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January 26, 2016

Members of the General Assembly of Virginia
General Assembly Building
201 North 9th Street
Richmond, VA 23219

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

Re: 2015 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 2015 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

2015

Judicial Council of Virginia



Report to the General Assembly and Supreme Court of Virginia



The Judicial Council of Virginia
2015 Report to the General Assembly and Supreme Court of Virginia
Supreme Court of Virginia, Office of the Executive Secretary
Richmond, Virginia
Published January 2016




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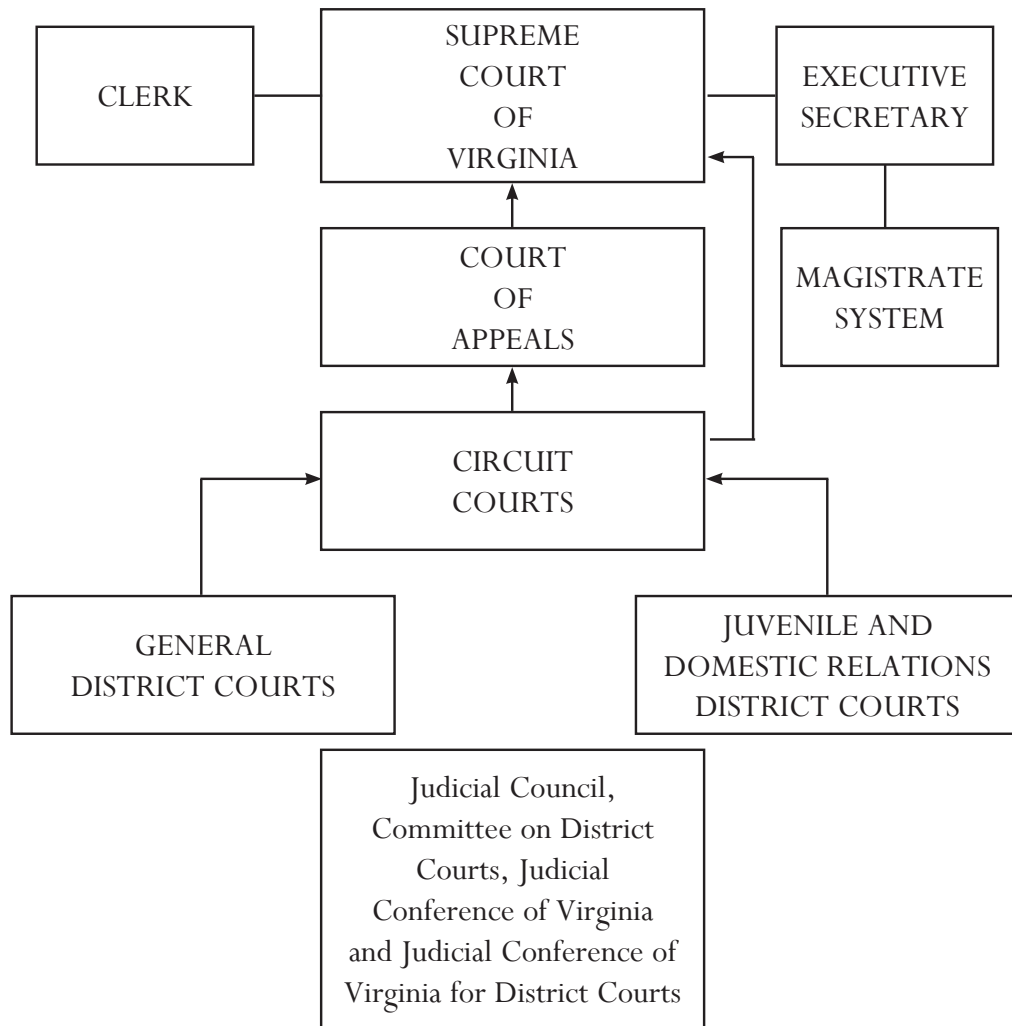
JUDICIAL COUNCIL OF VIRGINIA

