly engaging in the unauthorized practice of law.

Recommendation 2

Develop principles, guidelines, protocols, and training curricula for all clerks' office personnel and magistrates to clarify the information and assistance that may be provided to self-represented litigants.

Recommendation 3

Institutionalize an educational curriculum for judges on methods of managing cases involving self-represented litigants.

Recommendation 4

Support efforts to acquire funding to expand the number of dispute resolution coordinators on site in the trial courts in order to screen appropriate cases for mediation and to provide effective management of such cases.

Recommendation 5

Advocate for the enhanced funding of legal aid offices as the primary means of expanding access to legal representation, recognizing that the majority of self-represented litigants are unable to afford the services of an attorney.

Recommendation 6

Expand effective collaborative programs of legal aid offices and the private bar, including legal hotlines and pro bono panels.

Recommendation 7

Establish a Limited Representation Committee of the Virginia State Bar, under the auspices of its Access to Legal Services Committee, to explore the feasibility of delivering legal services through limited scope assistance, discrete task representation, or "unbundling." The Committee should seek the assistance and input of other statewide bar organizations, local bar associations, specialty bars, professional liability insurers, and the judiciary in undertaking this effort.

Recommendation 8

Consider adoption of a uniform discovery form for civil cases. The Supreme Court of Virginia, in collaboration with the Virginia State Bar, Virginia Bar Association, Virginia Trial Lawyers Association, the Virginia Legal Services Corporation, and representatives of the court system should collaborate in this deliberation.

Recommendation 9

Study limitations on fee arrangements in domestic relations cases and consider proposals for flexible options available to reduce or to contain the cost of legal representation. This Family Law Bar Coalition should coordinate this study.

Recommendation 10

Request that the Circuit and District Court Forms Advisory Committees evaluate court forms (beginning with high-volume forms) to make suggestions in content, appearance, and format that will enhance user-friendliness and facilitate comprehension.

Recommendation 11

Develop a grant application, in cooperation with the Legal Services Corporation of Virginia and state and local bar organizations, to pilot the development of a web-based and kiosk-based legal and court information system for use by all litigants. An advisory committee composed of judges, clerks of court, a magistrate, bar members, and a citizen representative should be appointed to oversee the development of the subject matters to be offered through this system.

Recommendation 12

Establish a statewide capability to develop, maintain, and update: (a) subject-specific resources (information pamphlets, packets, videos, etc.) on the legal system and court processes and procedures and (b) statewide policies and a plan of action to ensure the dissemination and availability of such information in all courts and magistrates offices.

The Council recommends the development of a web-based and kiosk-based legal and court information system for use by all litigants.

Chapter 4

The Council recommends convening a joint Judicial Council-Committee on District Courts advisory committee on self-represented litigation consisting of judges, clerks, magistrates, attorneys, and citizens.

Recommendation 13

Develop a brochure and video on codes of conduct for self-represented litigants.

Recommendation 14

Endorse the Judicial Council of Virginia's efforts to establish pilot court services centers as an additional means of providing assistance to self-represented litigants.

Recommendation 15

Study, develop, and pilot models for offering pre-trial services in civil cases for all levels of courts.

Recommendation 16

Convene a standing advisory committee on self-represented litigation. This should be a committee appointed jointly by the Judicial Council of Virginia and the Committee on District Courts and should consist of judges, clerks, magistrates, attorneys, and citizens.

Two proposals were not adopted. The first called for the development of appropriate protocols and specific scripts for inclusion in benchbooks for judges to use with self-represented litigants in the courtroom. The Council was concerned that the development of such protocols and scripts would signal the need for handling self-represented litigants in a specialized way as opposed to treating all litigants in the same way. The Council decided to handle another recommendation separate and apart from the issue of pro se litigants. This was the recommended study of the use of Commissioners in Chancery, their effect on litigants, and the advisability of limiting and/or abolishing the use of Commissioners in Chancery in domestic relations cases. The Council's Judicial Administration Committee will conduct this study as an issue facing the judicial system and all litigants.

Importantly, Recommendation 16 calls for the establishment of a Standing Committee of the Council on self-represented litigants in order to undertake the work prescribed in many of the other proposals. This Standing Committee will be appointed and will initiate its work in 2003.

Chapter 5

Budget Reduction Measures

INTRODUCTION

During the 2002 Session, the Governor and General Assembly were faced with serious financial difficulties. Recognizing that the judicial system is a core function of government, however, the General Assembly imposed budget cuts on the judicial system which were less drastic than those taken in many other areas of government. Nevertheless in order that all entities of state government share the burden of resolving the revenue shortfall, the judicial system was directed to absorb a one million dollar budget reduction each year of the 2002-04 biennium. This reduction will be accomplished by reducing funds spent on technology, technology training, continuing judicial education, mediation, use of substitute judges and use of temporary clerk's office employees.

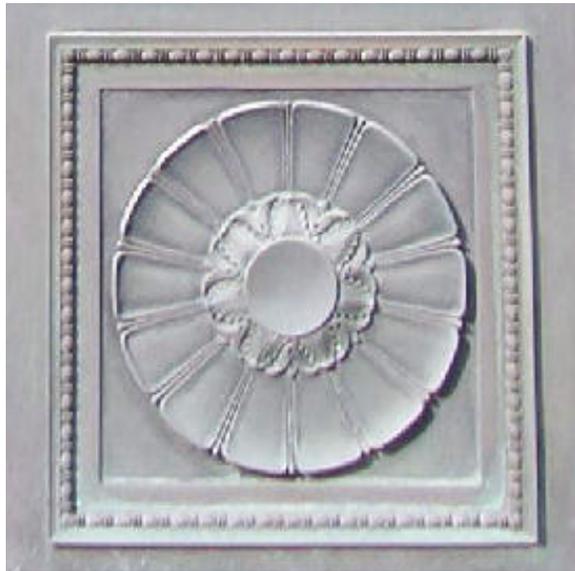
During the early months of the 2002-03 fiscal year, additional projected revenue shortfalls have heightened the existing budgetary crisis. As the executive branch agencies prepared to make additional budget cuts, the Supreme Court of Virginia and the Committee on District Courts believed it was incumbent upon the judicial system to do all that was possible to contribute further savings and therefore initiated a second round of reductions.

