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January 7, 2020

Members of the General Assembly of Virginia
Pocahontas Building
900 East Main Street
Richmond, VA 23219

Justices of the Supreme Court of Virginia
Supreme Court of Virginia
100 North Ninth Street
Richmond, VA 23219-1315

Re: 2019 Report of the Judicial Council of Virginia

Dear Members of the General Assembly and Justices of the Supreme Court of Virginia:

As Secretary of the Judicial Council of Virginia, I am pleased to submit the 2019 Report of the Judicial Council, as required by Code § 17.1-705.

If you have any questions, please do not hesitate to contact me.

With best wishes, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "KRH".

Karl R. Hade

KRH:jrp


cc: Division of Legislative Automated System

2019

Judicial Council of Virginia



Report to the General Assembly and Supreme Court of Virginia



**The Judicial Council of Virginia
2019 Report to the General Assembly and Supreme Court of Virginia
Supreme Court of Virginia, Office of the Executive Secretary
Richmond, Virginia
Published January 2020**




Table of Contents

The Judicial Council of Virginia ii

Organizational Chart of Virginia’s Judicial System iii

I. Proceedings of the Judicial Council of Virginia 1

 Proceedings

 The Honorable Harry L. Carrico Outstanding Career Service Award

 Legislative Proposals for the 2020 Session of the General Assembly

II. Recommended Changes to Rules of Court 4

THE JUDICIAL COUNCIL OF VIRGINIA

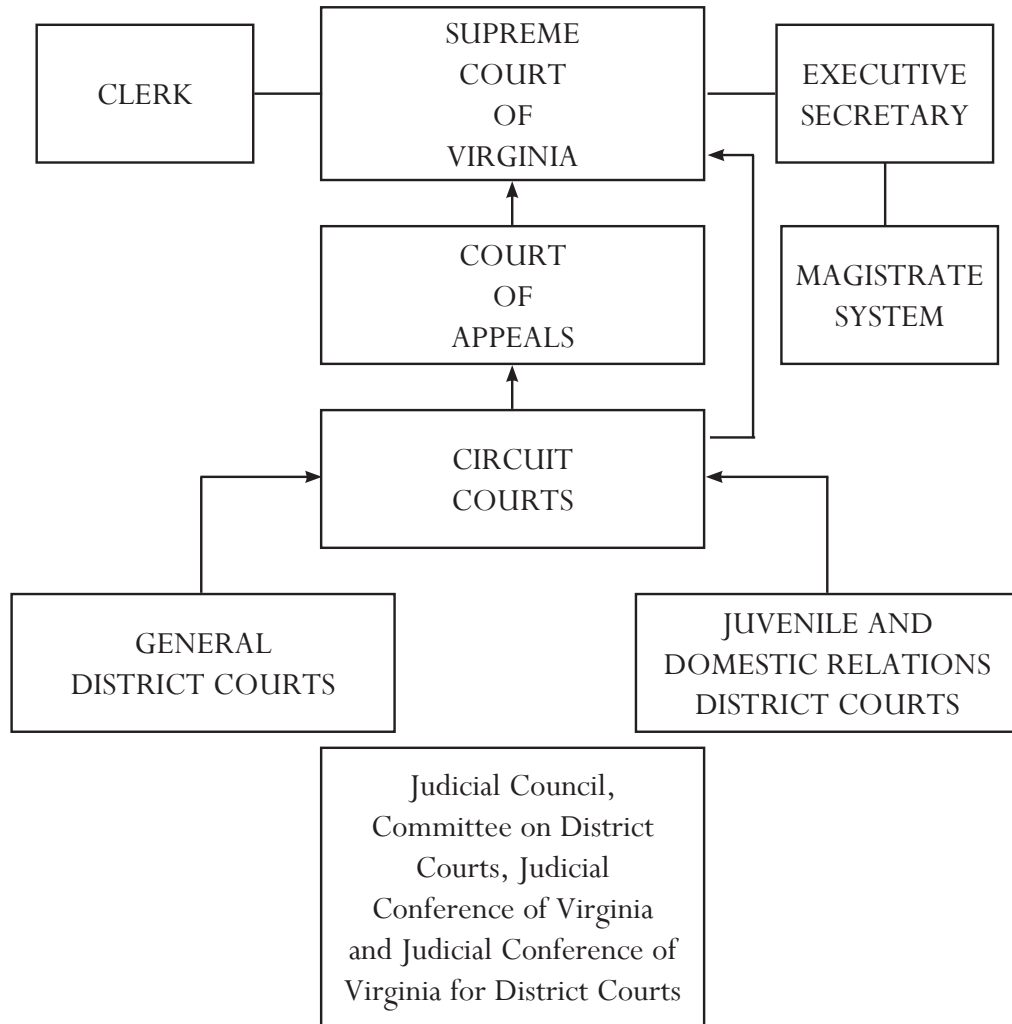
Membership as of December 31, 2019

The Honorable Donald W. Lemons	Chief Justice, Supreme Court of Virginia
The Honorable Marla Decker	Chief Judge, Court of Appeals of Virginia
The Honorable Jerrauld C. Jones	Judge, Fourth Judicial Circuit
The Honorable Thomas J. Wilson, IV	Judge, Twenty-Sixth Judicial Circuit
The Honorable Nolan B. Dawkins	Judge, Eighteenth Judicial Circuit
The Honorable Cheryl V. Higgins	Judge, Sixteenth Judicial Circuit
The Honorable Stacey Moreau	Judge, Twenty-Second Judicial Circuit
The Honorable Deanis Simmons	Judge, Twenty-Eighth Judicial Circuit
The Honorable Jay E. Dugger	Chief Judge, Eighth Judicial District
The Honorable George Barton Chucker	Judge, Fourteenth Judicial District
The Honorable Mark D. Obenshain	Chair, Senate Courts of Justice, Senate of Virginia
The Honorable Robert B. Bell	Chair, House Courts of Justice, Virginia House of Delegates
