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January 25, 2018

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

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

Re: 2017 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 2017 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

2017

Judicial Council of Virginia



Report to the
General Assembly
and
Supreme Court of Virginia



**The Judicial Council of Virginia
2017 Report to the General Assembly and Supreme Court of Virginia
Supreme Court of Virginia, Office of the Executive Secretary
Richmond, Virginia
Published January 2018**




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JUDICIAL COUNCIL OF VIRGINIA

Membership as of January 3, 2018

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 Mark D. Obenshain, Member, Senate of Virginia

The Honorable William J. Howell*, Speaker, Virginia House of Delegates

The Honorable David B. Albo, Member, Virginia House of Delegates

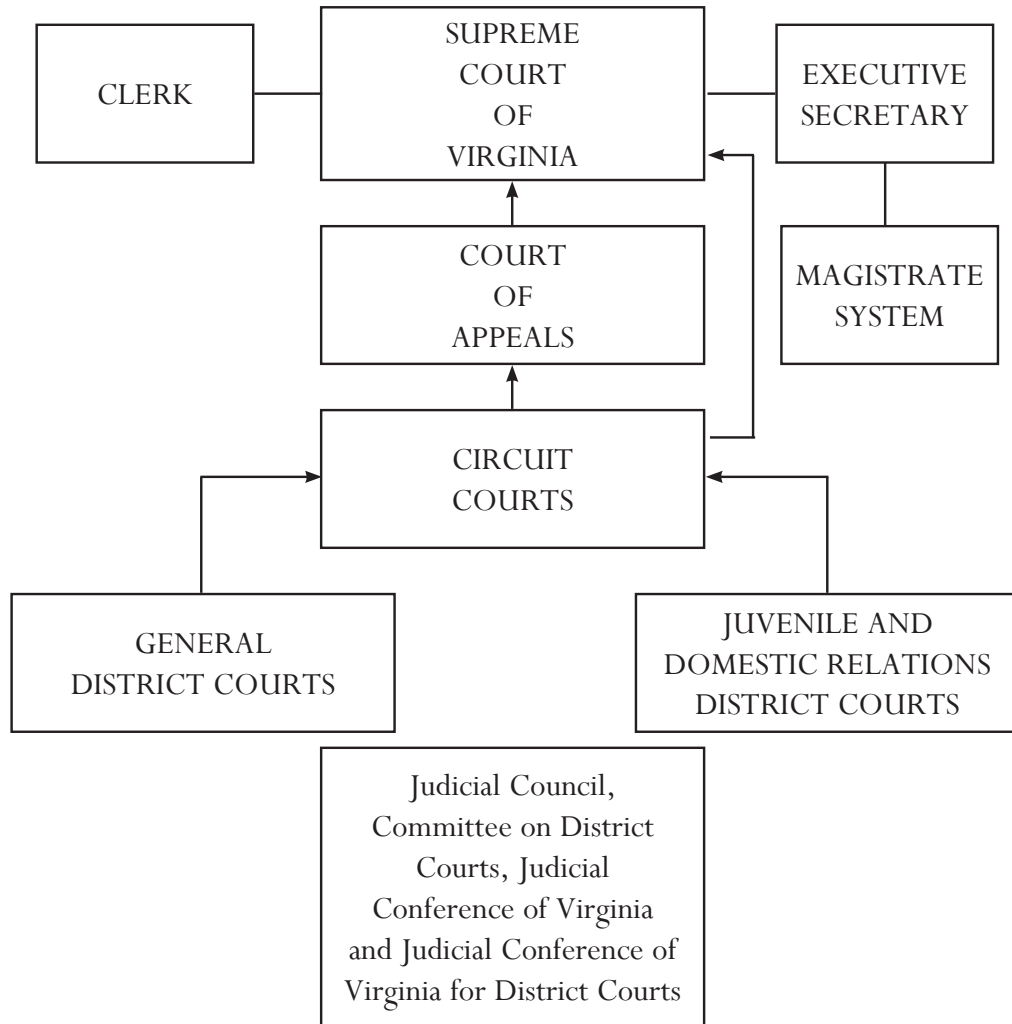
Monica Taylor Monday, Esquire

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

Report of the Standing Committee on Commissioners of Accounts

The Standing Committee on Commissioners of Accounts issued several recommendations in its December 9, 2015, report to the Judicial Council. These recommendations addressed the need to update the existing "Uniform Fee Schedule Guideline for Commissioners of Accounts," which became effective July 1, 2008. The Judicial Council had approved most of the recommended changes to the Uniform Fee Schedule in 2016 but could not approve a change to the fee for a Statement in Lieu of Settlement of Account because that \$75 fee amount was set by the General Assembly in subsection D of Virginia Code § 64.2-1314.