These reduction items included:

1. Elimination of the Fall Circuit Court Judges' Conferences
2. Elimination of out-of-state travel
3. Institution of hiring freeze and delay policies
4. Reduction of overtime expenditures
5. Further reduction in alternative dispute resolution expenditures

6. Further reduction in technology training
7. Elimination of printing of various newsletters and publications
8. Further reduction of district court substitute judge budgets
9. Further reduction in the district court wage budgets

These items represent a projected \$1.5 million in savings each year of the biennium over and above the original \$1 million in reduction.



Chapter 6

Changes to Rules of Courts

BACKGROUND

The Constitution of Virginia authorizes the Supreme Court of Virginia to promulgate rules governing the practice and procedures to be used in the courts of the Commonwealth.

In 1974, the Judicial Council of Virginia established an Advisory Committee on the Rules of Court to provide members of the Virginia Bar a means of more easily proposing Rule changes to the Council for recommendation to the Supreme Court. The duties of this committee include: (a) providing the machinery for the evaluation of suggestions for modification of the Rules made by the Bench and Bar and presenting proposed changes to the Judicial Council for its consideration; (b) keeping the Rules up to date in light of procedural changes in other jurisdictions; (c) suggesting desirable changes to clarify ambiguities and eliminate inconsistencies in the Rules; and (d) recommending changes in the Rules to keep them in conformity with the Code of Virginia in order to eliminate possible conflict.

The Advisory Committee on the Rules of Court, as well as the entire Judicial Council, is called upon continually to study and to make recommendations on Rules of Court. Rules recommended by the Council and subsequently adopted by the Supreme Court are published in Volume 11 of the Code of Virginia. All Rule changes are also posted on the Judiciary's website at www.courts.state.va.us.

RULE CHANGES

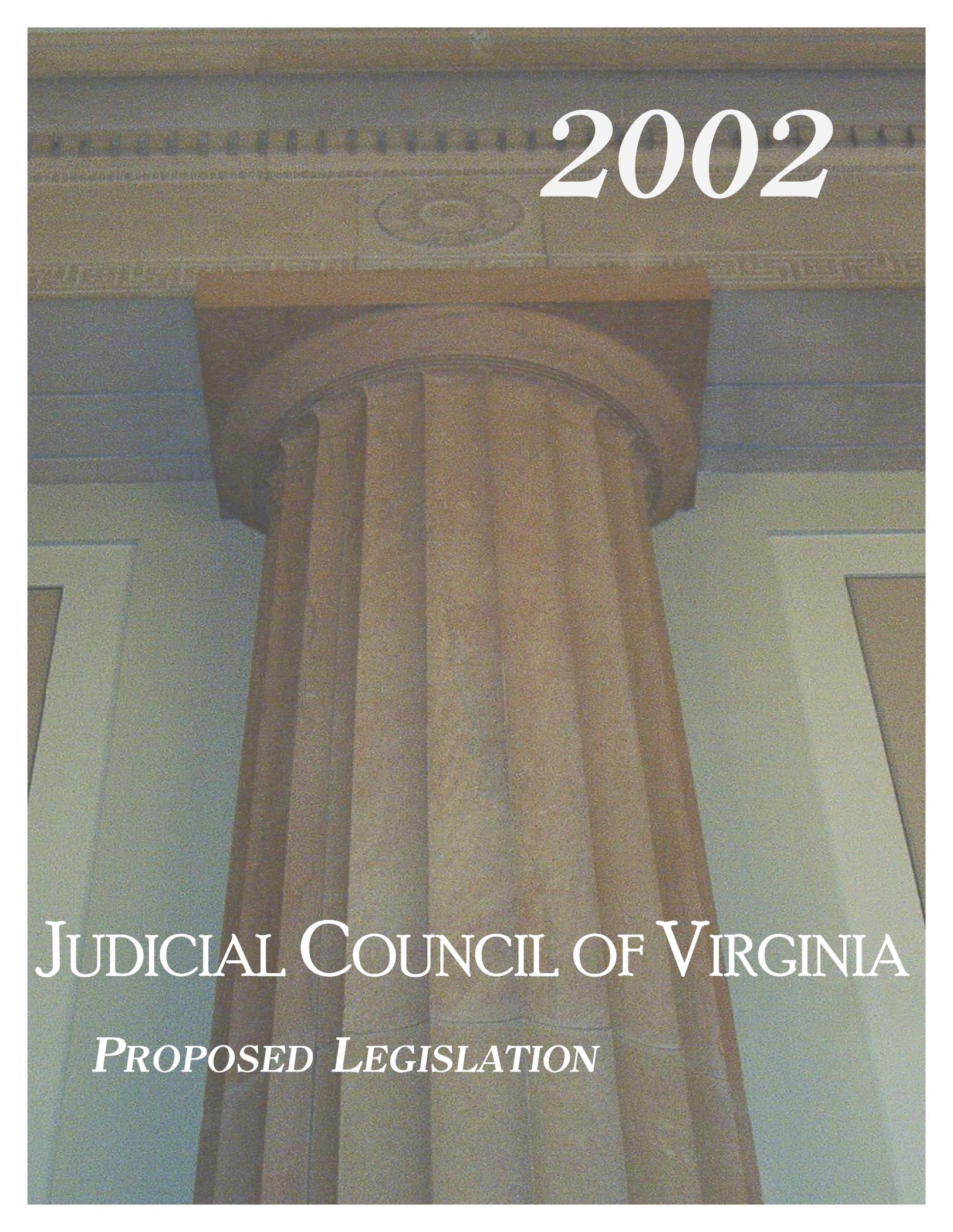
Changes to the following Rules became effective during 2002 or on or after January 1, 2003.

Rule 3A:12	Subpoena (effective 01/01/03)
Rule 3A:17.1	Proceedings in Bifurcated Jury Trials of Non-Capital Felonies and Class 1 misdemeanors (effective 01/01/03)
Rule 4:1	General Provisions Governing Discovery (effective 01/01/03)

Chapter 6

In 1974, the Judicial Council of Virginia established an Advisory Committee on the Rules of Court to provide members of the Virginia Bar a means of more easily proposing Rule changes to the Council for recommendation to the Supreme Court.

