

VIRGINIA'S COURTS  
IN THE 21ST CENTURY

TO BENEFIT ALL,  
TO EXCLUDE NONE





VIRGINIA'S COURTS  
IN THE 21ST CENTURY

TO BENEFIT ALL,  
TO EXCLUDE NONE

MISSION

TO PROVIDE AN INDEPENDENT, ACCESSIBLE, RESPONSIVE  
FORUM FOR THE JUST RESOLUTION OF DISPUTES IN ORDER  
TO PRESERVE THE RULE OF LAW AND TO PROTECT ALL  
RIGHTS AND LIBERTIES GUARANTEED BY THE UNITED  
STATES AND VIRGINIA CONSTITUTIONS.

## **General Information for Individuals with Disabilities**

The Court System has adopted a policy of non-discrimination in both employment and in access to its facilities, services, programs and activities. Individuals with disabilities who need accommodation in order to have access to court facilities or to participate in court system functions are invited to request assistance from court system staff. Individuals (not employed by the court system) with disabilities who believe they have been discriminated against in either employment or in access may file a grievance through local court system officials. Those who need printed material published by the court system in another format, those who have general questions about the court system in another format or those who have general questions about the court system's non-discrimination policies and procedures may contact the Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219. The telephone number is 804/786-6455; communication through a telecommunications device (TDD) is also available at this number.

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Lawrence L. Koontz, Jr.

Cynthia D. Kinser

Donald W. Lemons

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Legislative & Public Relations

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The Honorable Leroy Rountree Hassell, Sr.	<i>Chief Justice, Supreme Court of Virginia</i>
The Honorable Walter S. Felton, Jr.	<i>Chief Judge, Court of Appeals of Virginia</i>
The Honorable Wilford Taylor, Jr.	<i>Judge, Eighth Judicial Circuit</i>
The Honorable William N. Alexander, II	<i>Judge, Twenty-second Judicial Circuit</i>
The Honorable Leslie M. Alden	<i>Judge, Nineteenth Judicial Circuit</i>
The Honorable Gary A. Hicks	<i>Chief Judge, Fourteenth Judicial Circuit</i>
The Honorable C. Randall Lowe	<i>Judge, Twenty-eight Judicial Circuit</i>
The Honorable Alfreda Talton-Harris	<i>Judge, Fifth Judicial District</i>
The Honorable Randal J. Duncan	<i>Judge, Twenty-seventh Judicial District</i>
The Honorable Teresa M. Chafin	<i>Judge, Twenty-ninth Judicial Circuit</i>
The Honorable Henry L. Marsh	<i>Member, Senate of Virginia</i>
The Honorable Walter A. Stosch*	<i>Member, Senate of Virginia</i>
The Honorable William J. Howell*	<i>Speaker, Virginia House of Delegates</i>
The Honorable David B. Albo	<i>Member, Virginia House of Delegates</i>
The Honorable Kenneth R. Melvin	<i>Member, Virginia House of Delegates</i>
Richard Cullen, Esquire	<i>Attorney-at-law, Member of the Bar of the City of Richmond</i>
Leisa K. Ciaffone, Esquire	<i>Attorney-at-law, Member of the Bar of the City of Roanoke</i>
Karl R. Hade	<i>Executive Secretary, Supreme Court of Virginia</i> <i>Ex-officio Secretary</i>

\*By invitation of the Chief Justice of Virginia

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LEROY ROUNTREE HASSELL, SR.

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ROSCOE B. STEPHENSON, JR.  
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# SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING  
RICHMOND, VIRGINIA 23219  
804-786-6404

**CLERK**  
PATRICIA L. HARRINGTON  
**EXECUTIVE SECRETARY**  
KARL R. HADE  
**CHIEF STAFF ATTORNEY**  
GREGORY E. LUCYK  
**REPORTER OF DECISIONS**  
KENT SINCLAIR  
**STATE LAW LIBRARIAN**  
GAIL WARREN

## MEMORANDUM

**TO:** All Members of the Judicial System

**FROM:** Leroy Rountree Hassell, Sr., Chief Justice  
Supreme Court of Virginia

**DATE:** March 30, 2009

I am pleased to forward to you a copy of the 2009 Strategic Plan for Virginia's judicial system. As you know, Virginia is the birthplace of America's judicial system and the rule of law in our nation and, consistent with our great commitment to the rule of law, we are pleased to present a Strategic Plan reflective of the judicial system's mission:

To provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the Constitution of Virginia and the Constitution of the United States of America.

Thousands of Virginians participated in the planning process that was used to develop the Strategic Plan. This process was perhaps the most extensive planning effort in the history of Virginia's judicial system. We received input from our second commission on the future of Virginia's courts: "Commission on Virginia Courts in the 21<sup>st</sup> Century: To Benefit All, To Exclude None." Over 400 judges, clerks and magistrates participated in a constituent survey. Ten focus groups, which included over 100 community leaders, also shared their views, perceptions, and concerns regarding our judicial system. We utilized this broad array of participation to identify strengths, weaknesses, and opportunities in our effort to develop a strategic plan that will improve the quality of justice for all Virginians.

The Strategic Plan, which will be periodically reviewed, will guide our operations for the next five years. The Plan includes seven new visions that represent the core functions of our judicial system, and the 2009 Strategic Plan preserves objectives identified in our prior strategic plans. The strategies enumerated in the Strategic Plan illustrate how the judicial system intends to achieve these visions and long term objectives. The Office of the Executive Secretary maintains an operational plan that describes various strategies that may be implemented to achieve our core aspirations and long term objectives.

We look forward to working with members of the Judiciary, the Governor, the General Assembly, lawyers and our fellow citizens as we seek to make Virginia's excellent judicial system even better.



## What is the Judicial Branch?

In the United States, the prevailing model of government is one of three separate divisions—the Executive, Legislative, and Judicial Branches. These branches exercise both shared and distinct powers, allowing for a system of checks and balances that enables each branch to defend the integrity of its own functions while inhibiting any potential abuse of powers by the other branches. This separation of the branches and balance of powers is integral to the rule of law.