Council approved a recommendation that legislation be submitted to the 2017 General Assembly proposing that subsection D be deleted, allowing Council to approve the fee amount for a Statement in Lieu of Settlement of Account as it does for other Commissioner fees. This legislative proposal was enacted by the General Assembly in 2017 Acts of Assembly, Chapter 638. Following passage of the legislation, Council approved the Standing Committee's recommendation that the fee be increased to \$150, effective July 1, 2017.

Proposed Revisions to Mediator Certification Guidelines

Virginia Code § 8.01-576.8 requires that neutrals providing mediation services to the courts be certified pursuant to guidelines promulgated by the Judicial Council of Virginia. Since that statute's enactment in 1993, Virginia has been a leader in mediator certification, requiring training and an experiential component for initial certification and recertification every two years thereafter. Ongoing developments, research, and expansion in the field, as well as the mounting experience of mediators, program managers, and regulators, help inform what is meaningful for mediator certification and what is not.

Over a period of one and a half years, beginning in 2016, the Office of the Executive Secretary (OES) vetted proposed revisions to the certification guidelines with Virginia mediation entities (the Virginia Association for Community Conflict Resolution, the Joint ADR Committee of the Virginia State Bar and the Virginia Bar Association, and the Virginia Mediation Network) and then requested certified mediator feedback on three rounds of changes. OES considered all feedback and developed additional revisions based on mediator suggestions and perspectives. OES proposed that the Judicial Council approve numerous changes to the certification guidelines. The Judicial Council adopted all proposed revisions on October 19, 2017, to become effective November 1, 2017. Key revisions included:

- **Eliminate the case requirement** (few, if any, other professions require proof of experience for continuing credentialing);

- **Eliminate the continuing education distinction between substantive “general” and “family” courses**, giving mediators more control over their continuing education training and an opportunity to expand their knowledge base;
- **Reduce the number of continuing education hours required for mediators who have both “family” and “general” certification**, who formerly were required to take double continuing education hours; and
- **Allow 8 hours of continuing education credit carryover** for one certification cycle (mediators still must take 2 hours of ethics each certification cycle).

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 latest recipient of this award, selected in 2016 for presentation in 2017, was the Honorable A. Ellen White, presiding judge of the Campbell County Juvenile and Domestic Relations District Court. Judge White was appointed to the bench in 1994 and is currently serving a third term as Chief Judge of the 24th District Juvenile and Domestic Relations District Courts. She served as a member of the Board of Trustees of the National Council of Juvenile and Family Court Judges for seven years and is a past president of the Virginia Council of Juvenile and Domestic Relations District Court Judges. Judge White is a past chair of the Judicial Education Committee, the Law Revision Committee, and the Judicial Administration Committee of the Judicial Conference of Virginia for District Courts. She received the Family Law Service Award from the Virginia State Bar Family Law Section in 2014 and has served as a faculty member for the National Council of Juvenile and Family Court Judges, the Virginia State Bar, the Virginia Continuing Legal Education Foundation, and numerous judicial education programs sponsored by the Supreme Court of Virginia.

LEGISLATIVE PROPOSALS FOR THE 2018 SESSION OF THE GENERAL ASSEMBLY

Request for New Circuit and District Judgeships

This proposal would make several adjustments to the number of circuit, general district, and juvenile and domestic relations district court judges authorized for the respective judicial circuits and districts in accordance with the recommendations of the 2017 Virginia Workload Assessment Report from the National Center for State Courts (“NCSC”). The Executive Committee of the Judicial Council adopted the NCSC’s recommendations regarding the number of authorized district and circuit judgeships.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.6:1 and 17.1-507 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.6:1. Number of judges.