Rule 4:12	Failure to Make Discovery; Sanctions (effective 01/01/03)
Rule 4:15	Motions Practice (effective 01/01/03)
Rule 5:7B	Petition for a Writ of Actual Innocence (effective 01/15/03)
Rule 5A:3	Extension of Time (effective 01/01/03)
Rule 5A:8	Record on Appeal: Transcript or Written Statement (effective 01/01/03)
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Rule 1:21 1/1/2002)	Preliminary Voir Dire Information (effective 1/1/2002)
Rule 1:22	Exercise of Challenges to Prospective Jurors. (effective 1/1/2002)
Rule 1:23	Note Taking by Jurors (effective 1/1/2002)
Rule 3	Designation of Panel; Certificate of Parties (effective 1/1/2002)
Rule 3B:2	Uniform Fine Schedule (effective 07/01/02)
Rule 3C:2	Uniform Fine Schedule (effective 07/01/02)
Rule 4:1(b)(4)	General Provisions Governing Discovery (effective 1/1/2002)
Rule 4:1(e)	General Provisions Governing Discovery (effective 1/1/2002)
Rule 5:17(g).	Petition for Appeal (effective 11/15/02)
Rule 5:32(a)	Appendix (effective 11/15/02)
Rule 7B:11	Motions to Transfer (effective 1/1/2002)
Rule 8.1	Bar Admission And Disciplinary Matters (effective 09/26/02)
Rule 8.3	Reporting Misconduct (effective 09/26/02)



2002

JUDICIAL COUNCIL OF VIRGINIA
PROPOSED LEGISLATION

Proposed Legislation

PETITIONS FOR WRITS OF ACTUAL INNOCENCE

§ 19.2-327.3. (Effective November 15, 2002) 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, and that such conviction was upon a plea of not guilty or that the person is under a sentence of death or convicted of (1) a Class 1 felony, (2) a Class 2 felony or (3) 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; (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 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 sixty days of obtaining the test results under § 19.2-327.1; (vii) that the petitioner is currently incarcerated; (viii) the reason or reasons the evidence will prove that no rational trier of fact could have found proof of guilt beyond a reasonable doubt; and (ix) for any conviction that became final in the circuit court after June 30, 1996, that the evidence was not available for testing under § 9.1-121. 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 § 53.1-232.1 (iii) or (iv).

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, 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. The Supreme Court shall not accept the petition unless it is accompanied by a duly executed return of service ~~verifying~~ 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 occurred and the Attorney General or an acceptance of service signed by these officials, or any combination thereof. The Attorney General shall have thirty 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 of

Proposed Legislation

the defendant 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 defendant is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10 of this title.

Proposed Legislation

GUIDELINES FOR INTERPRETERS

§ 19.2-164. Interpreters for non-English-speaking persons.

In any criminal case in which a non-English-speaking person is the accused, an interpreter for the non-English-speaking person shall be appointed. In any criminal case in which a non-English-speaking person is a victim or witness, an interpreter shall be appointed by the judge of the court in which the case is to be heard unless the court finds that the person does not require the services of a court-appointed interpreter. An English-speaking person fluent in the language of the country of the accused, a victim or a witness shall be appointed by the judge of the court in which the case is to be heard, unless such person obtains an interpreter of his own choosing who is approved by the court as being competent. The compensation of an interpreter appointed by the court pursuant to this section shall be fixed by the court in accordance with guidelines set by the Judicial Council of Virginia and shall be paid from the general fund of the state treasury as part of the expense of trial. Such fee shall not be assessed as part of the costs. Whenever a person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter. The provisions of this section shall apply in both circuit courts and district courts.

§ 8.01-384.1:1. Interpreters for non-English-speaking persons in civil cases.

A. In any trial, hearing or other proceeding before a judge in a civil case in which a non-English-speaking person is a party or witness, an interpreter for the non-English-speaking person may be appointed by the court. A qualified English-speaking person fluent in the language of the non-English-speaking person may be appointed by the judge of the court in which the case is to be heard unless the non-English-speaking person shall obtain a qualified interpreter of his own choosing who is approved by the court as being competent.

B. To the extent of available appropriations, the compensation of such interpreter shall be fixed by the court in accordance with guidelines set by the Judicial Council of Virginia and shall be paid from the general fund of the state treasury as part of the expense of trial. The amount allowed by the court to the interpreter may, in the discretion of the court, be assessed against either party as a part of the cost of the case and, if collected, the same shall be paid to the Commonwealth.

C. Whenever a person communicates through an interpreter to any person under such circumstances that the communications would be privileged, and such persons could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter. The provisions of this section shall apply in circuit, family and district courts.

Proposed Legislation

RULES OF COURT ON THE INTERNET

§ 8.01-3. Supreme Court may prescribe rules; effective date thereof; rules to be printed and distributed; rules to be published, indexed, and annotated; effect of subsequent enactments of General Assembly.

A. Supreme Court to prescribe rules. - The Supreme Court, subject to §§ 17.1-503 and 16.1-69.32, may, from time to time, prescribe the forms of writs and make general regulations for the practice in all courts of the Commonwealth; and may prepare a system of rules of practice and a system of pleading and the forms of process and may prepare rules of evidence to be used in all such courts. This section shall be liberally construed so as to eliminate unnecessary delays and expenses.

B. Effective date; ~~printing and distribution; maintenance by clerks of courts availability.~~ - New rules and amendments to rules shall not become effective until sixty 60 days from adoption by the Supreme Court, and shall ~~be printed and distributed as public documents pursuant to § 17.1-318. Such rules and amendments shall be maintained in a special book kept for such purpose by the clerks of court to which they are distributed~~ made available to all courts, members of the bar, and the public.

C. Rules to be published. - The Virginia Code Commission shall publish and cause to be properly indexed and annotated the rules adopted by the Supreme Court, and all amendments thereof by the Court, and all changes made therein pursuant to subsection D hereof.

D. Effect of subsequent enactments of the General Assembly on rules of court. - The General Assembly may, from time to time, by the enactment of a general law, modify, or annul any rules adopted or amended pursuant to this section. In the case of any variance between a rule and an enactment of the General Assembly such variance shall be construed so as to give effect to such enactment.

E. The rules of evidence prepared by the Supreme Court shall be submitted to the Virginia Code Commission for approval as provided in § 30-153 and shall be codified upon enactment by the General Assembly.