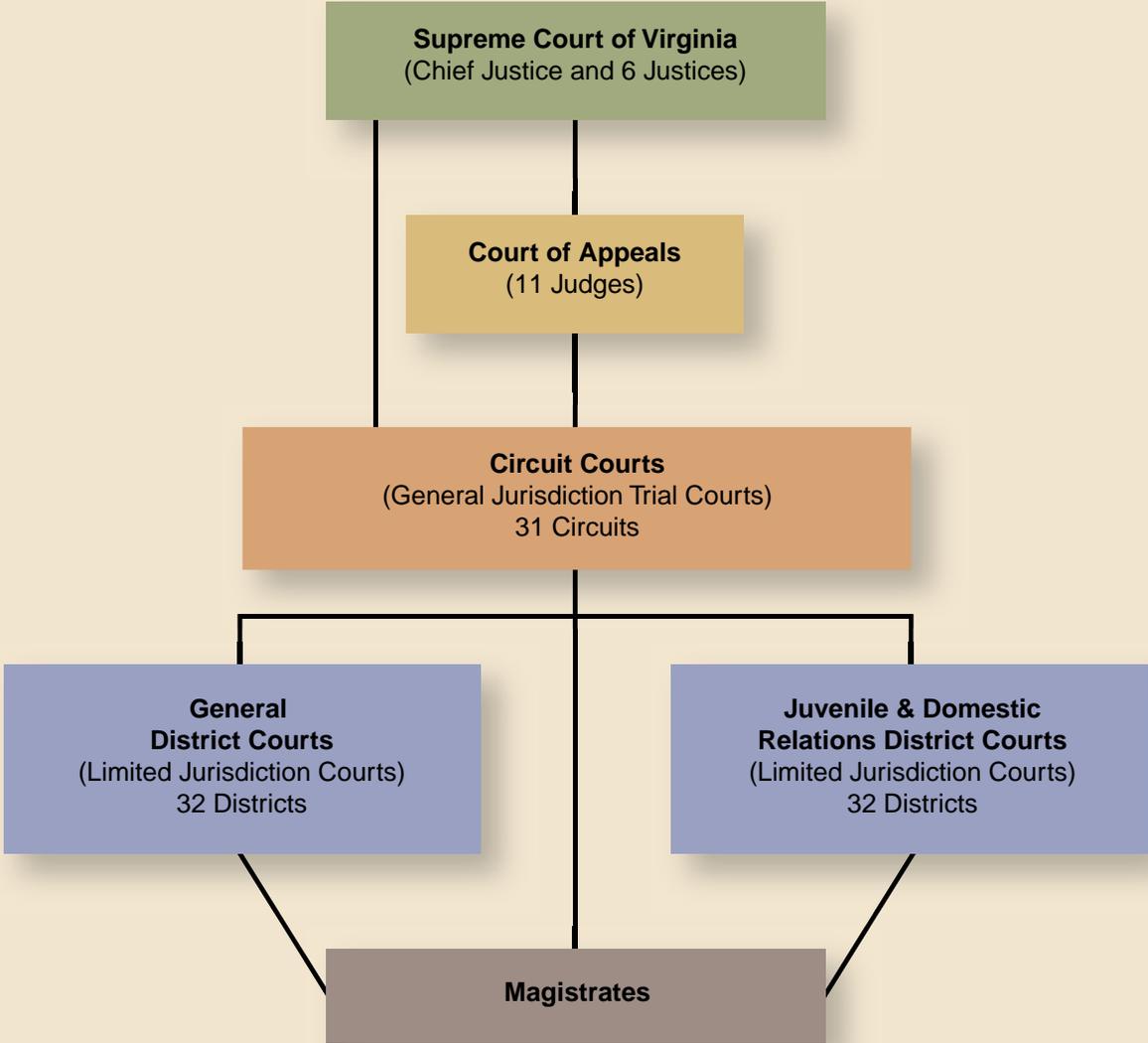
The rule of law is a fundamental component of democratic society and is defined broadly as the principle that all members of society—both citizens and rulers—are bound by a set of clearly defined and universally accepted laws. The role of the Judicial Branch is to support the rule of law by assuring that disputes are resolved justly, promptly, and economically. The components necessary to discharge this function are a court system unified in its structure and administration; competent, honest judges and court personnel; and uniform rules of practice and procedure.

In Virginia, the present Judicial System consists of four levels of courts: the Supreme Court, the Court of

Appeals, the circuit courts, and the district courts. In addition, magistrates serve as judicial officers with authority to issue various types of processes. The courts are organized into 31 judicial circuits and 32 similar judicial districts. More than 2,550 people, including judges, clerks, and magistrates, work within the Judicial Branch of government to provide the citizens of the Commonwealth prompt, efficient service.

The Chief Justice of the Supreme Court serves as the administrative head of Virginia's Judicial System, that is, its chief executive officer. The Chief Justice is charged with overseeing the efficient and effective operation of the entire system. Assisting in this task as the chief operating officer of the Judicial System is the Executive Secretary of the Supreme Court. In many states the Executive Secretary would be called the "State Court Administrator." The Executive Secretary provides administrative assistance and overall direction to the courts of the Commonwealth and to Virginia's magistrates through multiple departments that comprise the Office of the Executive Secretary (OES).

THE JUDICIAL BRANCH  
OF THE STATE OF VIRGINIA



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### **What is “strategic”?**

*A resource, process, or accomplishment that is essential to the long-term achievement of a preferred end.*

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### **Why Do Courts Plan?**

Maintaining the courts as a core function of our democratic form of government is critically important. In addition to carrying out the basic functions of the justice system, the courts must also be prepared to address special circumstances and needs, such as security and continuity of court services and personnel in the event of natural or man-made disaster. Both the governmental functions and basic operations of the justice system must be able to adapt to societal changes—the opportunities and threats they present and the expectations they create. To ensure that the court system performs its governmental role—its *mission*—effectively, the courts maintain an ongoing, comprehensive planning process that identifies the preferred course for meeting responsibilities and monitors progress toward identified ends. Ideally, the planning process will raise the awareness of judges, clerks, and others so they will come to think and act more consciously with respect to the courts’ mission and what they can do to fulfill it.