The Honorable James A. Leftwich, Jr. (Jay)*	Member, Virginia House of Delegates
Monica Taylor Monday, Esquire	Attorney-at-Law, Member of the Bar of the City of Roanoke
Lucia Anna Trigiani, Esquire	Attorney-at-Law, Member of the Bar of the City of Alexandria
Karl R. Hade**	Executive Secretary

*Designee of Delegate Robert B. Bell

**Ex-officio

VIRGINIA'S JUDICIAL SYSTEM



Route of Appeal →

I. Proceedings of the Judicial Council of Virginia

INTRODUCTION

The Judicial Council of Virginia was established by statute in 1930. Council is charged with making a continuous study of the organization and the rules and methods of procedure and practice of the judicial system of the Commonwealth of Virginia, including examining the work accomplished and results produced by the judicial system. See Va. Code §17.1-703.

PROCEEDINGS OF THE JUDICIAL COUNCIL

The Honorable Harry L. Carrico Outstanding Career Service Award

In 2004, the Judicial Council of Virginia created an Outstanding Career Service Award in honor of the Honorable Harry L. Carrico, Chief Justice of Virginia from 1981 to 2003. This award is presented annually to one who, over an extended career, demonstrates exceptional leadership in the administration of the courts while exhibiting the traits of integrity, courtesy, impartiality, wisdom, and humility.

The latest recipient of this award, selected in 2018 for presentation in 2019, was the Honorable Wilford Taylor, Jr., retired judge of the 8th Judicial Circuit (Hampton). The Peninsula native and former deputy city attorney for Hampton was appointed to the Hampton General District Court in 1985, where he served until 1995, when he was elected a judge of the Hampton Circuit Court, 8th Judicial Circuit of Virginia. Retired Judge Taylor served four terms as Chief Judge of the Hampton Circuit Court and retired in 2017. On both courts, he was Hampton's first full-time African-American judge. At the Hampton Circuit Court, Judge Taylor helped institute its drug treatment court program and later a specialty docket for veterans. Judge Taylor served on both active duty and as a reservist in the U.S. Army, 1972-2001. He served two terms on the Judicial Council and was active in the American Judges Association and the Lawyers Helping Lawyers Committee of the Virginia State Bar. He is currently an Adjunct Professor of Law and Director of the Trial Advocacy Program at Marshall-Wythe School of Law, College of William & Mary.