~~§ 17.1-318. Printing and distribution of Rules of the Supreme Court.~~

~~A. The Executive Secretary of the Supreme Court of Virginia shall have printed sufficient copies of the Rules of the Supreme Court and amendments thereto, adopted from time to time pursuant to subsection A of § 8.01-3 for delivery pursuant to this section.~~

~~The Executive Secretary shall deliver:~~

~~1. One copy of such rules and amendments thereto to the following:~~

- ~~a. Each justice of the Supreme Court;~~
- ~~b. The Clerk of the Supreme Court;~~
- ~~c. The judges of each court of this Commonwealth;~~
- ~~d. The clerk of each court of this Commonwealth;~~
- ~~e. The Secretary of the Virginia State Bar;~~
- ~~f. The Clerk of the House of Delegates;~~

Proposed Legislation

- ~~g. The Clerk of the Senate;~~
 - ~~h. The Division of Legislative Services;~~
 - ~~i. Each member of the General Assembly;~~
 - ~~j. The clerk of each of the district courts of the United States held in this Commonwealth;~~
 - ~~k. The Library of Virginia; and~~
 - ~~l. The State Law Library;~~
- ~~2. Six copies of such rules and amendments to each of the following:~~
- ~~a. The Attorney General;~~
 - ~~b. The State Corporation Commission; and~~
 - ~~c. The Virginia Workers' Compensation Commission;~~
- ~~3. Annually on the request of the respective deans of the accredited schools of law in this Commonwealth, such number of copies of the rules and the amendments unincorporated therein, from time to time, as each such dean shall certify to him is needed for instructional purposes; and~~
- ~~4. To the Secretary of the Virginia State Bar, from time to time, such number of copies as the Secretary shall from time to time request. The Secretary shall distribute such rules and amendments from time to time to the members of the Virginia State Bar, and to others whom he deems interested in and affected by the same.~~
- ~~B. The Executive Secretary of the Supreme Court of Virginia shall fix the price for each copy of the rules and amendments distributed in an amount to cover the cost of printing, mailing, and handling, and shall collect such costs from the distributees set forth in subdivisions A 3 and A 4 of this section and pay all such funds collected into the state treasury.~~

Proposed Legislation

PAYMENT OF JUROR FEES IN NONSUITS

§ 8.01-380. Dismissal of action by nonsuit; fees and costs.

A. A party shall not be allowed to suffer a nonsuit as to any cause of action or claim, or any other party to the proceeding, unless he does so before a motion to strike the evidence has been sustained or before the jury retires from the bar or before the action has been submitted to the court for decision. After a nonsuit no new proceeding on the same cause of action or against the same party shall be had in any court other than that in which the nonsuit was taken, unless that court is without jurisdiction, or not a proper venue, or other good cause is shown for proceeding in another court, or when such new proceeding is instituted in a federal court. If after a nonsuit an improper venue is chosen, the court shall not dismiss the matter but shall transfer it to the proper venue upon motion of any party.

B. Only one nonsuit may be taken to a cause of action or against the same party to the proceeding, as a matter of right, although the court may allow additional nonsuits or counsel may stipulate to additional nonsuits. The court, in the event additional nonsuits are allowed, may assess costs and reasonable attorneys' fees against the nonsuiting party.

C. If notice to take a nonsuit of right is given to the opposing party within five days of trial, the court in its discretion may assess against the nonsuiting party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are actually incurred by the opposing party solely by reason of the failure to give notice at least five days prior to trial. The court shall have the authority to determine the reasonableness of expert witness fees and travel costs.

D. If notice to take a nonsuit of right is exercised at trial or within twenty-four hours prior to the beginning of trial, the court in its discretion may assess against the nonsuiting party any costs actually incurred in summoning or impaneling jurors for the trial.

E. A party shall not be allowed to nonsuit a cause of action, without the consent of the adverse party who has filed a counterclaim, cross claim or third-party claim which arises out of the same transaction or occurrence as the claim of the party desiring to nonsuit unless the counterclaim, cross claim or third-party claim can remain pending for independent adjudication by the court.

Proposed Legislation

DESIGNATION OF CIRCUIT COURT JUDGES TO SIT IN DISTRICT COURTS

§ 16.1-69.35. Administrative duties of chief district judge; same judge may be both general district judge and juvenile and domestic relations district judge in certain counties.

The chief judge of each district shall have the following administrative duties and authority with respect to his district:

1. When any district court judge is under any disability or for any other cause is unable to hold court and the chief judge determines that assistance is needed:

a. The chief district judge shall designate a judge within the district or a judge of another district court within the Commonwealth, if one is reasonably available, to hear and dispose of any action or actions properly coming before such district court for disposition; or

b. If unable to designate a judge as provided in subdivision 1 a, the chief district judge may designate a retired district judge for such hearing and disposition if such judge consents; or

c. If unable to assign a retired district court judge, the chief district judge may designate a retired circuit court judge if such judge consents or the chief district judge may request that the Chief Justice of the Supreme Court designate a circuit judge.

If no judges are available under subdivision a, b or c, then a substitute judge shall be designated pursuant to § 16.1-69.21.

While acting, any judge so designated shall have all the authority and power of the judge of the court, and his order or judgment shall, to all intents and purposes, be the judgment of the court. A general district court judge designated pursuant to subdivision 1 a, may, with his consent, substitute for or replace a juvenile and domestic relations district court judge, and vice versa. The names of the judges designated under subdivisions b and c shall be selected from a list provided by the Executive Secretary and approved by the Chief Justice of the Supreme Court.

2. The chief general district court judge of a district may designate any juvenile and domestic relations district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases for a period of not more than ninety days, in any of the general district courts within the district. The chief juvenile and domestic relations district court judge of a district may designate any general district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases for a period of not more than ninety days, in any of the juvenile and domestic relations district courts within the district. Every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as any judge of the district for which he is designated to assist, and, while so acting, his order or judgment shall be, for all purposes, the judgment of the court to which he is assigned.

3. If on account of congestion in the work of any district court there is in his opinion need therefor, the Chief Justice of the Supreme Court may, upon his

Proposed Legislation

own initiative or upon written application of the chief district court judge desiring assistance, designate a **district court** judge from another district or any circuit or a retired ~~district~~ judge to provide judicial assistance to such district. Every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as any judge of the district for which he is designated to assist and while so acting his order or judgment shall be, to all intents and purposes, the judgment of the court to which he is assigned. ~~If such a designation is made, the Chief Justice shall designate a general district court judge to sit in a general district court and a juvenile and domestic relations district court judge to sit in a juvenile and domestic relations district court.~~

4. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge may establish special divisions of any general district court when the work of the court may be more efficiently handled thereby such as through the establishment of special civil, criminal or traffic divisions, and he may assign the judges of the general district court with respect to serving such special divisions. In the City of Richmond the general district court shall, in addition to any specialized divisions, maintain a separate division of such court in that part of Richmond south of the James River with concurrent jurisdiction in civil matters whenever one or more of the defendants reside or the cause of action or any part thereof arises in that part of the city, concurrent jurisdiction over all traffic matters arising in that part of the city and exclusive jurisdiction over all other criminal matters arising in that part of the city.

5. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge shall determine when the district courts or divisions of such courts shall be open for the transaction of business. The chief judge or presiding judge of any district court may authorize the clerk's office to close on any date when the chief judge or presiding judge determines that operation of the clerk's office, under prevailing conditions, would constitute a threat to the health or safety of the clerk's office personnel or the general public. Closing of the clerk's office pursuant to this subsection shall have the same effect as provided in § 1-13.3:1. In determining whether to close because of a threat to the health or safety of the general public, the chief judge or the presiding judge of the district court shall coordinate with the chief judge or presiding judge of the circuit court so that, where possible and appropriate, both the circuit and district courts take the same action. He shall determine the times each such court shall be held for the trial of civil, criminal or traffic matters and cases. He shall determine whether, in the case of district courts in counties, court shall be held at any place or places in addition to the county seat. He shall determine the office hours and arrange a vacation schedule of the judges within his district, in order to ensure the availability of a judge or judges to the public at normal times of business. A schedule of the times and places at which court is held shall be filed with the Executive Secretary of the Supreme Court and kept posted at the courthouse, and in any county also at any such other place or places where court may be held, and the clerk shall make such schedules available to the public upon request. Any matter may, in the discretion of the judge, or by direction of the chief district judge, be removed from any one of such designated places to another, or to or from the county seat, in order to serve the convenience of the parties or to expedite the administration of justice;

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however, any town having a population of over 15,000 as of July 1, 1972, having court facilities and a court with both general criminal and civil jurisdiction prior to July 1, 1972, shall be designated by the chief judge as a place to hold court.

6. Subject to the provisions of § 16.1-69.38, the chief judge of a general district court or the chief judge of a juvenile and domestic relations district court may establish a voluntary civil mediation program for the alternate resolution of disputes. The costs of the program shall be paid by the local governing bodies within the district or by the parties who voluntarily participate in the program.

7. Notwithstanding any other provision of law, the same judge shall be allowed to serve as both a general district judge and a juvenile and domestic relations district judge for the Counties of Accomack and Northampton.

Proposed Legislation

COMMISSIONERS OF ACCOUNTS LEGISLATION

§ 8.01-606. Payment of small amounts to certain persons through court without intervention of fiduciary; authority of commissioners of accounts; certain fiduciaries exempt from accountings.

A. Whenever there is due to any person, any sum of money from any source, not exceeding ~~\$10,000~~ \$15,000, the fund may be paid into the circuit court of the county or city in which the fund became due or such person resides. The court may, by an order entered of record, (i) pay the fund to the person to whom it is due, if the person is considered by the court competent to expend and use the same in his behalf, or (ii) pay the fund to some other person who is considered competent to administer it, for the benefit of the person entitled to the fund, without the intervention of a fiduciary, whether the other person resides within or without this Commonwealth. The clerk of the court shall take a receipt from the person to whom the money is paid, which shall show the source from which it was derived, the amount, to whom it belongs, and when and to whom it was paid. The receipt shall be signed and acknowledged by the person receiving the money, and entered of record in the book in the clerk's office in which the current fiduciary accounts are entered and indexed. Upon the payment into court the person owing the money shall be discharged of such obligation. No bond shall be required of the party to whom the money is paid by the court. (Note: last two sentences were separate paragraphs.)

B. Whenever (i) it appears to the court having control of a fund, tangible personal property or intangible personal property or supervision of its administration, whether a suit is pending therefor or not, that a person under a disability who has no fiduciary, is entitled to a fund arising from the sale of lands for a division or otherwise, or a fund, tangible personal property or intangible personal property as distributee of any estate, or from any other source, (ii) a judgment, decree, or order for the payment of a sum of money or for delivery of tangible personal property or intangible personal property to a person under a disability who has no fiduciary is rendered by any court, and the amount to which such person is entitled or the value of the tangible personal property or intangible personal property is not more than ~~\$10,000~~ \$15,000, or (iii) a person under a disability is entitled to receive payments of income, tangible personal property or intangible personal property and the amount of the income payments is not more than ~~\$10,000~~ \$15,000 in any one year, or the value of the tangible personal property is not more than ~~\$10,000~~ \$15,000, or the current market value of the intangible personal property is not more than ~~\$10,000~~ \$15,000, the court may, without the intervention of a fiduciary, cause such fund, property or income to be paid or delivered to any person deemed by the court capable of properly handling it, to be used solely for the education, maintenance and support of the person under a disability. In any case in which an infant is entitled to such fund, property or income, the court may, upon its being made to appear that the infant is of sufficient age and discretion to use the fund, property or income judiciously, cause the fund to be paid or delivered directly to the infant.

Proposed Legislation

C. Whenever a person is entitled to a fund or such property distributable by a fiduciary settling his accounts before the commissioner of accounts of the court in which the fiduciary qualified, and the amount or value of the fund or property, or the value of any combination thereof, is not more than ~~\$10,000~~ \$15,000, the commissioner of accounts may approve distribution thereof in the same manner and to the extent of the authority herein conferred upon a court including exemption from filing further accounts where the value of the fund being administered is less than ~~\$10,000~~ \$15,000.

D. Whenever an incapacitated person or infant is entitled to a fund or such property distributable by a fiduciary settling accounts before the commissioner of accounts of the court in which the fiduciary qualified and the will or trust instrument under which the fiduciary serves, authorizes the fiduciary to distribute the property or fund to the incapacitated person or infant without the intervention of a guardian, conservator or committee, and the amount or value of such fund or property, or the value of any combination thereof, is not more than ~~\$10,000~~ \$15,000, the commissioner of accounts may approve distribution thereof in the same manner and to the extent of the authority hereinabove conferred upon a court or judge thereof.