### **How Do Courts Plan: The Planning Process in Virginia’s Courts**

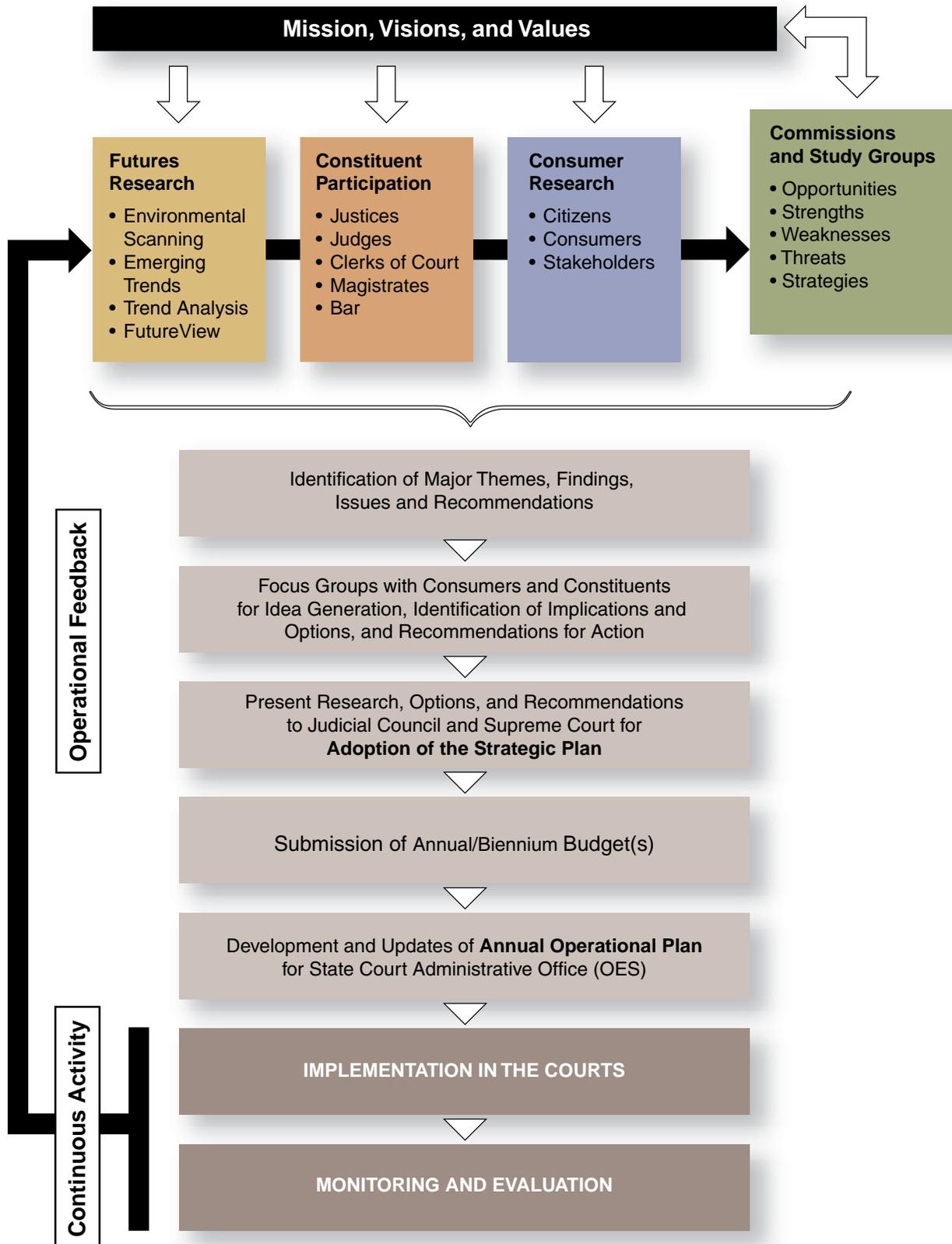
The comprehensive strategic and operational planning process for Virginia’s courts (see the diagram on page 4) largely evolved following the 1989 Commission on the Future of Virginia’s Judicial System. For many years, the process operated on a two-year cycle. This timing was necessitated by the inclusion in the official Strategic Plan of short-term operating tasks that had been approved as part of the Plan’s implementation. The approval and completion of tasks depended significantly on securing adequate resources during the state’s biennial fiscal cycle. Recognizing that the truly strategic aspects of planning are longer-term than two years, the courts began to shift the planning process away from the biennial cycle in 2005. Although implementation and monitoring of the Strategic Plan will be ongoing and the list of operational tasks for the Judicial Branch will be updated in one- to two-year intervals, actual updates of the long-term strategies of the Judicial System—beginning with those reported in this document—will now take place at intervals of five years or more.

Four types of resources continue to inform the planning process. The foremost of these is the body of findings and recommendations provided by expert commissions and study groups, most notably the Judiciary’s two Futures Commissions. The court system’s continuing mission plus the visions and original objectives of past Strategic Plans were developed from the work of the first (1989) commission. That commission strongly influenced the values and strategies that were manifested in the succession of multi-year plans that the Judicial Council and Supreme Court of Virginia adopted over the past two decades. The recommendations of the second Futures Commission, *Virginia Courts in the 21st Century: To Benefit All, To Exclude None* (2006), will similarly inform the ensuing cycles of the comprehensive planning process. The Judicial Council of Virginia considered the second commission’s 198 recommendations in 2007 and approved 194 of them for Supreme Court review, including five with modifications and an alternate version of one recommendation that it did not approve.

Another information resource is ongoing futures research that the Judicial Branch conducts to help identify and understand developments that could shape the future. By a number of different techniques, including environmental scanning, the identification and analysis of trends, and the solicitation of expert opinions through focus groups, the Judicial Branch gains information about the choices that are available to address various opportunities and threats and what the consequences of those choices may be. These efforts guide the development and implementation of appropriate strategies within the planning process.

The remaining sources of information driving the planning process are consumer research and constituent participation. The Supreme Court of Virginia conducts surveys periodically to assess citizen perceptions of the Virginia courts; the most recent such survey was in 2007. The Executive Secretary of the Supreme Court also solicits feedback from individuals involved in the judicial process, including judges, clerks, and attorneys. The latest such survey was administered in the spring of 2008. These efforts clarify perceptions of the strengths, weaknesses, opportunities, and threats that the court system faces. These surveys also help identify possible strategies and tasks for the court system and provide feedback regarding their merits. (*cont. on page 6*)

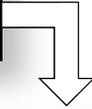
# THE COMPREHENSIVE STRATEGIC AND OPERATIONAL PLANNING SYSTEM FOR VIRGINIA COURTS



# THE DEVELOPMENT OF OPERATIONAL OBJECTIVES AND TASKS

(EXAMPLE)

- Vision 2** Equal Application of Law and Procedure
- Vision 3** Effective Access to Justice
- Vision 4** Responsiveness to Changing Societal Needs



**Futures Research Findings**

- In 2005, Virginia had 723,667 foreign-born residents, an increase of 26.9% since 2000
- 12.7% of Virginians speak a language other than English at home
- Since 1990, new immigrants have been settling throughout the state, including rural communities for which the cultural and social implications of immigration are new phenomena

**Futures Commission (2005-2006)**  
[Constituents]

Many Virginia residents have limited fluency in English, restricting meaningful access to legal services, especially in their interactions in the courthouse.

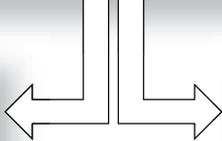
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Increase efforts to recruit, train and certify foreign language interpreters for criminal and civil cases. *Recommendation 2.17.*

Evaluate salary supplements for court personnel who offer skills such as fluency in a foreign language or sign language proficiency. *Recommendation 2.18.*

Provide court forms and instructional materials in languages other than English. *Recommendation 2.19.*

Encouraging the MCLE Board to grant credit for courses aimed at the representation of clients whose first language is not English, including courses exploring cultural patterns and practices. *Recommendation 2.25.*



**Implications**

**Focus Groups (2006)**  
[Constituents & Citizens]

Dealing with immigrants can be expensive and time-consuming. Unqualified interpreters compromise the judicial process.

The increased presence of and quality of participation by non-English-speaking residents (as witnesses as well as parties) affects the quality of justice for all residents. Unreliable work conditions (hours and pay) discourage the recruitment and training of qualified interpreters.

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Emphasize in training (of judges) the importance of using only certified interpreters and explain the dangers of using non-certified interpreters. *Task 2*

Create ethics training for interpreters. *Task 3*

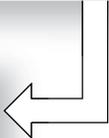
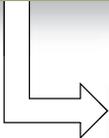
Define access to justice to include the necessary right to a professional, certified interpreter. *Task 14*

Require certification before interpreting in any Virginia court. *Task 17*

Increase the number of bilingual court-appointed attorneys. *Task 22*

**Recommended Actions**

Adjustments to Long-term Strategies  
New Tasks for Consideration in the Operational Plan



The Judicial Branch uses the information from these many sources to draft a comprehensive, long-term strategic plan for consideration by the Judicial Council and Supreme Court of Virginia. After the Supreme Court has formally adopted a set of strategies, the information from these sources then influences the Judiciary's budget requests and the development of specific operational tasks by which to implement the strategies. The Executive Secretary takes an active role in the identification and ultimate fulfillment of these tasks. In order to allocate limited resources effectively, tasks are carefully prioritized before implementation. The planning process includes continuous monitoring and evaluation to ensure that tasks are implemented in a timely and effective manner and to assess whether strategies are actually successful in meeting their intended objectives. This operational feedback then becomes part of the planning information cycle.