LEGISLATIVE PROPOSALS FOR THE 2020 SESSION OF THE GENERAL ASSEMBLY

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-149 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-149. How surety on a bond in recognizance may surrender principal and be discharged from liability; deposit for surrender of principal.

A. A bail bondsman or his licensed bail enforcement agent on a bond in a recognizance may at any time arrest his principal and surrender him to the court before which the recognizance was taken or before which such principal's appearance is required, or to the sheriff, sergeant or jailer of the county or city wherein the court before which such principal's appearance is required is located; in addition to the above authority, upon the application of the surety, the court, or the clerk thereof, before which the recognizance was taken, or before which such principal's appearance is required, or any magistrate shall issue a *capias* for the arrest of such principal, and such *capias* may be executed by such bail bondsman or his licensed bail enforcement agent, or by any sheriff, sergeant or police officer, and the person executing such *capias* shall deliver such principal and such *capias* to the sheriff or jailer of the county or the sheriff, sergeant or jailer of the city in which the appearance of such principal is required, and thereupon the surety or the property bail bondsman shall be discharged from liability for any act of the principal subsequent thereto. Such sheriff, sergeant or jailer shall thereafter deliver such *capias* to the clerk of such court, with his endorsement thereon acknowledging delivery of such principal to his custody. If a magistrate issues a *capias* pursuant to this section, the magistrate shall transmit a copy of the *capias* to the court before which such principal's appearance is required by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

B. If a bail bondsman on a bond in a recognizance surrenders his principal for any reason other than a summons to show cause issued by the court for which the principal is to appear, the bondsman shall deposit with the clerk or magistrate the greater of 10 percent of the amount of the bond or \$50, which shall be made at such time the bondsman makes application for a *capias*. The bondsman shall petition the court within 15 days from the surrender of the principal to show cause, if any can be shown, why the bondsman is entitled to the amount deposited. If the court finds that there was sufficient cause to surrender the principal, the court shall return the deposited funds to the bondsman. If the court finds that the surrender of the principal by the bondsman was unreasonable, the deposited funds shall be returned to the principal. Remission of funds shall not be issued by the court until the sixteenth day after the finding. If the bondsman does not petition the court for the return of the deposited funds within 15 days from the surrender of the principal, the deposited funds shall be paid into the state treasury to be credited to the Literary Fund. Nothing in this subsection shall apply to a private citizen who posted cash or real estate to secure the release of a defendant.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-295.2:1 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-295.2:1. Postrelease supervision of felons sentenced for certain offenses committed on or after July 1, 2006.

A. For offenses committed on or after July 1, 2006:

1. At the time the court imposes a sentence upon a conviction for a first violation of subsection A of § 18.2-472.1 the court shall impose an added term of postrelease ~~supervision~~ incarceration of six months.

2. For a second or subsequent violation of subsection A of § 18.2-472.1 when both violations occurred after July 1, 2006, or a first violation of subsection B of § 18.2-472.1, the court shall impose an added term of postrelease ~~supervision by the Department of Corrections~~ incarceration of two years.

3. For a second or subsequent violation of subsection B of § 18.2-472.1 when both violations occurred after July 1, 2006, the court shall impose an added term of postrelease ~~supervision by the Department of Corrections~~ incarceration of five years.

Any terms of postrelease ~~supervision~~ incarceration imposed pursuant to this section shall be in addition to any other punishment imposed, including any periods of active incarceration or suspended periods of incarceration, if any.