E. Whenever a fiduciary is administering funds not exceeding ~~\$10,000~~ \$15,000, the circuit court of the county or city in which the fund is being administered by order entered of record may authorize the fiduciary, when considered competent to administer the funds, to continue to administer the funds for the benefit of the person entitled to the fund without the necessity of filing any further accounts, whether such person resides within or without this Commonwealth. The clerk of the court shall take a receipt from the fiduciary, which shall show the amount of the fund remaining, to whom it belongs, and the date the court entered the order exempting the filing of further accounts. The receipt shall be signed and acknowledged by the fiduciary, and entered of record in the book in the clerk's office in which the current fiduciary accounts are entered and indexed. ~~No bond shall~~ surety shall be required on the bond of a fiduciary granted an exemption from filing any further accounts. *(Note: last sentence was a separate paragraph)*

§ 26-4. ~~Effective January 1, 1998~~ When fiduciary may qualify without security.

The several courts in this Commonwealth and the clerks thereof, having jurisdiction to appoint personal representatives, guardians, conservators and committees may, in their discretion, when the amount coming into the hands or possession of the personal representative, guardian of a minor, conservator or committee does not exceed ~~\$5,000~~ \$15,000, allow any such personal representative, guardian, conservator or committee to qualify by giving bond without surety. Any personal representative or trustee serving jointly with a bank or trust company exempted from giving surety on its bond as such under § 6.1?18 shall, unless the court shall otherwise direct, be likewise exempt.

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§37.1-144. Surrender of ward's incapacitated person's estate.

The fiduciary shall surrender the ward's incapacitated person's estate or that portion for which he is accountable, to the ward's incapacitated person, if the incapacitated person is restored to capacity, or

If the ward's incapacitated person dies prior to such restoration, the fiduciary shall surrender the real estate to the ward's incapacitated person heirs or devisees, and the personal estate to his executors or administrators. If upon the death of the ward incapacitated person, (i) the value of the personal estate in the custody of the fiduciary is ~~\$5,000~~ \$15,000 or less, (ii) a personal representative has not qualified within sixty days of the ward's incapacitated person's death, and (iii) the fiduciary does not anticipate that anyone will qualify, the fiduciary may pay the balance of the ward's incapacitated person's estate to the ward's incapacitated person's surviving spouse, or if there is no surviving spouse, to the distributees of the ward's incapacitated person or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services provided. The distribution shall be noted in the guardian's fiduciary's final accounting submitted to the Commissioner of Accounts.

~~Nothing in this section or in §§ 37.1-138 to 37.1-142 shall be construed as affecting in any way the provisions of § 37.1-145 relative to supplying comforts and luxuries for persons committed.~~

§ 58.1-1712. Levy; rate of tax.

A tax is hereby imposed on the probate of every will or grant of administration not exempt by law. The tax shall be based on the value of the estate as determined in §§58.1-1713. For every \$100 of value, or fraction of \$100, a tax of 10 cents is imposed. However, the tax imposed by this section shall not apply to decedents' estates of ~~\$10,000~~ \$15,000 or less in value.

§ 26-8. Commissioners of accounts.

A. The judges of each circuit court shall appoint so many commissioners of accounts, as may be requisite to carry out the duties of that office, who shall be removable at pleasure and who shall have a general supervision of all fiduciaries admitted to qualify in such court or before the clerk thereof and make all ex parte settlements of their accounts. The person appointed as a commissioner of accounts shall be a discreet and competent attorney-at-law. ~~however, if no such attorney be found willing to serve, the court shall appoint some other discreet and proper person. Any individual holding the office of commissioner of accounts upon July 1, 1973, shall continue therein at the pleasure of the court or until his retirement or death.~~

B. In the event more than one such commissioner is appointed, each commissioner shall maintain his own office and keep his own books, records and accounts. He shall retain the power of supervision over every account, matter or thing referred to him until his final account is approved, unless he shall resign, retire or be removed from office, in which case his successor shall continue such duties.

Proposed Legislation

§ 26-13. Enforcing filing of such inventories.

If any such fiduciary fail to make the return required by §§ 26-12, the commissioner shall issue, through the sheriff or other proper officer, a summons to such fiduciary, requiring him to make such return; and if such return be not made within thirty days after the date of service of the summons, the commissioner shall report the fact to his court. The court shall immediately thereupon order a summons to the fiduciary, requiring him to appear; and upon his appearing unless excused for sufficient reason, he shall be fined by the court in a sum not to exceed \$500. If the fiduciary still fail to make the return within such time as the court may prescribe, he shall be deemed guilty of contempt of court, and be dealt with accordingly.

~~Whenever the commissioner reports to the court that a fiduciary, who is an attorney at law licensed to practice in the Commonwealth, has failed to make the required return within thirty days after the date of service of a summons, the commissioner shall also mail a copy of his report to the Virginia State Bar.~~

§ 26-15. Accounts of sales under deeds of trust, etc.

Within six months after the date of a sale made under any recorded deed of trust, mortgage or assignment for benefit of creditors, otherwise than under a decree, the trustee shall return an account of sale to the commissioner of accounts of the court wherein the instrument was first recorded. Promptly after recording any trustee's deed, the trustee shall deliver to the commissioner of accounts a copy of the deed. The date of sale is the date specified in the notice of sale, or any postponement thereof, as required by subsection A of §§ 55-59.1. The commissioner shall state, settle and report to the court an account of the transactions of such trustee, and the same shall be recorded as other fiduciary reports. Any trustee failing to comply with this section shall forfeit his commissions on such sale, unless such commissions are allowed by the court.

If the commissioner of accounts of the court wherein an instrument was first recorded becomes aware that an account as required by this section has not been filed, the commissioner and the court shall proceed against the trustee in like manner and impose like penalties as set forth in §§ 26-13, unless such trustee is excused for sufficient reason. If after a deed of trust is given on land lying in a county, and before sale thereunder, the land is taken within the limits of the incorporated city, the returns of the trustee and settlement of his accounts shall be before the commissioner of accounts of such city.