MISSION, VISIONS  
AND STRATEGIES



## MISSION

TO PROVIDE AN INDEPENDENT, ACCESSIBLE, RESPONSIVE  
FORUM FOR THE JUST RESOLUTION OF DISPUTES IN ORDER  
TO PRESERVE THE RULE OF LAW AND TO PROTECT ALL  
RIGHTS AND LIBERTIES GUARANTEED BY THE UNITED  
STATES AND VIRGINIA CONSTITUTIONS.



## The Visions of the Judicial Branch

### **Vision 1**

Virginia's courts will be distinctive and independent—as a branch of government and in judicial decision making.

### **Vision 2**

Virginia's courts will ensure due process through the equal application of law and procedure to all cases and controversies.

### **Vision 3**

Virginia's courts will maintain human dignity and provide effective access to Justice for all persons.

### **Vision 4**

Virginia's courts will be responsive to the changing needs of society—in the development and operation of the law, in the functions of the judicial process, and in the delivery of public services.

### **Vision 5**

Virginia's courts will be expeditious, economical, and fair in the resolution of disputes.

### **Vision 6**

Virginia's courts will demonstrate accountability to the public through effective management practices, including the use of the most appropriate processes and technologies for court operations.

### **Vision 7**

Virginia's courts will operate in a manner that fosters public trust and confidence in and respect for the courts and for legal authority.

*“Without a strong and independent court system, no one would protect our basic rights, freedoms, and liberties. Our sacred right to a trial by jury would vanish. Without an independent judiciary, despotism and tyranny would replace democracy.”*

*Chief Justice Leroy R. Hassell, Sr.  
(2008)*



## VISION 1

VIRGINIA'S COURTS WILL BE DISTINCTIVE AND  
INDEPENDENT—AS A BRANCH OF GOVERNMENT  
AND IN JUDICIAL DECISION MAKING.



## THE JUDICIAL BRANCH WILL:

- 1.1 Promote the independence and accountability of the Judicial Branch.
- 1.2 Effectuate better understanding and communications among the three branches of state government.
- 1.3 Foster programs that promote civic awareness and understanding of the courts and their role in a democratic society.
- 1.4 Serve the ends of justice in individual cases by preserving judicial discretion.
- 1.5 Exercise appropriate judicial authority.
- 1.6 Maintain the highest standards of judicial ethics and integrity.
- 1.7 Attract and retain the most qualified persons to serve as judges.
- 1.8 Provide a compensation, reward and benefit system and a working environment to attract and retain a highly-qualified, diverse, and skilled workforce.
- 1.9 Develop advanced and specialized training opportunities for all judges, clerks, and magistrates.

*“...[I]ndependent tribunals of justice... will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights.”*

*James Madison (1789)*



## VISION 2

VIRGINIA'S COURTS WILL ENSURE DUE PROCESS  
THROUGH THE EQUAL APPLICATION OF LAW AND  
PROCEDURE TO ALL CASES AND CONTROVERSIES.



THE JUDICIAL BRANCH WILL:

- 2.1 Improve the quality of the court’s processing of all legal subject matter.
- 2.2 Employ Rules of Procedure that are clearly written, logically organized and indexed, and properly reflective of the law.
- 2.3 Apply Rules of Evidence that are clear, conveniently distilled, and suitably reflective of current law and science.
- 2.4 Use the most reliable, timely, and efficient means practicable to make and preserve the trial record.
- 2.5 Eliminate from the operation of the Judicial System harmful biases such as those based on race, gender, age, disability or socioeconomic status.
- 2.6 Improve the quality of indigent defense representation in Virginia.
- 2.7 Strengthen the jury system by improving the selection process and the jury’s method of operation.

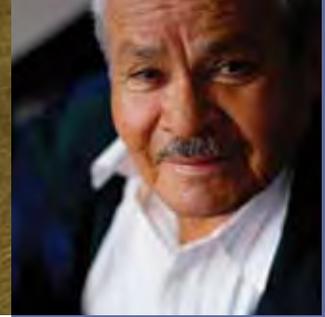
*“The most sacred of the duties of a government [is] to do equal and impartial justice to all its citizens.”*

*Thomas Jefferson (1816)*



### VISION 3

VIRGINIA'S COURTS WILL MAINTAIN HUMAN  
DIGNITY AND PROVIDE EFFECTIVE ACCESS TO  
JUSTICE FOR ALL PERSONS.



## THE JUDICIAL BRANCH WILL:

- 3.1 Assure that access to the courts is not inhibited because of an individual's race, language, gender, age, disability, or socioeconomic status.
  - a. Provide appropriate services for the elderly, disabled, and other vulnerable groups.
  - b. Enable the courts to more effectively respond and provide appropriate services to non-English speakers in Virginia's courts.
  - c. Minimize economic barriers to legal representation.
  - d. Provide appropriate services to self-represented litigants.
  - e. Improve the quality of indigent defense representation in Virginia.
  - f. Encourage the use of plain language in all official communications and legal documents.
- 3.2 Provide greater access to a broader range of dispute resolution options.
- 3.3 Provide ready access to magistrate services.
- 3.4 Expand the use of existing and emerging technologies for conducting business with the courts.
- 3.5 Treat all those who use the courts with courtesy and respect.
- 3.6 Emphasize high-quality customer service.

*"...[T]he stability of our society depends upon the ability of the people to readily obtain access to the courts...."*

*Robert J. Gray, Jr. (2004)*



#### VISION 4

VIRGINIA'S COURTS WILL BE RESPONSIVE TO THE CHANGING NEEDS OF SOCIETY—IN THE DEVELOPMENT AND OPERATION OF THE LAW, IN THE FUNCTIONS OF THE JUDICIAL PROCESS, AND IN THE DELIVERY OF PUBLIC SERVICES.



#### THE JUDICIAL BRANCH WILL:

- 4.1 Maintain and enhance its strategic planning capabilities.
- 4.2 Maintain processes and resources by which to monitor and assess the implications of change within society and the courts and to develop appropriate responses.
- 4.3 Increase the courts' awareness of and responsiveness to the needs of the citizens they serve.
- 4.4 Maintain and enhance court system resources—facilities, technology, fiscal and human resources, etc.
- 4.5 Establish a comprehensive range of dispute resolution services in Virginia's courts.
- 4.6 Expand collaborative relationships among the courts, state and local governments, and the private sector to improve service to the public.

*“If the courts as a public institution fail to meet public needs and expectations, the people will address those needs elsewhere and ultimately support of the court as an institution will diminish.”*

*Richard J. Williams (1994)*



VISION 5

VIRGINIA'S COURTS WILL BE  
EXPEDITIOUS, ECONOMICAL, AND FAIR IN  
THE RESOLUTION OF DISPUTES.



