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November 30, 2018

The Honorable Mark D. Obenshain  
Chair, Courts of Justice Committee  
Senate of Virginia  
P.O. Box 555  
Harrisonburg, Virginia 22803

The Honorable Robert B. Bell  
Chair, Courts of Justice Committee  
Virginia House of Delegates  
2309 Finch Court  
Charlottesville, VA 22911

The Honorable Thomas K. Norment, Jr.  
Co-Chair, Finance Committee  
Senate of Virginia  
P.O. Box 6205  
Williamsburg, Virginia 23188

The Honorable S. Chris Jones  
Chair, Appropriations Committee  
Virginia House of Delegates  
P.O. Box 5059  
Suffolk, VA 23435

The Honorable Emmett W. Hanger, Jr.  
Co-Chair, Finance Committee  
Senate of Virginia  
P.O. Box 2  
Mount Solon, Virginia 22843-0002

RE: Item 38, Paragraph O, of the Appropriation Act, Chapter 2, Virginia Acts of Assembly, 2018 Special Session I

Dear Chairmen Obenshain, Norment, Hanger, Bell, and Jones:

Please find enclosed a summary of the findings and recommendations of the working group to evaluate issues related to statewide adoption of electronic filing of civil cases in circuit courts, as required by Item 38, Paragraph O, of the Appropriation Act, Chapter 2, Virginia Acts of Assembly, 2018 Special Session I.

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

With kind regards, I am

Very truly yours,

Karl R. Hade

KRH:jrp  
Enclosure

MEMORANDUM

To: Co-Chairman of the Senate Committee on Finance  
Chairman of the Senate Committee on Courts of Justice  
Chairman of the House Committee on Appropriations  
Chairman of the House Committee on Courts of Justice

From: Office of the Executive Secretary of the Supreme Court of Virginia

Date: November 30, 2018

Re: Response of Work Group Established Pursuant to Item 38 O of the  
Appropriations Act of 2018

Background

This report was prepared in response to the following language in the 2018 Appropriation Act (“the Budget Language”). Item 38 (O) of the 2018 Appropriation Act (House Bill 5002, Chapter 2 of Special Session I) reads as follows:

*O. The Executive Secretary shall convene a working group, to include a minimum of five circuit court clerks, to evaluate issues related to statewide adoption of electronic filing of civil cases in circuit courts, and the implementation of a statewide system through which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers of that system. The evaluation shall include consideration of (i) the benefits of the availability of electronic case filing of civil cases in all circuit courts; (ii) the benefits of the adoption of one statewide electronic case filing system by all circuit courts; (iii) the benefits of a statewide system through which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers via a single subscription for statewide access; (iv) the types of information to be made available to subscribers of the system or, alternatively, excluded from the system; (v) how a subscription process may be established to provide a clear definition of the duties of the Office of the Executive Secretary and each circuit court clerk with respect to implementation and operation of the system; (vi) the estimated one-time and ongoing costs of all circuit courts implementing and operating a) an electronic case filing system, and b) one statewide electronic case filing system for use by all circuit courts; (vii) the estimated one-time and ongoing costs of implementing and operating a statewide system through which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers of that system via a single subscription for statewide access; (viii) a fee schedule for subscribers and how such fee schedule should be established, and (ix) any potential loss of revenues by circuit court clerks reasonably attributed to the implementation of one statewide electronic case filing system and a statewide system through which images of nonconfidential records within civil*

*case files in the circuit courts may be viewed by subscribers of that system. The Executive Secretary shall provide a summary of the findings and recommendations of the working group to the Chairmen of the House Committees on Courts of Justice and Appropriations, and the Senate Committees on Courts of Justice and Finance no later than November 30, 2018.*

### Work Group Meetings

The Office of the Executive Secretary (OES) convened a Work Group in accordance with the Budget Language. Specifically, the Work Group focused on addressing the considerations enumerated in the Budget Language.

The membership of the Work Group is attached as Appendix A – and included circuit court clerks representing the Virginia Court Clerks Association (“VCCA”) and staff within the OES. The first meeting of the Work Group was held on June 20, 2018, during which it was determined that OES and the VCCA would separately develop draft responses to components of the specific considerations within the Budget Language. Following the June 20 meeting, OES met internally and worked on potential draft responses to the Budget Language, and VCCA met internally and worked on potential drafts of legislation. The next meeting was held on September 5, 2018, with the members of the Work Group doing research and working internally on the potential draft responses to the Budget Language between the June 20 meeting and the September 5 meeting. At the September meeting the Work Group discussed OES’ draft responses to the Budget Language with the VCCA expressing concerns that the responses were too heavily focused on OES developed systems. There was consensus that neither the VCCA nor OES believes that legislation relating to the considerations set forth in the Budget Language should be introduced in the 2019 General Assembly. At the meeting on October 4, 2018, the VCCA presented alternative responses to the considerations set forth in the Budget Language and those responses were discussed.

The Work Group discussions revealed that OES approaches the development and implementation of technology systems in a manner that is uniform and system-wide, to the extent possible, while the VCCA prefers preserving the authority of circuit court clerks to select technology systems that are tailored to the needs of the individual circuit court the clerk serves. The VCCA does not believe that a “one-size fits all technology approach” recognizes the diverse needs of the circuit courts in the Commonwealth of Virginia.

Consequently, what follows is a list of findings upon which the Work Group achieved consensus, followed by responses to the considerations the Work Group was asked to evaluate. While many of the considerations were phrased in the affirmative, as an examination of the benefits of a course of action, discussion must necessarily be had concerning the downside of any given course of action. OES has sought to provide a summary of both.

Finally, the options set forth in this report seek to inform the legislature as to how certain policy goals may be achieved and wherein lie the shortfalls of any given policy choice. Recognizing that those policy decisions lie squarely with the legislative branch, the

“recommendations” set forth in this report are offered without endorsement under the heading of “Options.”

### Findings

Following hours of discussion and extensive work over the course of six months, the Work Group has reached the following conclusions:

1. Circuit court clerks are independent elected constitutional officers and by law are given the discretion to make decisions about the technologies utilized by their offices.
2. It has been demonstrated by the example of other states that until attorneys are required to use electronic case filing the benefits associated with it cannot be realized. Indeed, adoption of e-filing while maintaining traditional paper filing increases the workload of the clerks by creating parallel systems for the same process.
3. Any mandate that the clerks adopt a single, statewide e-filing system could be costly for individual clerk’s offices. Clerks’ offices may be required to transition from an existing system or acquire a system not currently in use and depending on the selected system’s ability to interface with other existing systems, pay for any necessary interfaces. If a single statewide e-filing system were required, the circuit court clerks and localities that have invested in technology systems to support the needs of that particular court would experience a loss of investment and would likely have costs associated with integrating a new system.

