

## **The Court of Appeals of Virginia**

The Court of Appeals of Virginia was established January 1, 1985. It is an intermediate appellate court which was created in order to increase the appellate capacity of the court system and expedite the appellate process. Its administrative headquarters are located in the Supreme Court Building in Richmond, Virginia.

### **History**

The need for expanded appellate capacity was first recognized in 1971. The report of the Virginia Court System Study Commission, composed of legislators and members of the bench and bar, recommended a reorganization plan for a unified court system. The Commission, chaired by former Chief Justice Lawrence W. I'Anson, recognized the need for an intermediate appellate court in Virginia which would absorb the bulk of review of circuit court appeals, while preserving the Supreme Court as a single body concentrating on the development of the law.

In 1978, a comprehensive study of the Virginia court system conducted by the National Center for State Courts also recommended that the appellate capacity of the Virginia courts be increased by creating an intermediate Court of Appeals. In 1982, the Judicial Council of Virginia proposed legislation for a twelve judge intermediate appellate court. Finally, in 1983, the General Assembly created the Court of Appeals of Virginia, effective January 1, 1985.

The establishment of the Court of Appeals has achieved the desired goal of increasing appellate capacity in the court system.

### **Judges**

The Court of Appeals consists of eleven judges who are elected for eight year terms by a majority of the members of each house of the General Assembly. If a vacancy occurs while the General Assembly is not in session, the Governor may appoint a successor to serve until thirty days after the commencement of the next session of the legislature.

The chief judge of the Court of Appeals is elected by a majority vote of the judges of the Court of Appeals to serve a term of four years. The Chief Judge designates where the Court of Appeals will sit in order to provide convenient access to the citizens of the various geographic areas of the state. The Court normally sits in four locations: Alexandria, Chesapeake, Richmond and Salem.

The clerk of the Court of Appeals receives, processes and maintains permanent records of appeals and other official documents filed with the Court.

### **Panels**

The Court of Appeals sits in panels of at least three judges. The chief judge assigns judges to panels and rotates the membership of the panels. Each panel independently hears and

determines petitions for appeal and appeals granted in criminal and other cases assigned to the panel.

The Court of Appeals sits en banc (or as a whole) in the following circumstances:

- where there is a dissent in a panel to which a case was originally assigned, and an aggrieved party requests an en banc hearing and at least four judges of the Court vote in favor of such a hearing;
- if a judge of a panel certifies that a decision of that panel conflicts with a previous decision of the Court or of any panel and three other judges agree; and
- in any case in which a majority of the Court, upon its own motion, determines it is appropriate to sit en banc.

Under these conditions, the Court of Appeals convenes en banc and reconsiders the case. The court sitting en banc may overrule any previous decision of a panel or the full Court. No fewer than eight judges may be present when the Court of Appeals sits en banc.

## **Jurisdiction**

The Court of Appeals has authority to hear appeals as a matter of right from:

- any final judgment, order, or decree of a circuit court involving affirmance or annulment of a marriage, divorce, custody, spousal or child support, control or disposition of a child and adoption, as well as other domestic relations cases;
- any final decision of the Virginia Workers' Compensation Commission (a state agency responsible for handling workers' compensation claims);
- any final decision of a circuit court on appeal from a decision of an administrative agency or a grievance hearing decision; and
- any interlocutory order granting, dissolving, or denying an injunction or adjudicating the principles of a cause in any of the cases listed above.

The Court of Appeals has authority to consider petitions for appeal from:

- final orders of conviction in traffic and criminal matters except where a sentence of death is imposed;
- final decisions of a circuit court on an application for a concealed weapons permit;
- certain preliminary rulings in felony cases when requested by the Commonwealth;
- final orders of a circuit court involving involuntary medical or mental health treatment of prisoners; and
- final orders for declaratory or injunctive relief addressing whether a person's free exercise of religion has been burdened by the Commonwealth or local government.

The Court of Appeals has original jurisdiction to issue writs of mandamus, prohibition and habeas corpus in any case over which the Court would have appellate jurisdiction.

In addition, the Court of Appeals has original jurisdiction to issue writs of actual innocence (based on non-biological evidence) upon petition of a person who has been convicted of a felony.

## **Procedure**

All criminal cases that are within the Court's jurisdiction and all traffic infraction cases are presented to the Court by petition for appeal. A petition is a formal written application to a court requesting judicial action on a certain matter.

Each petition for appeal in a criminal case is referred to one or more judges of the Court of Appeals. A judge may grant the petition on the basis of the record without oral argument. If the petition is granted, briefs are filed by both parties. The clerk of the Court of Appeals refers each granted appeal to a panel of the Court.