## THE JUDICIAL BRANCH WILL:

- 5.1 Eliminate unnecessary delays in the resolution of disputes.
- 5.2 Encourage the development of alternative and complementary dispute resolution mechanisms.
- 5.3 Encourage and evaluate methods for overcoming economic barriers to legal representation.
- 5.4 Improve case management to reduce unnecessary costs to the courts and litigants.
- 5.5 Continually evaluate the structure of the court system to ensure the prompt, fair, and cost-effective resolution of disputes.
- 5.6 Enhance and maintain court system infrastructure—facilities, technology, etc.
- 5.7 Foster innovation; encouraging flexibility in the adaptation of infrastructure, processes, and services.
- 5.8 Maximize the use of technology to enhance the quality of justice rendered by the courts.
- 5.9 Ensure that participants in the judicial process are not discriminated against because of race, language, gender, age, disability, or socioeconomic status.

*“Justice delayed is  
justice denied.”*

*attr. William Gladstone*



## VISION 6

VIRGINIA'S COURTS WILL DEMONSTRATE  
ACCOUNTABILITY TO THE PUBLIC THROUGH  
EFFECTIVE MANAGEMENT PRACTICES, INCLUDING  
THE USE OF THE MOST APPROPRIATE PROCESSES AND  
TECHNOLOGIES FOR COURT OPERATIONS.



## THE JUDICIAL BRANCH WILL:

- 6.1 Expand the strategic planning capabilities of the court system.
- 6.2 Ensure that courts have adequate resources to fulfill their mission.
- 6.3 Develop and employ meaningful and practical measures of performance and report performance results to the public on a regular basis.
- 6.4 Enhance the security of courthouses both for the general public and all personnel who work within them.
- 6.5 Improve the accuracy, timeliness, and use of caseload data generated by the trial courts.
- 6.6 Ensure that the Judicial System provides a competitive compensation, reward, and benefit system and a stimulating working environment to attract and retain a highly-qualified, diverse, and skilled workforce.
- 6.7 Maintain a high-quality magistrate system employing the best structure, procedures, and management for its operation.
- 6.8 Maximize the use of appropriate technologies to enhance the quality of justice rendered by the courts.
- 6.9 Protect the public through appropriate regulation of the Bar and fiduciaries.

*“A celebrated writer [Blackstone] justly observes that ‘next to doing right, the great object in the administration of public justice should be to give public satisfaction.’”*

*John Jay (1790)*



## VISION 7

VIRGINIA'S COURTS WILL OPERATE IN A  
MANNER THAT FOSTERS PUBLIC TRUST AND  
CONFIDENCE IN AND RESPECT FOR THE COURTS  
AND FOR LEGAL AUTHORITY.



### THE JUDICIAL BRANCH WILL:

- 7.1 Ensure that courts merit the respect of society in the handling of all cases.
- 7.2 Improve service quality by increasing the courts' awareness of and responsiveness to the needs of the citizens they serve.
- 7.3 Assist the public and other constituencies in understanding the courts and their role in a democratic society, supporting programs in schools, the media, and elsewhere that foster civic awareness.
- 7.4 Effectuate better understanding and communications between the courts and the other branches of state government.

*“Sometimes, in the pressure of doing what judges have to do and running a tight ship in the courtroom and deciding tough issues, we might forget that, in the last analysis, it is, after all, the public we serve and that we do care how the courts are perceived generally.”*

*Sandra Day O’Connor (1999)*

## Backgrounds for Quotations in the Plan

### Mission

The Honorable Leroy R. Hassell, Sr. (b. 1955), is chief justice of the Supreme Court of Virginia. He was appointed to the high court in 1989 and became chief justice by election of his peers in 2003. The quotation was excerpted from Chief Justice Hassell's annual State of the Judiciary Message, delivered on May 12, 2008, at the meeting of the Judicial Conference of Virginia in Williamsburg, as the message was published in *Virginia 2007 State of the Judiciary Report* (Richmond: Supreme Court of Virginia, 2008), p. xv.

### Vision 1

James Madison (b. 1751, d. 1836) culminated his long career in state and federal service as the fourth president of the United States. Among many achievements, he is noted as the "Father of the Constitution." The quotation was excerpted from a speech to the first session of Congress in 1789 by then Congressman Madison proposing what became the Bill of Rights.

### Vision 2

Thomas Jefferson (b. 1743, d. 1826), third president of the United States, was most proud of his roles in the authorship of the Declaration of Independence and of the Statute of Virginia for Religious Freedom and in the founding of the University of Virginia. The quotation is taken from a note that Thomas Jefferson wrote in 1816 as editor of the English translation of *A Treatise on Political Economy* by the French aristocrat and Enlightenment philosopher Antoine Louis Claude Destutt, comte de Tracy. Andrew A. Lipscomb and Albert Ellery Bergh, eds., *The Writings of Thomas Jefferson - Memorial Edition* (Washington, D.C.: Thomas Jefferson Memorial Association, 1903-04), 14:465.

### Vision 3

Robert J. Gray, Jr. (b. 1950) is a Richmond attorney with the law firm Hunton and Williams. He rose through the leadership ranks of the American Bar Association to become its president from 2004 to 2005. This quotation, from his term as ABA president, is excerpted from "Access to the Courts: Equal Justice for All," *eJournal USA: Issues of Democracy*, August 2004, <http://usinfo.state.gov/journals/itdhr/0804/ijde/grey.htm>.

### Vision 4

The Honorable Richard J. Williams (b. 1941), now retired, was an attorney and judge in New Jersey. He completed his active public service as administrative director of the New Jersey Courts from 1999 to 2003. In 1994, when he was an assignment judge for the Superior Court, he wrote the article from which this quotation is excerpted, "Envisioning the Courts: Old Myths or New Realities," *The Court Manager*, Fall 1994, at 45.

### Vision 5

William E. Gladstone (b. 1809, d. 1898) was a British statesman who served four times as prime minister. The quotation is attributed to Gladstone, but the attribution is not verifiable.

### Vision 6

John Jay (b. 1745, d. 1829) served in the Continental Congress and was elected President of that body from 1778 to 1779. During and after the American Revolution, he was a minister (ambassador) to Spain and France, helping to fashion American foreign policy and to secure favorable peace terms from the British and French. He co-wrote the *Federalist Papers* with Alexander Hamilton and James Madison. Jay served on the U.S. Supreme Court as the first Chief Justice of the United States from 1789 to 1795 and as governor of New York from 1795 to 1801. The quotation is from a draft of a letter from the justices of the Supreme Court to President George Washington, 15 Sept. 1790 in *Iredell Life* 2:293-96. Jay himself was quoting from Blackstone's *Commentaries on the Laws of England*. William Blackstone, 3 *Commentaries* \*391.

### Vision 7

The Honorable Sandra Day O'Connor (b. 1930) was a politician and jurist in Arizona before serving as an associate justice of the U.S. Supreme Court from 1981 to 2005. Her activities in retirement include the post of Chancellor of the College of William and Mary. The quotation is from a May 15, 1999, speech before the National Conference on Public Trust & Confidence in the Justice System (May 14-15, 1999, Washington, D.C.).