If a system other than the current OES e-filing system is required, OES would experience a significant loss of the investments made in the existing systems and would likely have significant costs associated with integrating a new system with existing systems.

4. Providing a technology system for e-filing of civil cases has benefits to litigants and to the members of the Virginia State Bar but also can be expensive for the clerks to operate and for OES to maintain, including the training of staff and providing support to users of the system, particularly if members of the Virginia State Bar do not use such systems.
5. In those jurisdictions currently offering e-filing in civil cases, user rates are very low as a percentage of total cases filed.
6. The Work Group does not recommend any legislation to mandate use of a single civil e-filing system in the circuit courts.
7. Significant participation by Virginia lawyers is a prerequisite to successful adoption of any comprehensive civil e-filing system. Therefore, the Virginia State Bar should seek input from its members as to whether they would support mandatory electronic filing of civil cases by attorneys in any jurisdiction where e-filing of civil cases is available.

## Discussion of Considerations

Because a rudimentary understanding of the technology currently employed by the circuit court clerks is necessary to understand the discussion that follows, the various OES systems are described briefly here. For a detailed overview of the OES systems currently in use in the circuit courts for both e-filing and online viewing of case documents, please see Appendix B. What follows is an explanation of the OES systems available to the circuit court clerks; however, pursuant to Va. Code § 17.1-502, any clerk may choose a private vendor to supply any one or a combination of these foundational systems. Pursuant to this authority, some clerks have implemented technology systems offered by private vendors. A table detailing the known systems used by each circuit court is provided in Appendix C.

The Circuit Case Management System (CCMS) is the operational system maintained by OES that serves as the main case-processing mechanism for all circuit court clerks' offices, except Fairfax and Alexandria that do not use CCMS. Multiple technology systems developed by OES are built upon CCMS' structure. The Virginia Judiciary E-Filing System (VJEFS), Case Imaging System (CIS), and Officer of the Court Remote Access System (OCRA) require use of CCMS before they can be implemented by any circuit court. VJEFS allows electronic filing of most civil cases in circuit court and is available for use by members of the Virginia State Bar and their designated staff. CIS provides circuit courts the ability to create and store electronic documents that are part of a case file. OCRA allows participating circuit court clerks to grant attorneys, attorneys' agents, pro hac vice attorneys, and government agencies secure remote access to documents in CIS.

### 1. Benefits of the availability of electronic case filing of civil cases in all circuit courts

In addition to the general benefits of e-filing, such as avoidance of travel to the courthouse and extended hours to file, attorneys throughout the Commonwealth with a statewide or multi-jurisdictional practice would benefit from the ability to manage their cases remotely. Circuit court clerks would benefit from the reduced amount of case processing functions such as case entry and case receipting, as well as the scanning necessary to create and store images of documents in case imaging systems, as the case data, payment information, and e-filed documents would already be available in an electronic format.

However, if lawyers do not use the e-filing system, then making e-filing available increases the workload of the clerk by creating a second, parallel process for case filing which must also be staffed. It is for this reason that clerks in some smaller courts with limited staff report not wanting to adopt e-filing even though that court may otherwise be equipped to do so.

### 2. Benefits of the adoption of one statewide electronic case filing system by all circuit courts

Use of one statewide e-filing system would provide uniformity and consistency across the Commonwealth and would create efficiencies for the attorneys and their staff who must learn

only one system. In addition, there are efficiencies for OES with the operation and support of one e-filing system.

However, adoption of a single system to be used by every circuit court would be disruptive and costly to those courts forced to transition to a new system. Some circuit court clerks have invested significantly in private sector technology systems that meet the needs of the community they serve. In some larger, wealthier localities the court technology systems are included in the local government IT contract with an outside vendor. For those communities, forcing the adoption of an e-filing system incompatible with the existing IT systems would be a hardship that would affect multiple local institutions, including those that have system interoperability with the local judicial system. Even if the state chose an outside private vendor to provide statewide e-filing, it would force the 35 courts currently using the OES' VJEFS off of the current system, as well as any court using a different private vendor than the one selected for e-filing. An outside vendor system would significantly impact the interoperability of the OES' case management, imaging, and OCRA systems across the Commonwealth.

3. Benefits of a statewide system through which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers via a single subscription for statewide access

A statewide system through which images of nonconfidential records within the civil case files could be viewed would benefit subscribers<sup>1</sup> wishing to access case information across multiple courts. Currently, a subscriber seeking such access may be required to pay a separate subscription fee for each circuit court that offers electronic access to nonconfidential records or visit each court in-person to access the case file. In addition, a single statewide system would only require users to learn to use a single system, as opposed to the multiple systems that are currently offered by circuit court clerks statewide. Operation of a single statewide system would likely reduce both foot traffic and calls to the clerk's offices. Subscribers accessing the records would possibly avoid paying a copy fee to obtain a copy of the electronically-viewed document.

However, a subscriber wishing to remotely view files within a single court may potentially face a higher subscription fee to access the statewide system than would normally be charged to access files within a single court. Such subscriber may view the cost increase to access records statewide as a detriment, although these higher costs could be reduced through the implementation of a multi-tier fee structure, with the costs of such subscription dependent on the number of courts accessible within each tier. Also, changing the manner in which users access images of records in civil case files to a statewide, single subscription model would result in loss of revenue to individual clerks' offices, as discussed in greater detail in Consideration #9.

OCRA, which was developed by OES and is currently being utilized in 92 of the 120 circuit courts, is a system through which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers, who are limited by statute to attorneys,

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<sup>1</sup> Subscribers are currently limited to members in good standing with the Virginia State Bar and their authorized agents, pro hac vice attorneys authorized by the court for purposes of the practice of law, and such governmental agencies as authorized by the clerk as set forth in Va. Code § 17.1-293(E)(7).

attorneys' agents, pro hac vice attorneys, and government agencies as authorized by the clerk. Currently, subscribers are limited to viewing images for only the circuit courts to which they have a paid subscription. In order to access the records of all 92 courts that offer OCRA, subscribers currently must subscribe with each of the 92 circuit court clerks' offices.

