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# SUPREME COURT OF VIRGINIA



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November 14, 2014

The Members of the Virginia General Assembly

Dear Members of the General Assembly:

Chapter 413, Virginia Acts of Assembly, 2013 Session, authorized the Office of the Executive Secretary of the Supreme Court of Virginia to contract with an independent entity to study the feasibility and effect of implementing a system in which "a specified number of retired circuit and district judges would become senior judges who sit for a specified amount of time each year in return for a portion of the current compensation of active judges, eliminating the need for substitute judges and special justices and for the reliance on recalled retired judges."

In response to the legislation, the Office of the Executive Secretary contracted with the National Center for State Courts to study the feasibility and effect of implementing a senior judge system for the circuit and district courts of the Commonwealth. In accordance with the Act, I am submitting an executive summary of the progress made to date by the National Center for State Courts towards meeting the objectives of this study.

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

With kind regards, I am

Very truly yours,

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

Karl R. Hade

KRH:jrp

Enclosure

cc: Division of Legislative Automated Systems

***Assessing the Feasibility and Impact  
of Implementing a Senior Judge System in the  
Circuit and District Courts of the Commonwealth of Virginia***

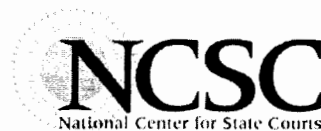
*Executive Summary of Progress to Date*

*Submitted by:*

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*National Center for State Courts*

*October 2014*



*“Under such a system [senior judge system], a specified number of retired circuit and district judges would become senior judges who sit for a specified amount of time each year in return for a portion of the current compensation of active judges, eliminating the need for substitute judges and special justices and for the reliance on recalled retired judges.”* (Chapter 413 of the 2013 Virginia Acts of Assembly)

**Goal:** In November, 2013, the Office of the Executive Secretary contracted with the National Center for State Courts to conduct a study to examine the feasibility and impact of implementing a senior judge system for circuit and district courts in Virginia. The 2013 Virginia Acts of Assembly (Chapter 413) calls for the study to address: (a) the design characteristics of a senior judge system including method of selection, compensation, and duration of service; (b) the number of senior judges required and the minimum amount of time each senior judge would be required to sit in order to eliminate the need for substitute judges and special justices and to reduce the reliance on recalled retired judges; (c) the fiscal impact of a senior judge system; (d) how a senior judge system should be structured to allow for more equitable and efficient allocation of judicial resources within and among the judicial circuits and districts; (e) improvements to the administration of justice resulting from a senior judge system; (f) the most effective procedure to transition to a senior judge system.

**Method:** To meet the requirements of the senior judge study, the National Center for State Courts (NCSC) followed a five-step research design. All stages of the research benefited from advice and input from staff at the Office of the Executive Secretary (OES) and an advisory committee comprised of sitting and retired judges from the circuit, general district, and juvenile and domestic relations district courts, and a district court clerk. Data used to conduct analyses were obtained directly from OES, including the Department of Judicial Planning, the Department of Fiscal Services, and the Human Resources Department. Additionally, significant input was obtained from sitting judges; recalled retired judges; substitute judges; and special justices from across the Commonwealth, through a series of surveys and site visits.

***Five-Step Research Process:***

***Step 1: Document current practice in Virginia***

As a first step in examining the feasibility and impact of implementing a senior judge system, NCSC staff documented the current statutory requirements associated with the eligibility, assignment, compensation, term of service, and jurisdiction of recalled retired judges, substitute judges, and special justices in Virginia. Advantages and disadvantages were identified for each of the current systems. For example, a substitute judge system can provide adequate coverage for emergencies and unplanned absences, but is susceptible to a perception of unfairness when one day a person is acting as a judge and the next day she is acting as a lawyer in that same court. In addition, NCSC staff, working with the OES to obtain the necessary data, documented current usage patterns for recalled retired judges, substitute judges, and special justices. This included documenting the number of days worked and the amount paid in each circuit and district court in 2013. Finally, again working with the OES, NCSC staff examined the age and eligibility for full retirement of all sitting judges as a means to estimate the upcoming pool of potential candidates for senior judgeships by level of court.