APPENDICES



## Appendix A

### HISTORY OF THE JUDICIAL PLANNING PROCESS IN VIRGINIA

The Virginia Judiciary's original strategic planning process was instituted by the Judicial Council in 1976. The process was designed as a method for identifying critical issues and for determining "strategies" to address those issues as well as to set direction for the future development of the court system. The planning process timetable was set to coincide with the submission of the Judiciary's biennium budget to the General Assembly. The Office of the Executive Secretary (OES) compiled input from Judicial System personnel, citizens, and the bar and presented it to the Judicial Council for identification of major issues. Thereafter, the Judicial Council and Committee on District Courts reviewed the issues and proposed actions for the plan. Those actions adopted by the Judicial Council became part of the comprehensive plan, a summary of which was then reported to judicial personnel, citizens, and the bar.

The comprehensive strategic and operational planning process evolved following the 1989 Commission on the Future of Virginia's Judicial System. In that period, the Judiciary's *mission statement* was developed:

*To provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the United States and Virginia Constitutions.*

This declaration is essentially a recognition of society's existing and continuing expectation of the role and function of the Judiciary rather than a defining statement for a new or redirected institution. But while the mission of the Virginia Judicial System changes little over time, the courts' leaders in the early 1990s recognized that the conditions under which the courts must fulfill that mission *are* subject to change over time, as are the underlying meanings of some of the key elements of the mission statement—*independence, accessibility, responsiveness, rights, and liberties*. With an eye to the future, the leaders of Virginia's court system drafted ten additional statements that they called "*visions*" to better express the values and operating conditions they felt were necessary to successfully fulfill the mission as the courts entered the 21st Century. Those original "*visions*" served as the structural framework for all subsequent strategic plans through fiscal year 2008.

#### **Vision 1**

All persons will have effective access to justice, including the opportunity to resolve disputes without undue hardship, cost, inconvenience or delay.

#### **Vision 2**

The court system will maintain human dignity and the rule of law, by ensuring equal application of the judicial process to all controversies.

#### **Vision 3**

The judicial system will be managed actively to provide an array of dispute resolution alternatives that respond to the changing needs of society.

#### **Vision 4**

Virginia's judicial system will be structured and will function in a manner that best facilitates the expeditious, economical and fair resolution of disputes.

#### **Vision 5**

The courts of Virginia will be administered in accordance with sound management practices which foster the efficient use of public resources and enhance the effective delivery of court services.

#### **Vision 6**

The court system will be adequately staffed by judges and court personnel of the highest professional qualifications, chosen for their positions on the basis of merit and whose performance will be enhanced by continuing education and performance evaluations. Lawyers, who constitute an essential element in the legal system, will receive a quality pre-professional and continuing education befitting the higher professional and ethical standards to which they will be held, and the need to become increasingly service-oriented in their relationships with clients.

#### **Vision 7**

Technology will increase the access, convenience and ease of use of the courts for all citizens, and will enhance the quality of justice by increasing the courts' ability to determine facts and reach a fair decision.

#### **Vision 8**

The public's perception of the Virginia judicial system will be one of confidence in and respect for the courts and for legal authority.

#### **Vision 9**

The impact of changing socio-economic and legal forces will be systematically monitored and the laws of Virginia will provide both the substantive and procedural means for responding to these changes.

#### **Vision 10**

The judicial system will fulfill its role within our constitutional system by maintaining its distinctiveness and independence as a separate branch of government.

During the period from the first futures commission until the adoption of the 2004-2006 Strategic Plan, the planning process continued to operate on a biennial cycle. One notable development in the early Twenty-first Century was the Supreme Court's assumption of a more active role in the process, particularly in deciding what details would be formally adopted for inclusion in the published strategic plan. Nevertheless, the details of the underlying process and the structure of the plans themselves remained unchanged until 2005.

Beginning in 2005, the OES has worked to improve the comprehensive planning process, even to the extent of adjusting how it develops its own internal task lists for working with the courts. While OES has continued to develop and use the principal information resources of the planning process—findings and recommendations provided by expert commissions and study groups, futures research, constituent input, and citizen surveys—it has placed greater emphasis on the connection of these information resources to the eventual details of the plan. There has also been an increased effort to involve all constituents of the Judicial Branch, both internal and external, in information-generation and task identification.

More fundamental, however, have been two other changes, one directly to the planning process and the other to the final structure of the Plan. They involve a shift in the strategic planning timeline and a stricter distinction between visionary ends and strategic means. The first of these changes recognizes that the truly strategic aspects of planning are longer-term than two years, but the inclusion of short-term tasks in the court system's past published plans necessitated biennial updates. Although implementation and monitoring of future strategic plans should be ongoing and the list of operational tasks for the OES should be updated in one- to two-year intervals, actual updates of the long-term strategies of the Judicial System should now take place at intervals of five years or more. As in this document, the published strategic plans will hereafter focus on the strategies and exclude the short-term tasks of the Virginia court system.

The stricter distinction between ends and means affects the contents of the plan and how they are organized. In considering what the new strategic plan should *include*, the Executive Secretary has examined the underlying structure of past plans. As is mentioned above, what have been called "visions" have provided the highest level of the plan's structural framework. Strictly speaking, a strategic vision or visions should be value statements that

describe mission-consistent future conditions that an organization desires. The options by which an organization chooses to achieve its mission and visions are *strategies*. The visions and strategies should be distinct, but those in past judicial plans have not been. The ten original visions were actually combinations of legitimate value statements and of the general means by which the court system intended to realize them—alternative dispute resolution, court structure, sound management, adequate staffing, technology, and planning. In the new Strategic Plan, all the basic values and strategies included in the ten original "visions" have been preserved, but they have been separated to clarify which are which. The seven key value or vision areas in the original visions are:

1. Independence
2. Due Process
3. Accessibility
4. Responsiveness
5. Swift, economical, and fair operations
6. Accountability, and
7. Public Trust and Confidence

These have become the core elements of the new visions presented in this Plan. Supporting these value areas are a range of major and minor strategies, some that were expressed in the ten original visions, still more from the "objectives" that were in the last prior strategic plan, and others that are new. As should ideally be the case, many of these strategies support multiple visions.

These changes provide several benefits. For both those within the Judicial Branch and the public, they strip away minor details to highlight the major goals of the courts. They also distinguish what the courts seek to achieve from how they will do so. An additional benefit is that the reduction in the number of visions brings the total within the 5 to 7 range that experts say is easiest for people to remember—a key factor for personnel who are expected to assist in the vision's realization.

While there is a definite hierarchy among strategies, with some minor ones supporting or clarifying major ones, this document displays most of the strategies of the strategic plan at the same level in the interest of simplicity. Internally, OES will use all the strategy levels when it develops its internal Operational Plan, which includes those short-term tasks that would begin or continue implementation of the many strategies.