4. The types of information to be made available to subscribers of the system, or alternatively, excluded from the system

Information available to subscribers would include all documents in civil cases except sealed, juvenile, adoption, and other confidential cases, as well as those documents that are marked confidential or sealed or are contained in a confidential addendum. The current manner in which information is filed for a civil case in circuit court would need to be altered to protect sensitive information if remote access to electronic documents is available to the public rather than as restricted by VA. Code § 17.1-293.

5. How a subscription process may be established to provide a clear definition of the duties of the Office of the Executive Secretary and each circuit court clerk with respect to implementation and operation of the system

OES could develop, operate and maintain OCRA as a single statewide system for viewing of nonconfidential civil case documents. In doing so, OES would establish an automated subscription process with the capability for online payments of the subscription fee. Each circuit court clerk would be responsible for imaging, maintaining and making available the case records through the system, including properly coding confidential documents to prevent unauthorized access to such records.

If this course of action is mandated, OES would request that the money generated from subscription fees be directed to OES to support the costs associated with the development, maintenance, and support of the system. OES would develop and distribute to the clerks the requirements necessary for implementing case imaging including hardware and server requirements, as it currently does when a court wants to implement CIS. Circuit courts that do not already have the equipment necessary to create or maintain electronic images of case records would need to obtain the necessary equipment.

In recognition of the fact that moving to a statewide, single subscription access to images of civil case records would deprive clerks of the fees they are currently receiving via OCRA subscriptions, the VCCA would request that the General Assembly provide for the initial equipment and ongoing maintenance costs so that OES could provide this service to clerks without having to pass along the costs. Currently, imaging is not mandatory and acquiring CIS is an option for the circuit court clerk. As this is an option, there are costs associated with this application, which include initial set-up, equipment and ongoing maintenance. OES charges the clerks for use of CIS to defray the costs of operation and maintenance of this system.

6. The estimated one-time and ongoing costs of all circuit courts implementing and operating 1) an electronic case filing system, and 2) one statewide electronic case filing system for use by all circuit courts

*1) One-time and ongoing costs for all circuit courts implementing and operating an electronic case filing system*

If the current OES systems are used, the one-time cost for all circuit courts to implement and operate an electronic case filing system can be ascertained by determining the number of courts that do not currently have e-filing capability, and the hardware and software costs associated with adopting VJEFS in each of these courts. We cannot determine what the costs would be if courts not currently offering e-filing were to do so through a private vendor. Currently, 35 of 120 circuit courts offer e-filing via VJEFS. OES has been able to ascertain that five courts offer e-filing through private vendors.

The cost for a court to implement VJEFS is determined by calculating the cost for the court to purchase the required hardware and software that will support VJEFS. OES offers a “CIS package,” which includes VJEFS within the software, along with customizable hardware options that would provide participating courts with the equipment necessary to scan and print case records. Upon purchase of the CIS package, a court can offer VJEFS at no additional cost to the court. Ninety-three circuit courts currently utilize the CIS package, and OES is in the process of adding CIS capabilities for 8 additional circuit courts (see Appendix C). Thus, there are 101 circuit courts that have (or will soon have) the capability of offering VJEFS at no further cost to the Clerk.

Of the remaining 19 circuit courts that do not operate CIS, 13 do not operate any type of case imaging system, and therefore would have to purchase a CIS package from OES or a technology system from a private vendor to offer e-filing. The total amount necessary for OES to provide the CIS package in these 13 circuit courts, which would also provide e-filing capability, is \$53,608 (see Appendix D, Table 1). The six remaining courts operate case imaging systems other than CIS and may offer e-filing through independent systems other than VJEFS. If all six courts offer e-filing through an independent system, no further costs would be necessary to establish e-filing in every circuit court. However, if none of these six courts offer e-filing through an independent system, and the courts opted to offer e-filing through use of VJEFS, the cost to implement CIS and VJEFS in four of the six courts would be \$34,688 (see Appendix D, Table 2).<sup>2</sup>

If the current OES systems are used, in addition to the one-time costs, there would be ongoing costs associated with system maintenance. System maintenance would include server upkeep, security updates, scanner support, and software licensing for components of

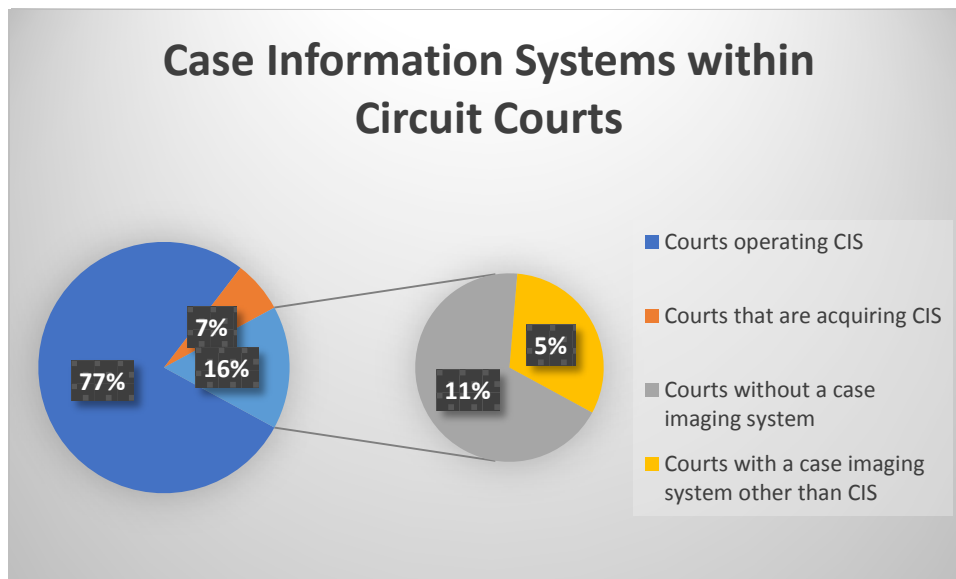
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<sup>2</sup> This amount does not include the cost to convert Fairfax and Alexandria’s case management systems to CCMS and CIS. The estimated cost to convert Alexandria Circuit Court and Fairfax Circuit Court to CCMS is unknown and cannot be determined without extensive investigation into and analysis of their existing systems. Also, in consideration of the scale and complexity of converting Fairfax Circuit Court to CCMS, it is anticipated that the cost will be exorbitant and any effort to convert will take more than two years to complete. For these reasons, and because CCMS is required to implement CIS, the costs for converting Alexandria Circuit Court and Fairfax Circuit Court to CIS are not available, and listed as “Not Available” in Table 2 of Appendix D.



applications. Each circuit court that offers CIS is currently responsible for paying fees to OES for maintenance of the system. The fees paid by each individual court vary based on system usage and services provided.