*Step 2: Review and document other senior judge systems, state and federal*

NCSC staff reviewed recent state reports, policy papers, practitioner guides, and state statutes to compile the various ways that senior judge programs are structured (e.g., how senior judges are appointed, scheduled, and compensated) in other states and jurisdictions. A review of senior judge systems in twenty-one states and the District of Columbia, the Supreme Court and Court of Appeals of Virginia, and the senior judge system for the federal courts revealed that there is not a single archetype for these programs. The review of the different systems led to the identification of thirteen key design parameters that should be defined in establishing a senior judge system for the circuit and district courts of Virginia.

The Senior Judge System Design Parameters identified and considered are:

1. Number of days of service required in a year
2. Compensation
3. Age eligible to become a senior judge
4. Minimum years of judicial experience to be eligible
5. Minimum years served as a judge in current court level to be eligible
6. Age limit for working as a senior judge
7. Term of service as a senior judge before review for renewal
8. Use of “first in, first out” rule
9. Retirement required to be a senior judge
10. Method of selection
11. Criteria for disqualification
12. Criteria for termination
13. Structure to allow for efficient allocation of resources (e.g., regional plan)

*Step 3: Survey of circuit and district court sitting and retired judges*

NCSC deployed separate surveys at the annual Judicial Conferences for the Judicial Conference of Virginia (May 2014) and the Judicial Conference of Virginia for District Courts (September 2014). Judges were asked to provide feedback on the effectiveness of the current system of recalled retired judges, substitute judges, and special justices as well as to indicate their preferences about the parameters of a senior judge system. Seventy retired circuit court judges and 184 sitting and retired judges from general district and juvenile and domestic relations court responded to the survey.

*Step 4: Site visits*

Site visits were made to the circuit, general district, and juvenile and domestic relations district courts in the 13th Judicial Circuit/District (Richmond), the 19th Judicial Circuit/District (Fairfax), and the 26th Judicial Circuit/District (Harrisonburg/Rockingham). During the visits NCSC staff met with sitting judges, recalled retired judges, substitute judges, special justices and clerks. Participants were asked for their views on: the current system; how courts with vacancies or under-resourced courts—based on the recent judicial workload assessment—handle the extra workload demands; the pros and cons of using

substitute judges and special justices; the need to develop a senior judge system; and specific design parameters for the senior judge system.

*Step 5: Scenarios - Fiscal and personnel implications*

To assess the feasibility and impact of implementing a senior judge system, NCSC developed several fiscal and personnel scenarios. By defining the number of days that senior judges would be required to work (e.g., 60 days) and senior judge compensation (e.g., 22 percent of the salary of a sitting judge), it was possible to estimate the cost and the number of senior judges needed to cover current practice, which is based on the number of recalled retired judge and substitute judge days actually worked in 2013.<sup>1</sup> Additional scenarios were developed for circuit, general district, and juvenile and domestic relations district courts based upon models that assumed: (1) all current judicial vacancies are filled; and (2) full implementation of the judicial positions recommended by the recent judicial workload assessment model.

Results from the alternative scenarios were compared to (1) the current number of retired judges, and (2) the estimate of the number of judges who are already fully vested or near mandatory retirement age as a means to assess whether the potential pool of senior judges is adequate to cover the demand. A regional model for the sharing of senior judge resources was also explored.

**Next Steps:**

- Prepare recommendations for the thirteen senior judge system design parameters;
- Estimate the costs of implementation of a senior judge system, based on the selected design parameters;
- Appraise the availability of a sufficient pool of retired judges to meet the needs of a senior judge system under alternative scenarios;
- Consider the need for additional sitting judges to cover the work currently being handled by special justices;
- Develop recommendations for the scheduling and monitoring of senior judge usage; and
- Document all research, assumptions and recommendations in a final report.

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<sup>1</sup> The number of recalled retired judge and substitute judge days worked in 2013 was higher than normal due to the high number of judicial vacancies in the Commonwealth during 2013.