Membership as of November 23, 2015

The Honorable Donald W. Lemons, Chief Justice, Chair
The Honorable Glen A. Huff, Chief Judge, Court of Appeals of Virginia
The Honorable Jerrauld C. Jones, Judge
The Honorable Joseph W. Milam, Jr., Judge
The Honorable Nolan B. Dawkins, Judge
The Honorable Cheryl V. Higgins, Judge
The Honorable Clifford L. Athey, Jr., Judge
The Honorable Tammy S. McElyea, Judge
The Honorable Deborah V. Bryan, Judge
The Honorable William H. Cleaveland, Judge
The Honorable Thomas K. Norment, Jr., Member, Senate of Virginia
The Honorable Mark D. Obenshain, Member, Senate of Virginia
The Honorable William J. Howell*, Speaker, Virginia House of Delegates
The Honorable Walter A. Stosch*, Member, Senate of Virginia
The Honorable David B. Albo, Member, Virginia House of Delegates
Richard Cullen, Esquire
Monica Taylor Monday, Esquire
Lucia Anna Trigiani, Esquire*
Karl R. Hade, Executive Secretary

*By Invitation of the Chief Justice

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

Recommendations for the Collection of Fines and Court Costs

The 2015 Regular Session of the General Assembly enacted House Bill 1506, which requires all circuit and district courts to reduce to writing the guidelines they have adopted pursuant to Virginia Code § 19.2-354 for the collection of court-ordered fines and costs. In addition, these guidelines shall be posted in the clerk's office and on the court's website if such a website is available.

Chief Justice Donald W. Lemons, the Chair of the Judicial Council, requested that the Judicial Council use the implementation of this legislation as an opportunity to have courts evaluate the conditions and procedures they employ for the collection of fines and court costs via “time-to-pay” plans.

To assist the trial courts in developing the most appropriate conditions and procedures for the collection of fines and court costs, the Judicial Council endorsed the following recommendations. They are general and meant to serve as principles. These recommendations were distributed to all the members of the Judicial Conference of Virginia and the Judicial Conference of Virginia for District Courts and were the subject of educational sessions during the mandatory annual conference of each Judicial Conference.

**Recommendations for the Collection of Unpaid Fines and Court Costs
Pursuant to Chapter 21 of Title 19.2 (§§ 19.2-339 through -368)
and the Suspension of Driving Privileges Pursuant to § 46.2-395 of the Virginia Code**

Office of the Executive Secretary
Supreme Court of Virginia

Endorsed by the Judicial Council of Virginia
May 18, 2015

The purposes of the statutory court collection process are (i) to facilitate the payment of fines, court costs, penalties, restitution and other financial responsibilities assessed against defendants convicted of a criminal offense or traffic infraction, (ii) to collect the monies due to the Commonwealth and localities as a result of these convictions, and (iii) to assure payment of court-ordered restitution to victims of crime.

Given these purposes, a court should develop policies and establish payment guidelines that facilitate payment by defendants of these financial obligations so as to avoid the suspension of driver's licenses or other sanctions.

In order to assist courts in establishing written guidelines for determining the conditions of deferred or installment payment agreements for a defendant owing fines and costs¹, the Judicial Council of Virginia recommends the following practices and procedures:

- ▶ Since a court is statutorily required to order a defendant who is unable to pay fines and costs within 30 days to pay those fines and costs "in deferred payments or installments," a court should not have blanket refusals to enter into time-to-pay agreements with defendants. Va. Code § 19.2-354 A.
- ▶ Eligibility for a payment agreement should not be restricted based on the type of offense which resulted in the fine and costs or the nature of the financial obligation (e.g., restitution, penalty, etc.). All unpaid fines and costs, of whatever source or type, should be eligible.
- ▶ Since a court is obligated to "order the defendant to pay such fine, restitution, forfeiture or penalty and any costs . . . in deferred payments or installments," courts should offer defendants the option of deferred or installment payment plans. Va. Code § 19.2-354 A.