If the current OES systems are used and if interconnectivity among OES systems and private e-filing systems were required, the maintenance costs would increase significantly with each independent system operated by the circuit court clerks and linked through an interface, as the system complexity and potential fail points would increase with each additional system.



*2) One-time and ongoing costs for all circuit courts implementing and operating one statewide electronic case filing system for use by all circuit courts*

VJEFS offers interconnectivity among all participating circuit courts, and thus could serve as the statewide system if every circuit court were to utilize it. Again, we are unable to determine the costs associated with adopting a statewide electronic case filing system provided by a private vendor.

If the current OES systems are used, the one-time costs of a statewide e-filing system is directly related to the amount required for every circuit court to operate the CIS package offered by OES, which includes access to VJEFS for no additional cost. As previously stated, 101 circuit courts already operate, or are scheduled to operate, the CIS package offered by OES. The cost for 13 of the remaining courts to purchase the CIS package would be \$53,608. The cost for four of the six remaining courts to purchase CIS would be \$34,688. (see Appendix D, Table 2). As noted within Footnote 3, the amounts provided in Appendix D do not include the costs associated with converting Alexandria Circuit Court or Fairfax Circuit Court to CCMS or CIS. The costs associated with converting these two circuit courts to CCMS and CIS would need to be determined to provide the total amount for establishing a fully statewide e-filing system for circuit courts.

Regarding ongoing costs, circuit courts are currently required to pay maintenance costs for their use of CIS. Those costs vary based on services provided and system usage. However, efficiencies would be created in development, training, support, compatibility, and security of the statewide system if all circuit courts were to use the same e-filing system.

If the current OES systems are used, OES would need two additional dedicated personnel to provide technical support to clerks and VJEFS users. Although VJEFS is currently supported by the individual participating circuit clerk's offices, OES staff are often needed to assist with questions and provide support to both clerks and attorneys and their staff who use the system. If VJEFS were to be available statewide, the need for technical support and assistance is expected to increase. The total estimated yearly cost for dedicated VJEFS technical support personnel in OES is approximately \$126,000.

If a single statewide e-filing system is mandated by the General Assembly, the costs to the circuit court clerks and the localities who have invested in development, maintenance and operation of private e-filing systems to address the needs of that circuit court are indeterminate but potentially substantial. The loss of ongoing revenue in terms of fees paid to the circuit court clerks is also indeterminate.

In the clerks' experience, when an attorney has a question, they call the clerk where they are trying to e-file something. Therefore, the clerks believe they will need additional employees to handle this additional workload.

7. The estimated one-time and ongoing costs of implementing and operating a statewide system through which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers of that system via a single subscription for statewide access

The estimated costs are highly dependent upon the type of statewide electronic access system that would be implemented. The estimated costs provided below assume the uniform use of the current OES systems in all circuit courts, including use of CCMS. Integrating independent systems into an OES system through an interface would increase the costs, both for the clerks and OES.

There are currently 19 circuit courts that either do not have an imaging system in place, have no plans of acquiring such a system, or do not use an electronic imaging system that is compatible with systems maintained by OES. The one-time cost to purchase and install hardware for 17 of these 19 courts is approximately \$88,296. This estimate does not include the costs for converting Alexandria Circuit Court and Fairfax Circuit Court to CCMS and CIS (see Footnote 3).

Persons seeking secure remote access to electronic court documents within the system maintained by OES would be required to register for a paid subscription service. The cost associated with creating the electronic registration portal includes the cost of programming and

developing this electronic registration feature. The estimated one-time cost to develop an automated and paperless user registration process is approximately \$78,000<sup>3</sup>.

In addition, if the current OES systems are used, there would be ongoing personnel costs. Two additional record management services personnel would be needed in OES to maintain oversight and assist users in their registration and use of the system. Currently, OCRA is supported by the individual participating circuit clerks but it is expected, if legislation is enacted mandating a statewide system, that support would be provided by OES since clerks would no longer receive the registration fees. Users of the system would be directed to OES for support. In addition, records management services personnel would provide support to circuit clerks regarding document imaging. If the current OES systems are used, the total estimated yearly cost for record management services personnel is approximately \$126,000. The costs to the circuit court clerks to operate a statewide e-filing in each circuit court are indeterminate in terms of personnel costs.

If the current OES systems are used, OES would offer semi-annual training sessions to attorneys to demonstrate the system's capabilities and increase public usage of the system. Training would also be offered to circuit court personnel to increase their familiarity with the system and convey best practices. OES estimates yearly training costs to be approximately \$10,000.

If the current OES systems are used, based on prior experience with the development and maintenance of applications similar in size and scope, OES would need two full-time development contractors to ensure a high level of security and performance of the application. These dedicated resources would be needed to maintain system security and integrity, ensure ongoing performance, and develop system enhancements. If the current OES systems are used, the estimated yearly cost for two development contractors is approximately \$256,000.

#### 8. The fee schedule for subscribers and how such fee schedule should be established

If a single statewide system for viewing nonconfidential civil case documents is implemented, such a system should be subscriber based. The fees charged for the service would be applied to the costs of development and maintenance of the system. If OES were to develop and maintain such a system, OES would recommend that the fee structure be established by the Judicial Council, as this would allow for the fee to be adjusted based on a range of determinants in the future without the need for further legislation. The fee schedule to be established would vary depending upon the number of users if such system were to be self-supporting. The VCCA would request that, regardless of whether OES develops and maintains a statewide system, or a private vendor does so, the fee structure be established by the General Assembly.

#### 9. Any potential loss of revenues by circuit court clerks reasonably attributed to the implementation of one statewide electronic case filing system and a statewide system through

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<sup>3</sup> The VITA Security Standard for Remote Access to Court Documents Online would apply to this process and would need to be updated to allow for automated and paperless user registration.

which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers of that system

It is difficult to estimate the potential loss of revenues by circuit court clerks in this circumstance. Circuit court clerks anticipate an indeterminate loss of revenues due to loss of copy fees, loss of OCRA fees (where applicable), additional expenses to pay OES for these additional technology systems, loss of funds from the clerks' nonreverting local funds and expenses related to imposition of additional duties for Clerks with no new staffing.