For the several judicial districts there shall be full-time general district court judges and juvenile and domestic relations district court judges, the maximum number as hereinafter set forth, who shall during their service reside within their respective districts, except as provided in § [16.1-69.16](#), and whose compensation and powers shall be the same as now and hereafter prescribed for general district court judges and juvenile and domestic relations district court judges.

The maximum number of judges of the districts shall be as follows:

	General District Court Judges	Juvenile and Domestic Relations District Court Judges
First	4	4
Second	7	7 <u>6</u>
Two-A	1 <u>2</u>	1
Third	2	3
Fourth	6	5

Fifth	<u>23</u>	2
Sixth	<u>45</u>	<u>23</u>
Seventh	4	4
Eighth	3	3
Ninth	3	4
Tenth	3	<u>43</u>
Eleventh	3	3
Twelfth	5	6
Thirteenth	6	<u>45</u>
Fourteenth	5	5
Fifteenth	8	<u>109</u>
Sixteenth	4	6
Seventeenth	3	2
Eighteenth	2	2
Nineteenth	11	8
Twentieth	4	3
Twenty-first	<u>12</u>	2

Twenty-second	2	4
Twenty-third	4	5
Twenty-fourth	3	6
Twenty-fifth	4	5
Twenty-sixth	5	7
Twenty-seventh	5	5
Twenty-eighth	2 <u>3</u>	3
Twenty-ninth	2	3
Thirtieth	2	2 <u>3</u>
Thirty-first	5	5

The election or appointment of any district judge shall be subject to the provisions of § [16.1-69.9:3](#).

§ 17.1-507. Maximum number of judges; residence requirement; compensation; powers; etc.

A. For the several judicial circuits there shall be judges, the maximum number as hereinafter set forth, who shall during their service reside within their respective circuits and whose compensation and powers shall be the same as now and hereafter prescribed for circuit judges.

The maximum number of judges of the circuits shall be as follows:

First -- 5

Second – 98

Third -- 4

Fourth -- 8

Fifth – 34

Sixth -- 3

Seventh – 65

Eighth -- 3

Ninth -- 4

Tenth -- 4

Eleventh -- 3

Twelfth -- 6

Thirteenth – 87

Fourteenth -- 5

Fifteenth -- 11

Sixteenth -- 6

Seventeenth – 34

Eighteenth – 43

Nineteenth -- 15

Twentieth -- 5

Twenty-first – 23

Twenty-second – 54

Twenty-third -- 5

Twenty-fourth – 56

Twenty-fifth – 56

Twenty-sixth -- 8

Twenty-seventh – 76

Twenty-eighth -- 4

Twenty-ninth -- 5

Thirtieth -- 4

Thirty-first -- 6

B. No additional circuit court judge shall be authorized or provided for any judicial circuit until the Judicial Council has made a study of the need for such additional circuit court judge and has reported its findings and recommendations to the Courts of Justice Committees of the House of Delegates and Senate. The boundary of any judicial circuit shall not be changed until a study has been made by the Judicial Council and a report of its findings and recommendations made to said Committees.

C. If the Judicial Council finds the need for an additional circuit court judge after a study is made pursuant to subsection B, the study shall be made available to the Compensation Board and the Courts of Justice Committees of the House of Delegates and Senate and Council shall publish notice of such finding in a publication of general circulation among attorneys licensed to practice in the Commonwealth. The Compensation Board shall make a study of the need to provide additional courtroom security and deputy court clerk staffing. This study shall be reported to the Courts of Justice Committees of the House of Delegates and the Senate, and to the Department of Planning and Budget.

2. That the provisions of this act reducing the number of authorized judgeships in the Second Judicial Circuit shall become effective upon the death, resignation, or retirement on or after January 1, 2018, of any judge of that court.

Electronic Transfer of Appealed Cases between District Courts and Circuit Courts

The Judicial Council approved a proposal to expand authorization for the electronic transmission of cases between district and circuit courts. In addition to expanding the types of cases that can be electronically transmitted beyond just those that are appealed, the proposal allows for juvenile and domestic relations district courts to electronically transmit cases. Currently, electronic transmission is only allowed for civil cases that are appealed to circuit court from a general district court. Redundant wording that allows for the electronic transmission of appealed cases between general district and circuit courts would be deleted from Va. Code § 16.1-112.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.54 and 16.1-112 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.54. General provisions.