If a judge to whom the petition is initially referred does not grant the appeal, the petitioner is then entitled to appear before a panel and state the reasons why his appeal should be granted. If all of the judges of the panel agree the petition should not be granted, the order denying the appeal will state the reasons for denial and the case ends. If the panel grants the petition for appeal, further proceedings will take place.

All other appeals (domestic relations, Virginia Workers' Compensation Commission and those from administrative agencies) are heard as a matter of right. Appeals of right are cases that an appellate court is required to hear. These cases do not go through the petition process. Briefs are filed by both parties and the case is referred by the clerk of the Court to a panel of three judges. Oral argument is permitted but may be waived.

Decisions are issued by the Court of Appeals by written opinion or order.

A party may petition for rehearing of a final decision or order disposing of a case. The rehearing may be by a panel or en banc. If rehearing by a panel is granted it will be heard, where practicable, by the same panel which rendered the final decision in the case.

## **Certification**

In any case in which an appeal has been taken to the Court of Appeals, the Supreme Court may certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Such certification transfers jurisdiction over the case to the Supreme Court for all purposes. These certifications occur only when the case is of such public importance to require prompt decision by the Supreme Court or when the docket of the Court of Appeals is congested, and expeditious administration of justice requires the transfer.

## **Finality of Decisions**

When the Court of Appeals has rejected a petition for appeal, dismissed an appeal, or decided on an appeal, its decision is final, without appeal to the Supreme Court in the following cases:

- traffic infraction and misdemeanor cases where no incarceration is imposed;
- cases originating before any administrative agency or the Virginia Workers' Compensation Commission; and

- cases involving affirmance or annulment of a marriage, divorce, custody, spousal or child support, the control or disposition of a juvenile adoption, and all other domestic relations matters.

Notwithstanding the finality of these cases, if the Supreme Court determines on a petition for review that the decision of the Court of Appeals involves a substantial constitutional question as a determinative issue or a matter of significant precedential value, review may be had in the Supreme Court.

### **Review by the Supreme Court**

Except where the decisions of the Court of Appeals are final, any party aggrieved by a final decision of the Court of Appeals may petition the Supreme Court for an appeal.

## VIRGINIA'S JUDICIAL SYSTEM

### Notice Regarding the Americans with Disabilities Act and Requests for Accommodations by Persons with Disabilities

The Americans with Disabilities Act (ADA) of 1990 was enacted to ensure that all qualified individuals with disabilities enjoy the same opportunities that are available to persons without disabilities. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. The ADA directly affects state courts as providers of public programs and services. In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Supreme Court of Virginia and the courts of the Commonwealth of Virginia (collectively referred to as "Virginia's Judicial System") will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Virginia's Judicial System does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

**Effective Communication:** Virginia's Judicial System will generally, upon request, provide appropriate aids and services for qualified persons with disabilities so they can participate equally in Virginia's Judicial System programs, services, and activities, including qualified interpreters, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

**Modifications to Policies and Procedures:** Virginia's Judicial System will make all reasonable modification to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in Virginia's courts, even where pets are generally prohibited.

**Requests for Accommodation:** A request for accommodation should be made to the relevant clerk if the request relates to a pending case or activity of a particular court. Otherwise, the request should be made to the ADA Coordinator at the address below. Procedures for making a request, as well as a form for doing so, are available through the ADA Coordinator and on Virginia's Judicial System website, [www.vacourts.gov](http://www.vacourts.gov).

**No requirement to alter programs and services:** The ADA does not require Virginia's Judicial System to take any action that would fundamentally alter the nature of its programs or services or impose an undue financial or administrative burden.

**Complaints regarding accessibility:** Complaints concerning a program, service, or activity of a circuit court clerk's office should be directed to that clerk. Other complaints will be handled pursuant to grievance procedures adopted by the Office of the Executive Secretary. The procedures are available through the ADA Coordinator, and on Virginia's Judicial System website, [www.vacourts.gov](http://www.vacourts.gov).

**No surcharge:** Virginia's Judicial System will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

**Questions about this Notice** – Please submit your questions to: ADA Coordinator  
Renée Fleming Mills, Ph.D.  
Office of the Executive Secretary  
Supreme Court of Virginia  
100 N. 9th Street  
Richmond, Virginia 23219  
Fax: 804-786-0109  
E-mail: [ADACoordinator@vacourts.gov](mailto:ADACoordinator@vacourts.gov)