The most finite numbers available suggest a statewide loss of \$78,714.97 annually from the optional fee charged pursuant to Code § 17.1-258.3 for paper filing when e-filing is available and \$286,034.49 in lost revenue from OCRA fees. These numbers were gathered by running a fiscal year 2017 report for the two accounts into which these two types of fees are deposited. The circuit court clerks anticipate an additional indeterminate negative fiscal impact for the reasons stated herein.

If a course of action is taken that removes a revenue stream to the clerks, it could be offset by an increase in technology funding that would allow OES to provide the clerks with OES systems without having to pass along costs for initial hardware, maintenance, and updates. In addition, the VCCA believes that the circuit court clerks need annual appropriations to cover the expense of being on the front line with users of such a system.

### Options

1. Incentivize those courts that do not currently offer e-filing.

The Commonwealth could continue to allow each circuit court clerk to select the technology system for e-filing of civil cases that fits the needs of that circuit court. The General Assembly could incentivize those courts that do not have the technology infrastructure to offer e-filing by funding the costs for those courts, whether this is the OES technology or technology from a private vendor. This would also lay the necessary groundwork for remote access to those courts' case papers. OES and the VCCA believe that e-filing would be more widely adopted if the General Assembly incentivized circuit courts to offer e-filing for civil cases.

OES could offer a single page of web links on its website where practitioners could link to each circuit court's e-filing web page, regardless of whether an individual circuit court clerk uses the OES technology or that of a private vendor. In combination with these efforts, outreach to the Bar to educate and gauge interest in civil e-filing in circuit court could hasten the pace at which e-filing becomes available across the Commonwealth.

2. Adoption of one statewide electronic filing system by all circuit courts.

Option 2A: VJEFS, which was developed by OES, is utilized in 35 circuit courts and could be implemented in an additional 66 courts within six months, and could serve as the single

statewide electronic case filing system, as users of the system can register once and then e-file in any circuit court that uses VJEFS.

Benefits of adopting VJEFS as a single statewide electronic case filing system: There are efficiencies for OES with the operation and support of one e-filing system. VJEFS is already available in 35 circuit courts. An additional 58 circuit courts have, and eight will soon have, the OES technology infrastructure in place to enable them to adopt VJEFS at no additional cost to the clerk. Use of VJEFS provides the assurance of continued service because there is no risk that OES will become insolvent or discontinue support and service as has occurred with commercial vendors.<sup>4</sup>

Challenges of adopting VJEFS as a single statewide electronic case filing system: Although OES provides VJEFS at no additional cost to the clerks, circuit court clerks must have CIS in place to implement VJEFS. There are costs to circuit court clerks associated with the implementation of CIS, which are discussed in Consideration 6 above. As discussed above, clerks who have chosen to invest in private technology systems would lose the benefit of that investment if they were mandated to switch to VJEFS. In addition, both clerks and OES would incur significant costs associated with the conversion and migration of various existing systems to OES systems.

Option 2B: Alternatively, the Commonwealth could seek an outside vendor to provide or develop an electronic case filing system for statewide use in the circuit courts. The VCCA believes that the competitive procurements could request that bids from private vendors accommodate the diverse needs of the circuit courts in the Commonwealth. Benefits of adopting a private technology system for statewide electronic case filing: clerks would have the opportunity to evaluate various types of systems and select one that best fits the clerks' needs.

Challenges of adopting a private technology system for statewide electronic case filing: clerks would likely have difficulty selecting a single system that meets the needs of diverse jurisdictions but the VCCA would advocate that any competitive procurement request private technology vendors to submit proposals that would not limit technology solutions to "one size fits all" systems. In addition, OES would lose the benefit of the investment it has made in the development of existing systems and may incur costs in the process of converting and supporting clerks who would need to transition to a new system.

3. Adoption of a statewide system through which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers via a single subscription for statewide access.

OCRA, which was developed by OES and is being utilized in 92 circuit courts, could serve as the statewide system through which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers.

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<sup>4</sup> The Virginia Beach Circuit Court is again using CCMS after the private vendor it used for over six years went out of business and no longer provided updates and support for their system. A great deal of OES resources were expended in the process of transferring the case records back to CCMS. Similar situations have occurred nationally, leaving courts around the country with either incomplete systems or without support for existing systems.

Benefits of adopting OCRA statewide: Subscribers of OCRA would benefit from having access to images of civil case records of circuit courts statewide, as they currently are limited to viewing images for only the circuit courts to which they have a paid subscription. Currently, to access the records of all 92 courts that offer OCRA, subscribers need a subscription with each of the 92 circuit court clerks' offices, which is likely cost prohibitive.

Challenges of adopting OCRA statewide: As discussed above, some circuit court clerks have invested in private technology systems and would lose the benefit of those investments as well as incurring conversion costs if they were required to transition to OCRA. In addition, and as previously explained, the current OCRA system is limited to officers of the court. If made available to the public (which the VCCA does not feel is appropriate), steps would need to be taken to prevent unauthorized access to sensitive information such as social security numbers, dates of birth and financial account numbers. Remote access to records that contain such information is currently allowed by Va. Code § 17.1-293 when secure remote access is restricted to "members in good standing with the Virginia State Bar and their authorized agents, pro hac vice attorneys authorized by the court for purposes of the practice of law and such governmental agencies as authorized by the clerk." To avoid the need for clerks to redact certain information, legislation would need to provide that any petition, pleading, motion, order, decree, agreement of parties, or transcript that is filed in a civil case in circuit court could not contain sensitive information such as social security numbers, financial information that provides identifying account numbers, names of minors, or other information deemed confidential. The legislation would also need to provide that the party that prepares and submits the document that would otherwise contain such information would instead be required to include the confidential or sensitive information on a separate addendum, which would only be made available to the parties, their attorneys, and to such other persons deemed necessary by the court. The legislation would further need to provide that the party who submits documents in circuit court would also be required to ensure that any such information is removed prior to filing with the clerk and that the separate addendum is incorporated by reference within the document. Clerks would need to have the authority to reject any document that does not comply with this requirement and would need to be immune from liability for disclosures that may result from a party's failure to protect the information within documents that are filed with the clerk. OES would also need to be immune from liability for disclosures that may result from a party's failure to protect the information within documents that are available within the system. Due to the need to restrict the public's remote access to sensitive information, only cases filed after the implementation of the above described addendum requirement would be available within the system.