¹ The collection process applies to court-ordered "fines, court costs, forfeitures, restitution, and penalties." Va. § 46.2-395. For convenience, when this policy refers to "fines and costs," reference to these other types of debts is also intended.

▶ In determining the conditions of a deferred or installment plan, a court should assess the specific financial conditions of a defendant, as opposed to applying fixed payment amounts based solely on the amount of the fines or costs. Va. Code § 19.2-355.

▶ Defendants who have unpaid fines and costs in more than one court will need to pay or establish payment plans with respect to each court in order to remove the suspension of their driving privileges. Accordingly, a court should consider the defendant's other obligations in determining the amount needed for down payments and installment payments.

▶ Since "installment or deferred payment agreements shall include terms for payment if the defendant participates in a [community service] program," each court should ensure that a viable community service program is available as an option for suitable participants in deferred or installment payment plans. Va. Code § 19.2-354 A and C. Any portion of the community service completed should be credited to the defendant's obligations.

▶ A down payment should not be required to enter into a payment plan when the agreement sets forth deferred payments.

▶ If a down payment is required to enter into an installment plan, it should be a minimal amount calculated to facilitate entry into a plan. This consideration is especially important if the down payment may function to bar access to the installment plan process.

▶ Since a defendant who has defaulted on a payment plan has a statutory right to approach the court seeking entry into a new payment plan, courts should not have a blanket prohibition barring such a defendant's access to a subsequent payment plan. Va. Code § 46.2-395 B.

▶ If a defendant enters into a subsequent payment plan, then after payment of the reinstatement fee to the Department of Motor Vehicles, the defendant's driver's license "shall thereby be restored." Va. Code § 46.2-395 B. A court should not require a defendant to establish a payment history on a subsequent payment plan before restoring the defendant's driver's license.

▶ No driver's license suspension should occur while a defendant is in good standing on a deferred or installment payment plan. Va. Code § 46.2-395 B.

▶ A defendant whose fines and costs have been referred to the collection process under Virginia Code § 19.2-349 shall nevertheless be eligible to enter into an initial or subsequent payment plan with the court.

► In district court only, when a defendant enters into a payment plan, “the [district] court may assess a one-time fee not to exceed \$10 to cover the costs of management of the defendant’s account until such account is paid in full.” Va. Code § 19.2-354.

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, retired Chief Justice of Virginia. 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 2015 recipient of this award was the Honorable Cynthia D. Kinser, the recently-retired Chief Justice of the Supreme Court of Virginia.

A native of Lee County, Justice Kinser was appointed to the Supreme Court in 1997 by Governor George Allen. The General Assembly elected her to her first 12-year term in 1998 and reelected her in 2010. Also in 2010, her peers elected her to succeed the Honorable Leroy R. Hassell, Sr., as chief justice beginning in February 2011.

Prior to being appointed to the Supreme Court, Justice Kinser served as a law clerk to U.S. District Judge Glen M. Williams, Western District of Virginia, from 1977 to 1978. She then entered private practice from 1978 to 1979 and served as Commonwealth’s Attorney for Lee County from 1980 to 1984. She returned to private practice from 1984 to 1990. She served as a U.S. magistrate judge, Western District of Virginia, from 1990 to 1997.

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.courts.state.va.us/courts/scv/rules.html>.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2014 THAT BECAME EFFECTIVE IN 2015

Pursuant to Virginia Code § 8.01-3(E) there is a long lead-time on amendments to the Rules of Evidence:

Any amendment or addition to the rules of evidence shall be adopted by the Supreme Court on or before November 15 of any year and shall become effective on July 1 of the following year unless the General Assembly modifies or annuls any such amendment or addition by enactment of a general law.

For this reason, the following changes to Rules of Evidence, made by Order dated November 12, 2014, became effective July 1, 2015.

- Rule 2:801. Definitions. Amended to add subsections articulating Virginia's prior

consistent and inconsistent statement doctrine.