A. Each district court shall retain and store its court records as provided in this article.

The Committee on District Courts, after consultation with the Executive Secretary of the Supreme Court of Virginia, shall determine the methods of processing, retention, reproduction and disposal of records and information in district courts, including records required to be retained in district courts by statute.

B. Whenever a court record has been reproduced for the purpose of record retention under this article, such original may be disposed of upon completion of the Commonwealth's audit of the court records unless approval is given by the Auditor of Public Accounts for earlier disposition. In the event of such reproduction, the reproduction of the court record shall be retained in accordance with the retention periods specified in this section. The reproduction shall have the same force and effect as the original court record and shall be given the same faith and credit to which the original itself would have been entitled in any judicial or administrative proceeding.

C. Electronic case papers, whether originating in electronic form or converted to electronic form, shall constitute the official record of the case. Such electronic case papers shall also fulfill any statutory requirement that requires an original, original paper, paper, record,

document, facsimile, memorandum, exhibit, certification, or transcript if such electronic case papers are in an electronic form approved by the Executive Secretary of the Supreme Court. When case papers are transmitted between the district and circuit courts and there is an agreement between the chief judge of the applicable district court and the clerk of the circuit court for the electronic transmission of case papers, the case papers shall be transmitted between the courts by an electronic method approved by the Executive Secretary of the Supreme Court, with the exception of any exhibit that cannot be electronically transmitted.

§ 16.1-112. All papers transmitted to appellate court; further proceedings.

The judge or clerk of any court from which an appeal is taken under this article shall promptly transmit to the clerk of the appellate court the case papers, which shall include the original warrant or warrants or other notices or pleadings with the judgment endorsed thereon, together with all pleadings, exhibits, and other papers filed in the trial of the case. The required bond, and, if applicable, the money deposited to secure such bond and the writ tax and costs paid pursuant to § 16.1-107 shall also be submitted, along with the fees for service of process of the notice of appeal in the circuit court. ~~Upon agreement between the chief judge of the general district court and the clerk of the appellate court, the case papers shall be transmitted to the appellate court by an electronic method approved by the Executive Secretary of the Supreme Court, with the exception of any exhibit that cannot be electronically transmitted. In the jurisdictions where an agreement pursuant to this section is in effect for the electronic submission of case papers to the appellate court, the appellate court may transmit the case papers back to the general district court by electronic submission where the case is to be returned to the general district court under applicable law. Electronic case papers, whether originating in electronic form or converted to electronic form, shall constitute the official record of the case. Such electronic case papers shall also fulfill any statutory requirement requiring an original, original paper, paper, record, document, facsimile, memorandum, exhibit, certification, or transcript if such electronic case papers are in an electronic form approved by the Executive~~

~~Secretary of the Supreme Court.~~ Upon receipt of the foregoing by the clerk of the appellate court, the case shall then be docketed.

When such case has been docketed, the clerk of such appellate court shall by writing to be served, as provided in §§ 8.01-288, 8.01-293, 8.01-296, and 8.01-325, or by certified mail, with certified delivery receipt requested, notify the appellee, or by regular mail to his attorney, that such an appeal has been docketed in his office, provided that upon affidavit by the appellant or his agent in conformity with § 8.01-316 being filed with the clerk, the clerk shall post such notice at the front door of his courtroom and shall mail a copy thereof to the appellee at his last known address or place of abode or to his attorney, and he shall file a certificate of such posting and mailing with the papers in the case. No such appeal shall be heard unless it appears that the appellee or his attorney has had such notice, or that such certificate has been filed, 10 days before the date fixed for trial, or has in person or by attorney waived such notice.

Acceptability of Electronic Documents in Criminal Proceedings

Currently, in civil proceedings in circuit courts, electronic forms of documents approved for filing under the Rules of the Supreme Court of Virginia have the same acceptability as the originals. The Judicial Council approved a proposed amendment to Va. Code § 17.1-258.6 to give electronic versions of documents and materials in criminal proceedings in circuit courts the same acceptability as such documents would have in civil proceedings.