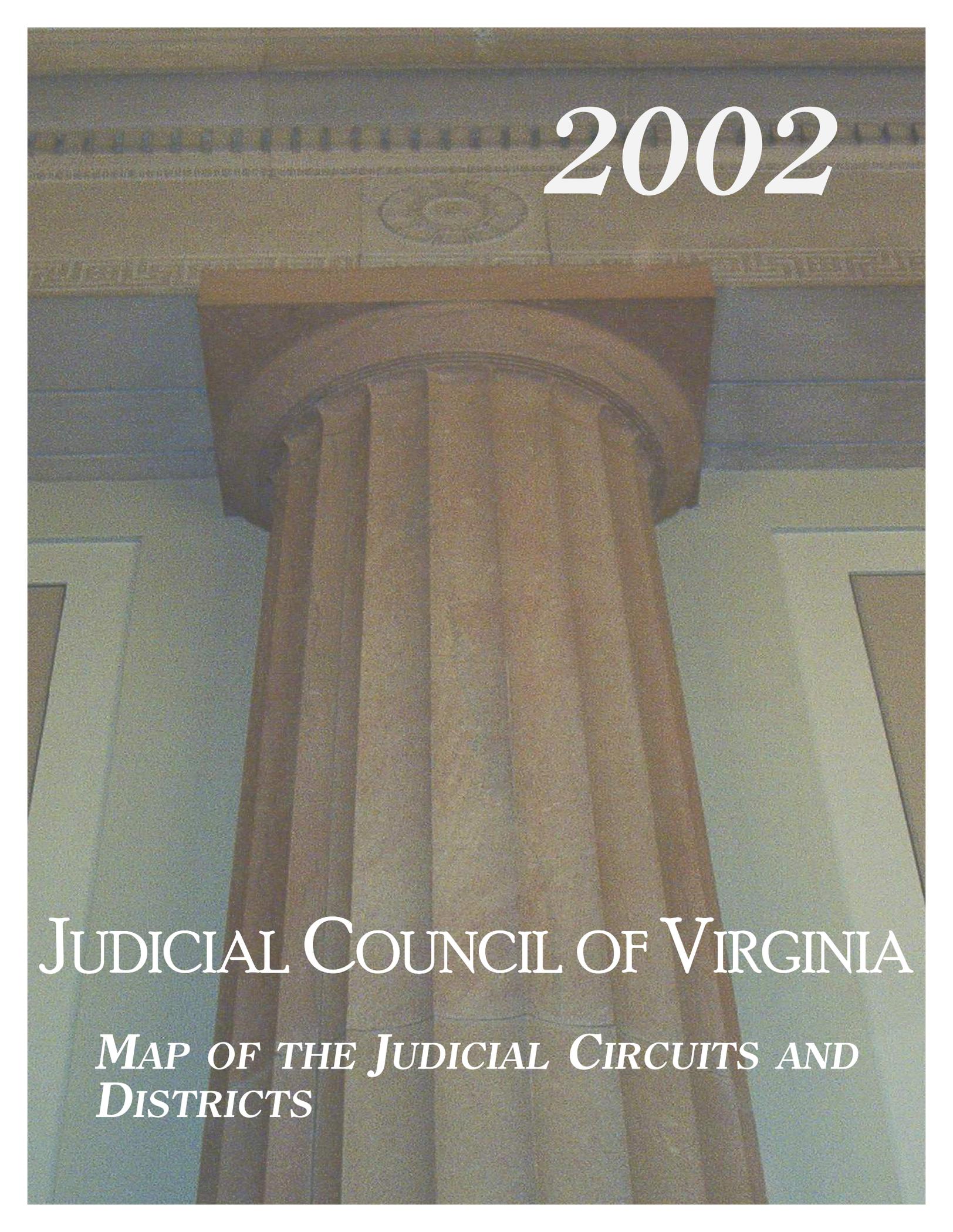
~~Whenever the commissioner reports to the court that a fiduciary, who is an attorney at law licensed to practice in the Commonwealth, has failed to make the required return within thirty days after the date of service of a summons, the commissioner shall also mail a copy of his report to the Virginia State Bar.~~

§ 26-20. Exhibition of accounts when sum does not exceed certain amount.

If the principal sum held by any fiduciary mentioned in §§ 26-17.3 does not exceed \$15,000, such fiduciary shall exhibit his accounts before the commissioner within ~~four months after the expiration of one year from the date of the order conferring his authority as the appropriate time period~~ provided in ~~§§ 26-17.3~~ §§ 26-17.4 through 26-17.7, but thereafter the commissioner of accounts

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may permit the fiduciary to exhibit his accounts every three years, which permission may be revoked by the commissioner on his own motion or upon request of any interested person. The provisions of this section shall apply to any case in which the corpus of the estate in the hands of the fiduciary has been reduced to \$15,000 or less although it formerly exceeded that amount. Any fiduciary exhibiting his accounts in accordance with the provisions of this section shall be entitled to compensation for his services.