Because centralization of OCRA would result in indeterminate but likely significant lost revenue to circuit court clerks, some thought should be given to how that revenue might be replaced or how the clerks' operating costs for the requisite systems that make remote access to case contents possible might be reduced or eliminated in order to offset that lost revenue stream.

## Appendix A

The Budget Language stated that “[t]he Executive Secretary shall convene a working group, to include a minimum of five circuit court clerks, to evaluate issues related to statewide adoption of electronic filing of civil cases in circuit courts, and the implementation of a statewide system through which images of nonconfidential records within civil case files in the circuit courts may be viewed by subscribers of that system.” In accordance with this language, OES and the VCCA worked together to establish the membership of the Work Group. The following individuals participated in the development of this report.

- Hon. Gayle Ashworth, Clerk, Essex Circuit Court
- Hon. John B. Chappell, Clerk, Dinwiddie Circuit Court
- Hon. Gail P. Clayton, Clerk, Surry Circuit Court
- Hon. Gary M. Clemens, Clerk, Loudoun Circuit Court
- Chip Dicks, Gentry Locke
- Hon. Paul Ferguson, Clerk, Arlington Circuit Court
- Hon. John Frey, Clerk, Fairfax Circuit Court
- Jo Fronfelter, Circuit Court Analyst, OES
- Norma Gates, Circuit Court Services Manager, OES
- Hon. Ed Jewett, Clerk, Richmond City Circuit Court
- Myron McClees, Staff Attorney, OES
- Hon. Kristen N. Nelson, Clerk, York County/Poquoson Circuit Court
- Alisa Padden, Staff Attorney, OES
- Jaime Reyes, Records Management Services Manager, OES
- Hon. Thomas E. Roberts, Clerk, Staunton Circuit Court
- Brandy Singleton, Staff Attorney, OES
- Hon. Tina Sinnen, Clerk, Virginia Beach Circuit Court
- Judy Worthington, Legislative Consultant, Sage Consulting LLC
- Kristi Wright, Director of Legislative and Public Relations, OES

## Appendix B

### **Current OES Systems**

The Office of the Executive Secretary (OES) has developed and currently maintains both an electronic filing system and a system that provides electronic access to imaged records for use in the circuit courts. Multiple circuit courts provide electronic filing and/or electronic access to images of records within case files, with some clerks using the systems developed by OES, and others may use privately developed or purchased systems.<sup>5</sup> A table detailing the known systems used by each circuit court is provided in Appendix C. Included below is a brief explanation of the OES systems, including their functionality.

#### *Circuit Case Management System*

The Circuit Case Management System (CCMS) is the operational system maintained by OES that serves as the main case-processing mechanism for participating circuit court clerks' offices and allows clerks to manage numerous office functions. Once clerks enter case information into CCMS, or the information is imported from a separate system, CCMS provides tools that allow clerks to process day-to-day operations, such as creation of an interactive docket, and automatic updating of a master calendar. CCMS has database capabilities that allow for storage and timely retrieval of entered case information, which limits the amount of manual processes that must be conducted by clerks. As cases are processed by the courts, CCMS can automatically generate reports and abstracts for state agencies through interfaces with other state-operated systems. For instance, criminal case information can be transmitted to the Department of State Police by means of an automatically-generated Central Criminal Records Exchange Report after the case is properly updated in CCMS. In addition, CCMS also provides specialized metrics, such as caseload statistics, that can be used by clerks to enhance office operations and efficiency.

Multiple technology systems developed by OES rely upon CCMS' structure. The Virginia Judiciary E-Filing System (VJEFS), Case Imaging System (CIS), and Officer of the Court Remote Access System (OCRA) require use of CCMS before they can be implemented by any circuit court. Currently, all circuit courts except Alexandria Circuit Court and Fairfax Circuit Court use CCMS, which is provided to the clerks by OES at no cost.

#### *Virginia Judiciary E-Filing System*

VJEFS, which began as a pilot in 2013, allows electronic filing of most civil cases in circuit court and is available for use by members of the Virginia State Bar and their designated staff. VJEFS can be used to track case submissions, receive status and other notifications by email, request service of process, and calculate and pay fees online. For example, when a case is filed in VJEFS, the system automatically calculates the fees for the filing attorney. Once the case is accepted by the clerk, the system creates a receipt in the Financial Accounting System,

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<sup>5</sup> Pursuant to Va. Code § 17.1-502, the clerks are authorized to operate their own systems that are independently developed and maintained.



file stamps the document with the time of submission, and sends notification that a document has been filed in the case. If service is requested by the attorney, VJEFS also produces forms for service. The automation of these steps reduces the amount of processing that must be carried out by personnel in the clerk's office.

Currently, 35 of the 120 circuit court clerks use VJEFS as their e-filing system. Any member of the Virginia State Bar who completes the registration process through a participating circuit court clerk's office may file cases in any of the 35 circuit courts that use VJEFS. The ability to e-file is not limited to the operating hours of the circuit court clerk's offices. Cases may be filed in VJEFS weekdays from 7 a.m. to 7 p.m.

Implementation of VJEFS in a circuit court requires that the court use CCMS. This requirement is necessary because of the interaction between the two systems. In addition, a court must also use OES' CIS to offer VJEFS.

#### *Case Imaging System*

CIS provides circuit courts the ability to create and store electronic documents that are part of a case file. Stored documents can be accessed by the court or the public at the courthouse, or by OCRA subscribers, who can view the documents through the OCRA interface. To view the documents, users can retrieve cases based on various search criteria, including name, case number, file date, or hearing date.

Implementation of CIS requires that the court be a user of CCMS. A court can use CIS after purchasing a "CIS package" from OES, which will include necessary software and hardware to allow for the scanning and printing of case records. Among the software included within the CIS package is VJEFS and OCRA, though not every court that purchases a CIS package opts to use these programs.

#### *Officer of the Court Remote Access System*

OCRA has been available to circuit courts since July 1, 2011. OCRA allows participating circuit court clerks to grant attorneys, attorneys' agents, pro hac vice attorneys, and government agencies secure remote access to documents in CIS. Users can view all documents for cases associated with the specific circuit court(s) for which they are registered except sealed, juvenile, adoption, and other confidential cases, as well as those documents that are marked confidential or sealed. Each circuit court clerk determines the subscription fee for accessing its documents through OCRA, and subscription fees are paid to and retained by the circuit court clerk. Currently, 92 of the 120 circuit court clerks offer secure remote access through OCRA.