Be it enacted by the General Assembly of Virginia:

1. That § 17.1-258.6 of the Code of Virginia is amended and reenacted as follows:

§ 17.1-258.6. Acceptability of electronic medium; submission of trial court record to appellate court.

A. In connection with civil or criminal proceedings in circuit court, any statutory requirement for an original, original paper, paper, record, document, facsimile, memorandum, exhibit, certification, or transcript shall be satisfied if such is in an electronic form approved for filing under the Rules of Supreme Court of Virginia. However, this section shall not apply to documents the form of which is specified in any statute governing the creation and execution of wills, codicils, testamentary trusts, premarital agreements, and negotiable instruments.

B. Notwithstanding any other provision of law, any statutory authorization for the use of copies or reproductions in civil or criminal proceedings in circuit court shall be satisfied by use of such copies or reproductions in hard copy or electronic form approved for filing under the Rules of Supreme Court of Virginia.

C. Any clerk of a circuit court with an electronic filing system that complies with the Rules of Supreme Court of Virginia may provide the trial court record in electronic form to the appropriate clerk of any appellate court. The clerk of the Supreme Court and the clerk of the Court of Appeals shall accept the official civil or criminal record in electronic form as otherwise required by law.

D. The Rules of Supreme Court of Virginia shall not prohibit the use of a private vendor electronic filing system if such system is in compliance with the filing standards established by the Court.

Magistrate Delivery to Court of an Affidavit for Search Warrant Authorizing Use of a Tracking Device

This proposal amends Va. Code § 19.2-56.2, which details the method of delivery to a court of an affidavit for a search warrant authorizing use of a tracking device, deleting the specific, acceptable forms of delivery and instead cross-referencing Va. Code § 19.2-54. The language of Va. Code § 19.2-56.2(C)(2) is inconsistent with that of other search warrant statutes in that the only allowable form of in-person delivery to a court requires the judicial officer who issued the warrant to personally deliver the affidavit. Other search warrant affidavits may be delivered by the judicial officer *or by a designee or agent*. In addition to in-person delivery of the affidavit, Va. Code § 19.2-56.2(C)(2) also allows sending it by fax or certified mail.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-56.2 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-56.2. Application for and issuance of search warrant for a tracking device; installation and use.

A. As used in this section, unless the context requires a different meaning:

"Judicial officer" means a judge, magistrate, or other person authorized to issue criminal warrants.

"Law-enforcement officer" shall have the same meaning as in § 9.1-101.

"Tracking device" means an electronic or mechanical device that permits a person to remotely determine or track the position or movement of a person or object. "Tracking device" includes devices that store geographic data for subsequent access or analysis and devices that allow for the real-time monitoring of movement.

"Use of a tracking device" includes the installation, maintenance, and monitoring of a tracking device but does not include the interception of wire, electronic, or oral communications or the capture, collection, monitoring, or viewing of images.

B. A law-enforcement officer may apply for a search warrant from a judicial officer to permit the use of a tracking device. Each application for a search warrant authorizing the use of a tracking device shall be made in writing, upon oath or affirmation, to a judicial officer for the circuit in which the tracking device is to be installed, or where there is probable cause to believe

the offense for which the tracking device is sought has been committed, is being committed, or will be committed.

The law-enforcement officer shall submit an affidavit, which may be filed by electronically transmitted (i) facsimile process or (ii) electronic record as defined in § 59.1-480, and shall include:

1. The identity of the applicant and the identity of the law-enforcement agency conducting the investigation;

2. The identity of the vehicle, container, item, or object to which, in which, or on which the tracking device is to be attached, placed, or otherwise installed; the name of the owner or possessor of the vehicle, container, item, or object described, if known; and the jurisdictional area in which the vehicle, container, item, or object described is expected to be found, if known;

3. Material facts constituting the probable cause for the issuance of the search warrant and alleging substantially the offense in relation to which such tracking device is to be used and a showing that probable cause exists that the information likely to be obtained will be evidence of the commission of such offense; and

4. The name of the county or city where there is probable cause to believe the offense for which the tracking device is sought has been committed, is being committed, or will be committed.