B. The court shall order that any term of postrelease ~~supervision~~ incarceration imposed pursuant to this section be suspended, and the defendant be placed on active supervision under a postrelease supervision program operated by the Department of Corrections. The court shall order that the defendant be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device during this period of postrelease supervision. Failure to successfully abide by the terms and conditions of the postrelease supervision program shall be grounds to terminate the period of postrelease supervision and recommit the defendant to the Department of Corrections or to a local correctional facility. Procedures for any such termination shall be conducted after a hearing in the court which originally sentenced the defendant, conducted in a manner consistent with a revocation hearing under § 19.2-306, mutatis mutandis.

C. Nothing in this section shall be construed to prohibit the court from exercising any authority otherwise granted by law.

II. Recommended Changes to Rules of Court

BACKGROUND

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

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

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

CHANGES TO RULES OF COURT RECOMMENDED BY THE JUDICIAL COUNCIL AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2018 THAT BECAME EFFECTIVE IN 2019

At the May 8, 2018, meeting, Judicial Council considered and made recommendations regarding adoption of the following proposed amendments. By Order dated October 31, 2018, the following Rules were amended, effective January 1, 2019.

- Amendment to Rule 1:7, Computation of Response Dates, and Rule 1:12, Service of Papers after the Initial Process. These Rules were amended to clarify deadlines for responding to different methods of delivery of pleadings and papers.
- Amendment to Rule 4:1, General Provisions Governing Discovery. This Rule was amended to improve discovery procedures for electronically stored information in civil cases.
- Amendment to Rule 4:9, Production by Parties of Documents, Electronically Stored Information, and Things; Entry on Land for Inspection and Other Purposes; Production at Trial. This Rule was amended to require that an objection to a request for production must state whether any responsive materials are being withheld based on the objection.
- Amendments to Rules 5:11 and 5A:8, Record on Appeal: Transcript or Written Statement. These Rules were amended to clarify that a transcript must be filed with the clerk of the trial court no later than 60 days after entry of judgment.

**RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL
AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2019**

At the May 8, 2019, meeting, Judicial Council considered and made recommendations regarding the following Rules. These recommendations were adopted by Order dated July 2, 2019, and became effective on September 1, 2019.

- Draft Rules 1:1B, Jurisdictional Transfer During Appeal of Final Judgment, and 1:1C, Jurisdictional Transfer During Appeals of Interlocutory Orders, as well as added language for Rules 5:9, Notice of Appeal, and 5A:6, Notice of Appeal. Rules 1:1B and 1:1C were promulgated and existing Rules 5:9 and 5A:6 amended to specify the locus of jurisdiction for various actions, before and after a notice of appeal is filed by a party in civil court.
- Part One Appendix of Forms – Form 3, Uniform Pretrial Scheduling Order. The Pretrial Scheduling Order was revised regarding the time and scope of deposition designations for material to be used at trial.
- Rule 3:20, Motion for Summary Judgment. This Rule was amended to allow use of depositions and affidavits on summary judgment motions in business-vs-business cases involving \$50,000 or more. The changes track amendments to Va. Code § 8.01-420 passed during the 2019 Session. 2019 Acts of Assembly, Ch. 10.
- Amendment to Rule 5A:25(d) amendment regarding determination of the contents of the Appendix on appeal. This Rule was amended to allow appellee to include assignments of error in preparing the Appendix in Court of Appeals cases.
- Rule 5:5, Filing Deadlines; Post Trial Proceedings Below; Timely Filing by Mail; Inmate Filing; Extension of Time, Rule 5A:3, Filing Deadlines; Post Trial Proceedings Below; Timely Filing by Mail; Inmate Filing; Extension of Time, and Rule 3A:25, Special Rule Applicable to Post-Conviction Proceedings: Inmate Filings in the Trial Courts Under Code § 8.01-654. These Rules were amended to update the provisions of these Rules which govern determinations of the “mailing date” for papers filed by an inmate.

Also at the May meeting, Judicial Council was presented with amendments to Rule 1:24, Requirements for Court Payment Agreements for the Collection of Fines and Costs. These amendments, occasioned by budget language passed during the 2019 General Assembly Session, removed from the Rule all references to the suspension of driver’s licenses for failure to pay fines and costs. The amendments were made by Order dated June 7, 2019.