### Appendix C

The following table details the known systems operated by each circuit court. Courts in rows with no shading operate the Court Imaging System (CIS) maintained by OES. Courts that are shaded in blue do not have CIS and have not previously requested a quote for adopting use of CIS. The courts shaded in green are in the process of adopting CIS. These courts have either been sent a quote, signed a quote, or they are awaiting CIS installation. The courts that are shaded red have a third-party case imaging system that is not maintained by OES and have not requested a quote for adopting use of CIS.

	<b>Court</b>	<b>Case Management System</b>	<b>Case Imaging System</b>	<b>Public Search of Images at Courthouse</b>	<b>OCRA</b>	<b>e-Filing</b>
1	Albemarle County	CCMS	CIS	Yes	OCRA	No
2	Amelia County	CCMS	CIS	Yes	OCRA	No
3	Amherst County	CCMS	CIS	No	OCRA	No
4	Augusta County	CCMS	CIS	Yes	OCRA	VJEFS
5	Bath County	CCMS	CIS	No	OCRA	No
6	Bedford County	CCMS	CIS	Yes	OCRA	VJEFS
7	Bland County	CCMS	CIS	No	OCRA	No
8	Bristol	CCMS	CIS	Yes	OCRA	VJEFS
9	Buchanan County	CCMS	CIS	No	OCRA	No
10	Buena Vista	CCMS	CIS	No	OCRA	No

	<b>Court</b>	<b>Case Management System</b>	<b>Case Imaging System</b>	<b>Public Search of Images at Courthouse</b>	<b>OCRA</b>	<b>e-Filing</b>
11	Campbell County	CCMS	CIS	No	OCRA	No
12	Caroline County	CCMS	CIS	Yes	OCRA	VJEFS
13	Carroll County	CCMS	CIS	No	OCRA	VJEFS
14	Charles City County	CCMS	CIS	Yes	OCRA	No
15	Charlotte County	CCMS	CIS	Yes	OCRA	No
16	Chesapeake	CCMS	CIS	Yes	OCRA	VJEFS
17	Chesterfield County	CCMS	CIS	Yes	OCRA	No
18	Colonial Heights	CCMS	CIS	No	OCRA	No
19	Craig County	CCMS	CIS	Yes	OCRA	VJEFS
20	Culpeper County	CCMS	CIS	Yes	OCRA	No
21	Danville	CCMS	CIS	Yes	OCRA	VJEFS
22	Dickenson County	CCMS	CIS	Yes	OCRA	VJEFS
23	Dinwiddie County	CCMS	CIS	Yes	OCRA	VJEFS
24	Fauquier County	CCMS	CIS	Yes	OCRA	No

	<b>Court</b>	<b>Case Management System</b>	<b>Case Imaging System</b>	<b>Public Search of Images at Courthouse</b>	<b>OCRA</b>	<b>e-Filing</b>
25	Floyd County	CCMS	CIS	Requested	OCRA	No
26	Fluvanna County	CCMS	CIS	Yes	OCRA	No
27	Franklin County	CCMS	CIS	No	OCRA	No
28	Frederick County	CCMS	CIS	Yes	OCRA	No
29	Fredericksburg	CCMS	CIS	Yes	OCRA	VJEFS
30	Gloucester County	CCMS	CIS	No	OCRA	No
31	Goochland County	CCMS	CIS	Yes	OCRA	No
32	Grayson County	CCMS	CIS	Yes	OCRA	VJEFS
33	Greene County	CCMS	CIS	No	OCRA	No
34	Greensville County	CCMS	CIS	Yes	OCRA	No
35	Halifax County	CCMS	CIS	Yes	OCRA	No
36	Hampton	CCMS	CIS	No	OCRA	No
37	Hanover County	CCMS	CIS	Yes	OCRA	VJEFS
38	Henrico County	CCMS	CIS	Yes	OCRA	No

	<b>Court</b>	<b>Case Management System</b>	<b>Case Imaging System</b>	<b>Public Search of Images at Courthouse</b>	<b>OCRA</b>	<b>e-Filing</b>
39	Henry County	CCMS	CIS	Yes	OCRA	No
40	Highland County	CCMS	CIS	No	OCRA	No
41	Hopewell	CCMS	CIS	Yes	OCRA	No
42	Isle of Wight County	CCMS	CIS	Yes	OCRA	VJEFS
43	King and Queen County	CCMS	CIS	Yes	OCRA	No
44	King George County	CCMS	CIS	Yes	OCRA	No
45	King William County	CCMS	CIS	No	No	No
46	Lancaster County	CCMS	CIS	Yes	OCRA	No
47	Lee County	CCMS	CIS	Yes	OCRA	VJEFS
48	Loudoun County	CCMS	CIS	Yes	OCRA	No
49	Louisa County	CCMS	CIS	Yes	OCRA	No
50	Lynchburg	CCMS	CIS	Yes	OCRA	No
51	Madison County	CCMS	CIS	Yes	OCRA	No
52	Martinsville	CCMS	CIS	Yes	OCRA	No

	<b>Court</b>	<b>Case Management System</b>	<b>Case Imaging System</b>	<b>Public Search of Images at Courthouse</b>	<b>OCRA</b>	<b>e-Filing</b>
53	Mecklenburg County	CCMS	CIS	Yes	OCRA	VJEFS
54	Montgomery County	CCMS	CIS	Yes	OCRA	VJEFS
55	Nelson County	CCMS	CIS	No	OCRA	No
56	New Kent County	CCMS	CIS	No	OCRA	No
57	Newport News	CCMS	CIS	Yes	OCRA	VJEFS
58	Norfolk	CCMS	CIS	Yes	OCRA	VJEFS
59	Northampton County	CCMS	CIS	No	OCRA	No
60	Northumberland County	CCMS	CIS	No	OCRA	No
61	Orange County	CCMS	CIS	No	OCRA	No
62	Petersburg	CCMS	CIS	Requested on 4/11/18	OCRA	No
63	Pittsylvania County	CCMS	CIS	Yes	OCRA	VJEFS
64	Portsmouth	CCMS	CIS	Yes	OCRA	VJEFS
65	Powhatan County	CCMS	CIS	Yes	OCRA	VJEFS
66	Prince Edward County	CCMS	CIS	Yes	OCRA	No

