

**INTERIM REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**A Retention Schedule
for
Court Records**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
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**Interim Report of the
Joint Subcommittee Studying
A Retention Schedule for Court Records
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
1987**

To: Honorable Gerald L. Baliles, Governor of Virginia,
and
The General Assembly of Virginia

INTRODUCTION

Pursuant to House Joint Resolution No. 69 (See Appendix A), the 1986 Session of the General Assembly authorized a study to review alternatives and recommend proposals concerning a retention and disposition policy for circuit court records in the Commonwealth.

C. Hardaway Marks, a delegate from Hopewell and sponsor of the study resolution, was selected to chair the joint study subcommittee. Other members of the General Assembly chosen from the House of Delegates to serve on this subcommittee were W. Tayloe Murphy, Jr., and Robert W. Ackerman, and, from the Senate, Virgil H. Goode, Jr. and Thomas J. Michie, Jr. Additionally, two circuit court judges, Robert C. Goad and Robert W. Stewart, two clerks of circuit courts, Charlton E. Gnadt and David A. Bell, and two citizen members, Lawrence A. Belcher and R. Breckinridge Daughtrey, were appointed to serve on the study subcommittee.

BACKGROUND

The clerks of Virginia's circuit courts are inundated under a relentlessly growing sea of court records. Many clerks' offices suffer from a critical shortage of storage space. Often case files must be transferred to makeshift, temporary, or inaccessible storage areas. Quality of service to the public is beginning to suffer as retrieval time for files increases. Jammed storage areas often unavoidably pose serious fire risks. Most clerks have neither the funds nor personnel to deal with the many problems created by this mountain of case files which must be permanently retained under current state law.

The annual number of law, equity and criminal cases commenced in Virginia circuit courts increased 177% between 1960 and 1983. New cases statewide grew from 54,048 in 1960 to 149,583 in 1983. Case volume is not expected to decline significantly in the future.

By the year 2000, it has been estimated that approximately \$3,500,000 will be needed to construct new storage areas. This estimate reflects only minimal equipment, construction and maintenance costs. On the other hand, microfilming offers no easy solution to the storage problem. Approximately \$200,000 annually would be required to microfilm new case files, and this sum would leave all existing files in their current state.

Overcrowding of storage areas in the Fairfax County Courthouse is illustrative of the problem statewide. Approximately 260,574 case files are housed in the Fairfax Judicial Center. Of these, 145,463 are stacked in temporary, shelved-in areas which have been earmarked for courtroom and administrative office expansion within the next five years. There is no other storage space currently available, and construction costs for new facilities would exceed \$100 per square foot. Almost \$3,000,000 would be required to backfilm all case files. Additionally, Fairfax County does not have sufficient staff to continually reorganize and upgrade (including boxing, marking and moving) existing files.

Although the volume of case files is greater in Fairfax County than in most other circuit courts in the Commonwealth, many of the smaller courthouses are just as or even more crowded. For example, testimony was received from the City of Williamsburg Circuit Court Clerk that unorganizable storage problems have left her entire office "in a shambles."

CONSIDERATIONS

In an effort to understand the magnitude of this problem and examine alternative solutions, the Study Subcommittee held public hearings and work sessions on August 15 and October 9.

Circuit court clerks, judges and other interested parties were invited and encouraged to share their concerns and suggest solutions.

Generally, the Study Subcommittee explored three alternatives or combinations thereof:

1. Construction of statewide storage facilities;
2. Microfilming all ended circuit court law, equity and criminal case files;
3. Purging existing case files after approved retention periods.

Each alternative contained drawbacks and posed serious funding problems.

FINDINGS AND RECOMMENDATIONS

The Subcommittee recommends that the study be continued for an additional year for the purpose of holding hearings and taking surveys to receive input from circuit court judges, clerks and other interested parties with regard to a proposed comprehensive records retention program.

In outline form, the suggested program will be structured as follows:

- A. All *case files ended prior to January 1, 1913*, are to be permanently maintained in hardcopy form, either in the locality or in the State Library in accordance with §§ 42.1-83 and 42.1-86 of the Code.

Reason : These records, which constitute only a small percentage of the total volume of case files, represent a mother lode for genealogists and historians who must rely almost exclusively on court records for many types of historical data. For records prior to 1913, when vital statistics began being kept, collateral sources of information are very scarce or nonexistent.

- B. *Case files after 1912.*

1. General retention rule:

- After a *30-year retention period*¹, all case files may be purged of non-essential material which will be enumerated in a *disposal list* to be prepared during the next year.

- Clerks will be encouraged to keep the entire file for any case which is deemed to have historical or sensational significance.

- No records regulating or pertaining to land title are to be destroyed.

- The files retained after purging may be kept either in hardcopy or on microfilm, at the local clerk's option.

- C. *Exceptions to "B"* (for case files after 1912) where the *entire case file may be destroyed after a 10-year retention period*²:

1. Cases that fall under the "two and five year" rule (See § 8.01-335(a) and (b)), which permits courts to dismiss inactive cases.
2. Nonsuits.
3. Misdemeanor appeals (unless a felony is involved).
4. Uncontested divorce case files.
5. Other (to be designated).

During the next year, the Subcommittee will specifically seek guidance as to which items should be included on the thirty-year disposal list or added to the recommended exceptions which will be subject to the ten-year disposal rule. A survey will also be conducted among all circuit court clerks to determine the pervasiveness of the overcrowding problem. Additionally, the feasibility of having the Commonwealth pay a portion of the expenses incurred by localities in the microfilming of case files will be explored.

Basically, the Subcommittee felt that neither construction of regional or local depositories nor wholesale microfilming solves the overcrowding problem. Additionally, each of these options would be almost prohibitively expensive.

The suggested records retention program with its selective purging provisions will allow each locality at its own pace to alleviate overcrowding by beginning (i) immediate purging of non-essential materials in older case files and (ii) immediate destruction of entire case files in designated cases at least ten years old.

The Subcommittee reluctantly recommended a system of purging, but believed sufficient safeguards would be provided to ensure that vital records are preserved. These safeguards include lengthy waiting periods and establishment of a disposal list (30-year rule) and a file destruction list (10-year rule) by consensus of those who use or are responsible for case files. At the same time, the Subcommittee felt that severe overcrowding of storage areas should be dealt with now, and that to propose "stopgap" measures would eventually prove more expensive. Judicious purging, it was felt, can serve to balance cost against historic significance and the necessity to permanently maintain vital records.

Respectfully submitted,

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FOOTNOTES

1. All retention periods begin on the court order date.