## Appendix B

### THE NEW STRATEGIC PLAN: COMMENTARY

The new Strategic Plan that the Supreme Court of Virginia adopted in FY 2009 will apply for at least five years—a departure from what has been a largely biennial timeframe. Another change is that the published Strategic Plan will no longer include a list of short-term tasks that have largely corresponded with the Operational Plan (OP) within the Office of the Executive Secretary (OES). OES will maintain a continuously-updated Operational Plan that is organized to implement the strategies of the Strategic Plan; however, in order to concentrate on the long-term matters of purpose, direction, and motivation that apply to *everyone* within the Judicial System, the Strategic Plan will exclude the frequently-updated and largely state-level tasks of the OP.

#### The Mission

The most fundamental element of the Strategic Plan is the mission. All activities within the court system should ultimately support the mission. An activity that cannot be shown to support the mission—even if it might be socially worthwhile—is a potential drain on limited resources and may compromise fundamental values that the courts seek to promote. Such inconsistent activities should be discontinued within the courts, perhaps to be assumed by another institution. The actual mission of the Judicial System of Virginia may arguably have existed, unchanged, for centuries, but the current statement of the mission is about twenty-years-old. This mission statement continues in the new Strategic Plan.

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*The mission of the Judicial System of Virginia is to provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the United States and Virginia constitutions.*

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The mission statement includes many essential concepts that may not be easy to understand or appreciate at first reading. First and foremost, the courts are *forums for resolving disputes*. Some disputes cannot be resolved by the parties involved and need third-party assistance to prevent the disputes from spinning out of control, potentially embroiling other members of the community and resulting in harm to persons and property. Significantly, our courts do not serve the interests of a totalitarian ruler or a mob, which could be arbitrary; rather, the author-

ity and legitimacy of our courts and other government institutions arise from *written laws*—most notably the *constitutions of the United States and Virginia*—to which all are subject. The integrity of our system of laws depends upon the forum provided by the courts to declare what the laws mean and to *protect the rights and liberties* that they guarantee—justly defending not only the majority against the criminal or negligent actions of individuals but also the individual against the excesses of the majority, even of the government itself. Lastly, we believe that the courts should be *independent, accessible, and responsive* in order to fully and justly perform their governmental function.

#### Visions

Although a mission statement is intended to summarize the purpose of an organization, individuals sometimes have a hard time grasping its meaning or relating it to what they do. By itself, that can leave the mission uninspiring or hard to follow. To clarify the mission and help motivate workers, many organizations develop a vision or visions that express values or otherwise describe what the organization should be like—in the future, if not now—when it is successfully fulfilling its mission. During the first futures commission, the Virginia courts developed ten aspirational statements that were intended to serve as visions of what the court system will be. These statements served as the structural framework for strategic planning through the 2004-2006 Strategic Plan and the second futures commission.

The concepts and values that these statements expressed have been preserved in the new Strategic Plan, but they have been restructured somewhat. The core goal- or ends-related concepts expressed in the original visions have been isolated in seven new vision statements (see the list of visions below); the remaining concepts, which were pronouncements about how the ends would be realized, are now restated among the strategies that support the new visions. The reduction in the number of visions confers the added benefit of making them easier to remember, and that which is more easily remembered is more likely to inspire.

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## The Judiciary's New Visions

### Vision 1

Virginia's courts will be distinctive and independent—as a branch of government and in judicial decision making.

### Vision 2

Virginia's courts will ensure due process through the equal application of law and procedure to all cases and controversies.

### Vision 3

Virginia's courts will maintain human dignity and provide effective access to Justice for all persons.

### Vision 4

Virginia's courts will be responsive to the changing needs of society—in the development and operation of the law, in the functions of the judicial process, and in the delivery of public services.

### Vision 5

Virginia's courts will be expeditious, economical, and fair in the resolution of disputes.

### Vision 6

Virginia's courts will demonstrate accountability to the public through effective management practices, including the use of the most appropriate processes and technologies for court operations.

### Vision 7

Virginia's courts will operate in a manner that fosters public trust and confidence in and respect for the courts and for legal authority.

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## What Do the Visions Mean and How Are They Relevant To Individuals in the Courts?

The new vision statements are intended to make the courts' mission easier to understand, highlighting key concepts about the dispute resolution forum we profess to be working toward—*independent, accessible, responsive*—and describing other important and desirable characteristics that the courts should have when we are successful. In the new Strategic Plan the broad methods by which the mission and visions will be realized—*strategies*—are listed under the visions. Some strategies support more than one vision, so there is overlapping reinforcement within the Plan. More specific short-term or ongoing tasks by which the strategies themselves will be implemented do not appear in the Strategic Plan but are spelled out in other documents such as the OES Operational Plan and, ideally, would also be developed by individual courts.

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**Vision 1** affirms one of the highest governmental ideals, judicial independence.

*Virginia's courts will be distinctive and independent—as a branch of government and in judicial decision making.*

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The aspect of this vision that would be most widely understood around the world is the principle of independence in judicial decision making. The basic idea is that justice is best ensured when judges are free of political, economic, and other pressures that might influence how they interpret the law and render decisions in cases. More unique, however, is the American governmental model in which the court system is administered as a separate and distinct branch of government rather than as a part of the executive or legislative branches. This operational independence is believed to reinforce decisional independence, particularly in situations where decisions may be politically significant or unpopular.

The strategies and tasks that support Vision 1 address issues such as the importance of good communications in maintaining healthy relationships among the three branches of government. They emphasize balancing concepts of independence and accountability and of judicial discretion and restraint. Vision 1 strategies also recognize the importance of competitive compensation packages and good training programs to the recruitment and retention of highly qualified judges and workers. Similarly, the strategies insist on the maintenance of the highest standards of judicial conduct.

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**Vision 2** verifies the high value that we place on equality before the law.

*Virginia's courts will ensure due process through the equal application of law and procedure to all cases and controversies.*

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The report of the first futures commission admits that courts cannot guarantee that all parties will be satisfied with the results of their cases. Given the differing points of view of parties and witnesses and the limits of human discernment, perfect resolutions in every case are impossible. Nevertheless, there are basic principles that can and should be guaranteed to all:

What is possible, and is the duty of the courts, is providing a fair process, equally applied. To be viewed as fair, the judicial process should be consistent and reliable. ...A diligent search for truth conducted in an environment of mutual respect with equality of process will allow the courts to fulfill the reasonable expectations of society and to maintain the rule of law.<sup>1</sup>

Thomas Jefferson noted, "The most sacred of the duties of a government [is] to do equal and impartial justice to all its citizens."<sup>2</sup>

The strategies and tasks supporting Vision 2 are aimed at the quality and fairness of court proceedings. They contemplate adjustments to the handling of cases based on differences in legal subject matter because some subjects tend to be more complex than others. They emphasize having up-to-date procedural and evidentiary rules that are as easy to locate and understand as possible. The elimination of harmful biases is a priority. Also appropriate to this vision are strategies and tasks concerned with the making and preservation of the trial record, the representation of indigent defendants, and the strengthening of the jury system.

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**Vision 3** prioritizes human dignity and meaningful access to justice.