	<b>Court</b>	<b>Case Management System</b>	<b>Case Imaging System</b>	<b>Public Search of Images at Courthouse</b>	<b>OCRA</b>	<b>e-Filing</b>
67	Prince George County	CCMS	CIS	No	OCRA	No
68	Prince William County	CCMS	CIS	Yes	OCRA	VJEFS
69	Pulaski County	CCMS	CIS	Yes	OCRA	VJEFS
70	Rappahannock County	CCMS	CIS	Yes	OCRA	No
71	Richmond	CCMS	CIS	Yes	OCRA	VJEFS
72	Richmond County	CCMS	CIS	No	OCRA	No
73	Roanoke City	CCMS	CIS	Yes	OCRA	VJEFS
74	Roanoke County	CCMS	CIS	Yes	OCRA	VJEFS
75	Rockingham County	CCMS	CIS	Yes	OCRA	Tyler
76	Russell County	CCMS	CIS	No	OCRA	No
77	Salem	CCMS	CIS	Yes	OCRA	No
78	Shenandoah County	CCMS	CIS	Yes	OCRA	VJEFS
79	Smyth County	CCMS	CIS	Yes	OCRA	VJEFS
80	Southampton County	CCMS	CIS	Yes	OCRA	No

	<b>Court</b>	<b>Case Management System</b>	<b>Case Imaging System</b>	<b>Public Search of Images at Courthouse</b>	<b>OCRA</b>	<b>e-Filing</b>
81	Spotsylvania County	CCMS	CIS	Yes	OCRA	No
82	Stafford County	CCMS	CIS	Yes	OCRA	No
83	Staunton	CCMS	CIS	Yes	OCRA	VJEFS
84	Suffolk	CCMS	CIS	Yes	OCRA	No
85	Tazewell County	CCMS	CIS	Yes	OCRA	VJEFS
86	Virginia Beach	CCMS	CIS	Yes	OCRA	No
87	Warren County	CCMS	CIS	Yes	OCRA	VJEFS
88	Washington County	CCMS	CIS	Yes	OCRA	VJEFS
89	Waynesboro	CCMS	CIS	Yes	OCRA	VJEFS
90	Williamsburg	CCMS	CIS	Yes	OCRA	VJEFS
91	Winchester	CCMS	CIS	Yes	OCRA	No
92	Wythe County	CCMS	CIS	Yes	OCRA	No
93	York County	CCMS	CIS	Yes	OCRA	No
94	Alleghany County	CCMS	No	No	No	No



	<b>Court</b>	<b>Case Management System</b>	<b>Case Imaging System</b>	<b>Public Search of Images at Courthouse</b>	<b>OCRA</b>	<b>e-Filing</b>
95	Brunswick County	CCMS	No	No	No	No
96	Clarke County	CCMS	No	No	No	No
97	Essex County	CCMS	No	No	No	No
98	Giles County	CCMS	No	No	No	No
99	Lunenburg County	CCMS	No	No	No	No
100	Page County	CCMS	No	No	No	No
101	Patrick County	CCMS	No	No	No	No
102	Radford	CCMS	No	No	No	No
103	Rockbridge County	CCMS	No	No	No	No
104	Surry County	CCMS	No	No	No	No
105	Sussex County	CCMS	No	No	No	No
106	Westmoreland County	CCMS	No	No	No	No
107	Accomack County	CCMS	E-Legal	Unknown	No	eLegal Case Pro
108	Appomattox County	CCMS	No	No	No	No

	Court	Case Management System	Case Imaging System	Public Search of Images at Courthouse	OCRA	e-Filing
109	Botetourt County	CCMS	No	No	No	No
110	Buckingham County	CCMS	No	No	No	No
111	Cumberland County	CCMS	No	No	No	No
112	Mathews County	CCMS	No	No	No	No
113	Middlesex County	CCMS	No	No	No	No
114	Nottoway County	CCMS	No	No	No	No
115	Alexandria	Other	Other	Unknown	No	Unknown
116	Arlington County	CCMS	Other	Unknown	No	TrueFiling
117	Charlottesville	CCMS	Conduent	Unknown	No	Unknown
118	Fairfax County	Other	CPAN	Unknown	No	Unknown
119	Scott County	CCMS	E-Legal	ClerkePass	No	eLegal Case Pro
120	Wise County	CCMS	E-Legal	ClerkePass	No	eLegal Case Pro

## Appendix D

The following tables detail the costs associated with converting individual courts to CIS. All courts that do not currently operate CIS and are not currently in the process of adopting CIS, are included within the table. Table 1 lists courts that do not have CIS or any other case imaging system and have not previously requested a quote for adopting use of CIS. Table 2 lists the courts that have a third-party case imaging system that is not maintained by OES and have not requested a quote for adopting use of CIS.

Amounts marked with an asterisk (\*) include the cost of database and server purchase and licensing.

**TABLE 1:**

	Court	Case Management System	One-time Conversion Costs
1	Alleghany County	CCMS	\$2,700.00
2	Brunswick County	CCMS	\$1,700.00
3	Clarke County	CCMS	\$1,700.00
4	Essex County	CCMS	\$500.00
5	Giles County	CCMS	\$500.00
6	Lunenburg County	CCMS	\$2,300.00
7	Page County	CCMS	\$6,720.00
8	Patrick County	CCMS	\$5,700.00
9	Radford	CCMS	\$500.00
10	Rockbridge County	CCMS	\$3,300.00

	<b>Court</b>	<b>Case Management System</b>	<b>One-time Conversion Costs</b>
11	Surry County	CCMS	\$25,088.00*
12	Sussex County	CCMS	\$1,200.00
13	Westmoreland County	CCMS	\$1,700.00
<b>TOTAL</b>			<b>\$53,608.00</b>

**TABLE 2:**

	<b>Court</b>	<b>Case Management System</b>	<b>CIS or Other?</b>	<b>One-time Conversion Costs</b>
1	Alexandria	Other	Other	Not Available
2	Arlington County	CCMS	Other	\$4,300.00
3	Charlottesville	CCMS	Conduent	\$24,988.00*
4	Fairfax County	Other	Other	Not Available
5	Scott County	CCMS	E-Legal	\$2,700.00
6	Wise County	CCMS	E-Legal	\$2,700.00
<b>TOTAL</b>				<b>\$34,688.00</b>