C. 1. If the judicial officer finds, based on the affidavit submitted, that there is probable cause to believe that a crime has been committed, is being committed, or will be committed and that there is probable cause to believe the information likely to be obtained from the use of the tracking device will be evidence of the commission of such offense, the judicial officer shall issue a search warrant authorizing the use of the tracking device. The search warrant shall authorize the use of the tracking device from within the Commonwealth to track a person or property for a reasonable period of time, not to exceed 30 days from the issuance of the search warrant. The search warrant shall authorize the collection of the tracking data contained in or

obtained from the tracking device but shall not authorize the interception of wire, electronic, or oral communications or the capture, collection, monitoring, or viewing of images.

2. The affidavit shall be certified by the judicial officer who issues the search warrant and shall be delivered to and preserved as a record by the clerk of the circuit court of the county or city where there is probable cause to believe the offense for which the tracking device has been sought has been committed, is being committed, or will be committed. ~~The affidavit shall be delivered by the judicial officer in person; mailed by certified mail, return receipt requested; or delivered by electronically transmitted facsimile process or by use of filing and security procedures as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) for transmitting signed documents.~~ After issuing a warrant under this section, the judicial officer shall file the affidavit in a manner prescribed by § 19.2-54.

3. By operation of law, the affidavit, search warrant, return, and any other related materials or pleadings shall be sealed. Upon motion of the Commonwealth or the owner or possessor of the vehicle, container, item, or object that was tracked, the circuit court may unseal such documents if it appears that the unsealing is consistent with the ends of justice or is necessary to reasonably inform such person of the nature of the evidence to be presented against him or to adequately prepare for his defense.

4. The circuit court may, for good cause shown, grant one or more extensions, not to exceed 30 days each.

D. 1. The search warrant shall command the law-enforcement officer to complete the installation authorized by the search warrant within 15 days after issuance of the search warrant.

2. The law-enforcement officer executing the search warrant shall enter on it the exact date and time the device was installed and the period during which it was used.

3. Law-enforcement officers shall be permitted to monitor the tracking device during the period authorized in the search warrant, unless the period is extended as provided for in this section.

4. Law-enforcement officers shall remove the tracking device as soon as practical, but not later than 10 days after the use of the tracking device has ended. Upon request, and for good cause shown, the circuit court may grant one or more extensions for such removal for a period not to exceed 10 days each.

5. In the event that law-enforcement officers are unable to remove the tracking device as required by subdivision 4, the law-enforcement officers shall disable the device, if possible, and all use of the tracking device shall cease.

6. Within 10 days after the use of the tracking device has ended, the executed search warrant shall be returned to the circuit court of the county or city where there is probable cause to believe the offense for which the tracking device has been sought has been committed, is being committed, or will be committed, as designated in the search warrant, where it shall be preserved as a record by the clerk of the circuit court.

E. Within 10 days after the use of the tracking device has ended, a copy of the executed search warrant shall be served on the person who was tracked and the person whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or by leaving a copy with any individual found at the person's usual place of abode who is a member of the person's family, other than a temporary sojourner or guest, and who is 16 years of age or older and by mailing a copy to the person's last known address. Upon request, and for good cause shown, the circuit court may grant one or more extensions for such service for a period not to exceed 30 days each. Good cause shall include, but not be limited to, a continuing criminal investigation, the potential for intimidation, the endangerment of an individual, or the preservation of evidence.

F. The disclosure or publication, without authorization of a circuit court, by a court officer, law-enforcement officer, or other person responsible for the administration of this section of the existence of a search warrant issued pursuant to this section, application for such search warrant, any affidavit filed in support of such warrant, or any return or data obtained as a result of such search warrant that is sealed by operation of law is punishable as a Class 1 misdemeanor.

Postrelease Incarceration Specified for Violations of Postrelease Supervision

The Judicial Council approved a proposal to amend Va. Code §§ 19.2-295.2 and 18.2-10 to clarify that postrelease incarceration may be imposed if a person violates the terms of postrelease supervision. Currently, Va. Code § 19.2-295.2 specifies twice that postrelease supervision shall not be less than six months nor more than three years, but does not address postrelease incarceration that is in addition to the active term. In addition, the proposal would amend Va. Code § 18.2-10 to clarify that the already existing standards are referring to the additional term of incarceration.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-10 and 19.2-295.2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-10. Punishment for conviction of felony; penalty.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be a person with intellectual disability pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under 18 years of age at the time of the offense or is determined to be a person with intellectual disability pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of incarceration of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.