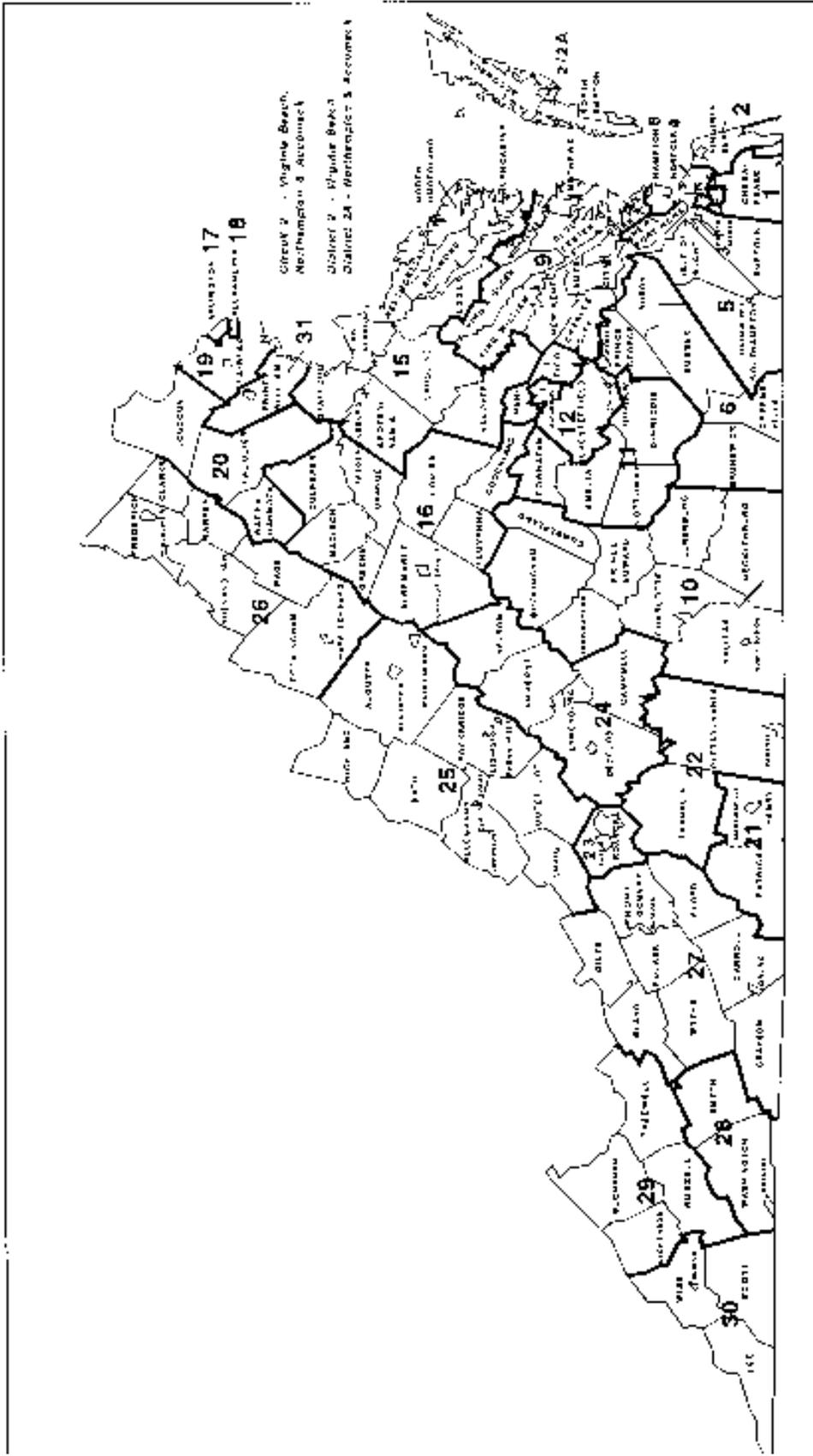


2002

JUDICIAL COUNCIL OF VIRGINIA

*MAP OF THE JUDICIAL CIRCUITS AND
DISTRICTS*

Judicial Circuits and Districts of Virginia



Prepared in the Office of the Executive Secretary.

Virginia Localities by Judicial Circuit/District

Accomack	2/2A	Franklin County	22	Patrick	21
Albemarle	16	Franklin City	5	Petersburg	11
Alexandria	18	Frederick	26	Pittsylvania	22
Alleghany	25	Fredericksburg	15	Portsmouth	3
Amelia	11	Galax	27	Powhatan	11
Amherst	24	Giles	27	Prince Edward	10
Appomattox	10	Gloucester	9	Prince George	6
Arlington	17	Goochland	16	Prince William	31
Augusta	25	Grayson	27	Pulaski	27
Bath	25	Greene	16	Radford	27
Bedford County	24	Greensville	6	Rappahannock	20
Bland	27	Halifax	10	Richmond County	15
Botetourt	25	Hampton	8	Richmond City	13
Bristol	28	Hanover	15	Roanoke County	23
Brunswick	6	Harrisonburg	26	Roanoke City	23
Buchanan	29	Henrico	14	Rockbridge	25
Buckingham	10	Henry	21	Rockingham	26
Buena Vista	25	Highland	25	Russell	29
Campbell	24	Hopewell	6	Salem	23
Caroline	15	Isle of Wight	5	Scott	30
Carroll	27	James City	9	Shenandoah	26
Charles City	9	King and Queen	9	Smyth	28
Charlotte	10	King George	15	Southampton	5
Charlottesville	16	King William	9	South Boston	10
Chesapeake	1	Lancaster	15	Spotsylvania	15
Chesterfield	12	Lee	30	Stafford	15
Clarke	26	Lexington	25	Staunton	25
Clifton Forge	25	Loudoun	20	Suffolk	5
Colonial Heights	12	Louisa	16	Surry	6
Covington	25	Lunenburg	10	Sussex	6
Craig	25	Lynchburg	24	Tazewell	29
Culpeper	16	Madison	16	Virginia Beach	2
Cumberland	10	Manassas	31	Warren	26
Danville	22	Manassas Park	31	Washington	28
Dickenson	29	Martinsville	21	Waynesboro	25
Dinwiddie	11	Mathews	9	Westmoreland	15
Emporia	6	Mecklenburg	10	Williamsburg	9
Essex	15	Middlesex	9	Winchester	26
Fairfax County	19	Montgomery	27	Wise	30
Fairfax City	19	Nelson	24	Wythe	27
Falls Church	17	New Kent	9	York	9
Fauquier	20	Newport News	7		
Floyd	27	Norfolk	4		
Fluvanna	16	Northampton	2/2A		
		Northumberland	15		
		Norton	30		
		Nottoway	11		
		Orange	16		
		Page	26		

Note	
Circuit 2	Virginia Beach Accomack Northampton
District 2	Virginia Beach
District 2A	Accomack Northampton

Virginia Judicial Circuits and Districts

1	Chesapeake	13	Richmond	25	Alleghany Augusta Bath Botetourt Buena Vista Clifton Forge Covington Craig Highland Lexington Rockbridge Staunton Waynesboro
2	Virginia Beach	14	Henrico		
2A	Accomack Northampton	15	Caroline Essex Fredericksburg Hanover King George Lancaster Northumberland Richmond Spotsylvania Stafford Westmoreland		
3	Portsmouth				
4	Norfolk				
5	Franklin City Isle of Wight Southampton Suffolk				
6	Brunswick Emporia Greensville Hopewell Prince George Surry Sussex	16	Albemarle Charlottesville Culpeper Fluvanna Goochland Greene Louisa Madiso Orange	26	Clarke Frederick Page Rockingham Harrisonburg Shenandoah Warren Winchester
7	Newport News				
8	Hampton	17	Arlington Falls Church		
9	Charles City Gloucester James City King & Queen King William Mathews Middlesex New Kent Poquoson Williamsburg York	18	Alexandria		
		19	Fairfax County Fairfax City		
		20	Fauquier Loudoun Rappahannock	28	Bland Carroll Floyd Galax Giles Grayson Montgomery Pulaski Radford Wythe
		21	Henry Martinsville Patrick	29	Bristol Smyth Washington Buchanan Dickenson Russell Tazewell
10	Appomattox Buckingham Charlotte Cumberland Halifax Lunenburg Mecklenburg Prince Edward	22	Danville Franklin County Pittsylvania	30	Lee Norton Scott Wise
11	Amelia Dinwiddie Nottoway Petersburg Powhatan	23	Roanoke City Roanoke County Salem	31	Manassas Manassas Park Prince William
12	Chesterfield Colonial Heights	24	Amherst Bedford City Bedford County Campbell Lynchburg Nelson		