- Rule 2:803 (6). Hearsay Exceptions . . . Records of Regularly Conducted Activity. This subsection of the rule was recast in outline format.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL IN 2014 AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2015

At the November 3, 2014, meeting, Judicial Council voted to recommend a proposed amendment to Rule 4:11, Requests for Admission, to provide a limit on the number of permitted Requests for Admission not directed to the genuineness of documents. The Supreme Court adopted this change by Order dated February 27, 2015, effective May 1, 2015.

Also at the November 3, 2014, meeting, Judicial Council reviewed and endorsed a number of rewording suggestions relating to the practical operation of the appellate rules in Part Five and Part Five-A governing procedure in the Supreme Court of Virginia and the Court of Appeals of Virginia. The following rules were amended by Order dated April 10, 2015, effective July 1, 2015.

- Rule 5:6A. Citation of Supplemental Authorities.
- Rule 5:9(b). Notice of Appeal.
- Rule 5:17(c)(1). What the Petition Must Contain.
- Rule 5:17(j)(4). Notice of Writ Argument to Appellee.
- Rule 5:18. Brief in Opposition.
- Rule 5:19(b). Reply Brief.
- Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal, the Denial of the Appeal, Refusal of Assignments of Cross-Error or Disposition of an Original Jurisdiction Petition.
- Rule 5:26(b). General Requirements for All Briefs.
- Rule 5:30(a). Briefs Amicus Curiae.
- Rule 5A:4A. Citation of Supplemental Authorities.
- Rule 5A:6. Notice of Appeal.
- Rule 5A:12(c)(1). What the Petition Must Contain.
- Rule 5A:19(a). General Requirements for All Briefs.
- Rule 5A:23(a). Briefs Amicus Curiae.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2015

At the May 18, 2015, meeting, Judicial Council voted to support the following

recommendations from the Advisory Committee on Rules of Court.

- Rule of Evidence 2:408. Compromise and Offers to Compromise. The rule was rewritten to provide better and more predictable protection for statements made during settlement discussions. The rule was amended by Order dated October 30, 2015, effective July 1, 2016, pursuant to Virginia Code § 8.01-3(E).
- Rule 5A:30. Attorney Fees, Costs and Notarized Bill of Costs, and Rule 5:35. Attorney's Fees, Costs, and Notarized Bill of Costs, were amended to add a new subpart to the appellate rules addressing the mechanics of the process by which attorney's fee awards relating to appellate proceedings in domestic relations cases are handled. These rules were amended by Order dated October 30, 2015, effective January 1, 2016.
- Form 6, Suggested Questions to Be Put by the Court to an Accused Who Has Pleaded Guilty (Rule 3A:8) and Form 11, Misdemeanor Proceedings in District and Circuit Courts (Rule 3A:8(b)(2); Rule 7C:6; and Rule 8:18), of the Appendix to Part Three A of the Rules, were amended to include a statement advising a non-citizen of the potential immigration, deportation or naturalization consequences of a guilty plea or conviction. These suggested plea colloquies were amended by Order dated October 30, 2015, effective immediately.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL IN 2015 PENDING ACTION BY THE SUPREME COURT OF VIRGINIA

The Advisory Committee on Rules of Court presented another recommendation to the Judicial Council at Council's November 30, 2015, meeting. The proposed changes are designed to lay the groundwork for the Office of the Executive Secretary of the Supreme Court to take advantage of opportunities to work with state agencies that frequently appear before the courts and, where feasible, establish the technology infrastructure to allow those agencies to submit the pleadings and documents necessary for their cases electronically. Specifically, the proposed new rule and a cross-reference to it lay the groundwork for a pilot project with the Department of Child Support Enforcement whereby that department would file documents electronically in juvenile and domestic relations courts. The proposal adds Rule 8:9, Filing Documents Electronically, and amends Rule 8:7, Format for Filing, to include a cross-reference to the new rule. Judicial Council voted to recommend these proposed changes to the Supreme Court of Virginia.