§ 19.2-295.2. Postrelease supervision of felons sentenced for offenses committed on and after January 1, 1995, and on and after July 1, 2000.

A. At the time the court imposes sentence upon a conviction for any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, in addition to any other punishment imposed if such other punishment includes an active term of incarceration in a state or local correctional facility, except in cases in which the court orders a suspended term of confinement of at least six months, impose a term of ~~postrelease supervision~~ incarceration, in addition to the active term, of not less than six months nor more than three years, as the court may determine. Such additional term shall be suspended and the defendant shall be ordered to be placed under postrelease supervision upon release from the

active term of incarceration. The period of supervision shall be established by the court; however, such period shall not be less than six months nor more than three years. Periods of postrelease supervision imposed pursuant to this section upon more than one felony conviction may be ordered to run concurrently. Periods of postrelease supervision imposed pursuant to this section may be ordered to run concurrently with any period of probation the defendant may also be subject to serve.

B. The period of postrelease supervision shall be under the supervision and review of the Virginia Parole Board. The Board shall review each felon prior to release and establish conditions of postrelease supervision. Failure to successfully abide by such terms and conditions shall be grounds to terminate the period of postrelease supervision and recommit the defendant to the Department of Corrections or to the local correctional facility from which he was previously released. Procedures for any such termination and recommitment shall be conducted in the same manner as procedures for the revocation of parole.

C. Postrelease supervision programs shall be operated through the probation and parole districts established pursuant to § 53.1-141.

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

II. Recommended Changes to Rules of Court

BACKGROUND

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

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

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

CHANGES TO RULES OF COURT RECOMMENDED BY THE JUDICIAL COUNCIL AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2016 THAT BECAME EFFECTIVE IN 2017

At the May 26, 2016, meeting, Judicial Council voted to recommend the following proposed amendments to the Rules of Court. These Rule changes were made by Order dated November 1, 2016, effective January 1, 2017.

- Former Rule 5:8A addressing appeal from partial final judgment in multi-party cases was relocated to Part 1 of the Rules and renumbered as Rule 1:2.
- Amendments to Rule 1:5 to address commonly occurring issues when a party is proceeding pro se or becomes pro se in the course of a case.
- Amendment of Rule 4:1(b)(4)(D) regarding discovery in eminent domain proceedings.
- Amendments to Rules 5:24 and 5A:17 regarding the non-jurisdictional nature of appeal bond defects.

RULE CHANGES RECOMMENDED BY THE JUDICIAL COUNCIL AND ADOPTED BY THE SUPREME COURT OF VIRGINIA IN 2017

At the April 27, 2017, meeting, Judicial Council considered and made recommendations regarding adoption of the following proposed amendments. By Orders dated May 31, 2017, the following Rules were either promulgated or amended:

- Proposal adopting new Rule 1:5A, Curing Signature Defects. The Rule became effective August 1, 2017.

- Amendment to Rule 1:18, Pretrial Scheduling Order, and adoption of a new Form 3-A, Alternate Pretrial Scheduling Order for Use in Eminent Domain Proceedings (Rule 1:18B). These changes became effective August 1, 2017.
- Amendment to Rule 4:5, Depositions Upon Oral Examination, effective August 1, 2017.
- Amendments to Rules 2:902, Self-Authentication (Rule 2:902(6) derived from Code § 8.01-390.3 and Code § 8.01-391(D)), and 3A:14.1 to conform the content of the Rules with statutory changes made during the 2017 General Assembly. These amendments became effective July 1, 2017.

At the October 19, 2017, meeting of Judicial Council, the Advisory Committee on Rules of Court presented a recommendation to amend Rule 2:606, Juror's Competency as a Witness, in response to the United States Supreme Court's decision in Peña-Rodriguez v. Colorado, 137 S.Ct. 855 (2017).

Pursuant to Virginia Code § 8.01-3(E) there is a long lead-time on amendments to Rules of Evidence that are not made to conform the Rule to a legislative change in an underlying statute:

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 Virginia Rule of Evidence 2:606 was amended by Order dated October 20, 2017, to be effective July 1, 2018.