*Virginia's courts will maintain human dignity and provide effective access to Justice for all persons.*

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Citizens' ability to gain access to the courts is a factor that directly correlates with the quality of justice rendered by the Judicial System. In the words of the first futures commission, "[t]he courts must be accessible to all who desire to and are required to use them."<sup>3</sup> Furthermore, "[t]he dignity of the judicial process also presumes a reciprocal dignity afforded to each individual who comes before the courts."<sup>4</sup> Institutional and personal biases have a significant effect on the barriers and treatment that confront those who would come before the courts, whether as workers within the court system or as members of the public seeking services and justice. Hostility or indifference to individuals associated with their race, ethnicity, language, sex, physical (dis)abilities, age, income, or other attribute is contrary to a fair and open system of justice. To fulfill the courts' mission, those within the court system have a positive duty to work toward the elimination of barriers and to offer good and equal services.

The strategies and tasks that support Vision 3 include ones aimed at the elimination of barriers associated with prejudice and economic resources. They advocate a broader range of dispute resolution options and ready access to magistrate services. The strategies and tasks call for the courts to expand the use of technologies, both existing and emergent, for conducting business with the courts, understanding the improvements to service volume and quality they can offer. Courtesy, respect, and high-quality customer service are all priorities.

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**Vision 4** emphasizes the need for adaptation to changing societal demands.

*Virginia's courts will be responsive to the changing needs of society—in the development and operation of the law, in the functions of the judicial process, and in the delivery of public services.*

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The first futures commission explained as follows:

The justice system has intrinsic to it elements of supply and demand, with the system supplying its concept of justice and society demanding what it needs. The needs and demands of society change. The legal system must be able to respond to these changes.<sup>5</sup>

Most fundamentally, the law must not be static if we are to have a healthy society. Although the Judiciary is not the principal law-making branch of government, it does have a role in determining the content and application of the law. Courts can best play that role by maintaining an active awareness of societal changes—demographic, scientific, economic, etc.; by contemplating their implications; and by formulating conscious strategies for addressing them. Similarly, the courts should strive for the prudent modernization of the adjudicative process and of the tools and procedures that apply to public services. Courts will be in the best position to take advantage of opportunities and avoid or minimize threats associated with change if they invest time and energy in planning. The continuing ability to fulfill societal needs will be the result.

Vision 4 requires strategies and tasks that commit the courts to learning about and acting intelligently in response to change. Not only should this mean that the court system will invest in state-level strategic planning capabilities, but it should also mean the nurturing of local planning capabilities. Capacities for futures research—for monitoring and assessing change and its implications—are required. Surveys designed to measure the satisfaction and expectations of the general public and of internal constituents are appropriate. To be responsive, the courts must have strategies for maintaining and enhancing resources—people, technologies, and facilities. They should be able to offer a comprehensive range of dispute resolution options and should encourage collaborative relationships among the courts and various government and private sector institutions.

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**Vision 5** highlights the need for justice to be affordable and reasonably swift.

*Virginia's courts will be expeditious, economical, and fair in the resolution of disputes.*

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Vision 5 recognizes one of the oldest truths among our concepts of justice—“Justice delayed is justice denied.”<sup>6</sup> Delay impedes factual recall, predictability, finality, deterrence, and rehabilitation. This vision also expresses the need for the courts to be economical. This point has two dimensions. One relates to the costs that the operation of the judicial process imposes on litigants—another potential barrier to justice—while the other relates to the effective organization and use of court resources in order to produce the most value (qualitatively and quantitatively) at least cost to the taxpayers. Lastly, the aspiration for fairness both underlines and tempers the other concepts. Expeditious and economical case processing helps ensure that weaker parties are not forced, out of hardship, to settle their cases prematurely or that criminal defendants do not languish in jail awaiting trial. On the other hand, courts should not be so interested in speed and economy that they do not allow litigants a reasonable amount of time to adequately prepare their cases.

Achieving expeditious, economical, and fair dispute resolution involves many factors that affect court operations. One of these factors is how the court system is structured, particularly at the trial court level. Others include the availability of alternatives to traditional adjudication, the cost of legal representation, the adequacy of court facilities, the appropriate use of technology, the quantity and quality of human resources, and, probably most important, the processes and procedures by which resources are managed. The strategies and tasks for realizing Vision 5 are diverse. For example, to reduce delay, courts must find ways to take control of their dockets and should institute calendar management practices aimed at achieving the prompt disposition of cases. There are many ways to improve docket control; likewise, there is no single method of calendar management that is best for all courts. The strategies encourage flexibility in the adaptation of infrastructure, processes, and services to achieve the vision. Some strategies, such as the evaluation of court structure, may bring about statewide changes, while others may require varying local adjustments. The strategies require conscious effort to meet public needs, to treat everyone fairly, and to avoid mindsets in which the nature of court operations is governed by “the way things have always been done.”

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**Vision 6** is concerned with managerial accountability.

*Virginia's courts will demonstrate accountability to the public through effective management practices, including the use of the most appropriate processes and technologies for court operations.*

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This vision speaks to the critical role that judicial administration must play in the achievement of the mission. Again, the first futures commission summarized the key points to understand:

Administration of the court system exists to facilitate the substantive role of dispute resolution, and to serve the economical and fair consideration of each case.... The challenge for the administrative components of the Judicial System is to ensure the availability of sufficient resources and the use of those resources to meet all judicial responsibilities within a cost range that is acceptable to society and to do so without interfering with the independence of the Judiciary in the decision-making process. Moreover, the courts as a public entity are accountable for their use of limited public funds. Such accountability requires a constant process of self-assessment and public scrutiny.<sup>7</sup>

Many of the strategies that support Vision 6 are concerned with the development and demonstration of what have been identified as core competencies for the fulfillment of courts' purposes and responsibilities:

- Caseflow Management
- Visioning and Strategic Planning
- Information Technology Management
- Human Resources Management
- Education, Training, and Development
- Resources, Budget, and Finance
- “Essential Components” such as facility management, court security, and interaction with non-court members of the justice system (e.g., attorneys, social services, law enforcement, etc.) and
- Court Community Communication<sup>8</sup>

To manage themselves well, the courts also need strategies and tasks for developing and using valid measures of their performance in these core areas. Only through performance measurements can those in the courts be certain of their accountability, and by regularly sharing the results from their performance measurements, they can make certain that elected officials and the public are aware of how they are doing, too.<sup>9</sup>

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**Vision 7** confirms the conscious connection that should exist between court operations and public trust and confidence.

*Virginia's courts will operate in a manner that fosters public trust and confidence in and respect for the courts and for legal authority.*

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Public support is crucial to the fulfillment of the courts' mission. "Compliance with the law depends heavily upon public confidence in the court system as well as its legitimacy in the eyes of the citizens it serves. The deference and esteem accorded to the courts come not only from actual performance but also from how the public perceives justice to be done."<sup>10</sup> In order for the public's perceptions to have merit, it is first necessary that the public have a reasonable understanding of the role of the courts in our system of government. The courts must then perform that role effectively and make sure that the public knows that this work is being done.

The strategies and tasks that are necessary to realize Vision 7 are ones that support civic education and good relations with both the public and other governmental institutions. The strategies for effective court operations have already been identified in conjunction with the other visions. At the most fundamental level, the core curricula of the school system must include content about the role of the court system—state courts as well as federal ones. This civic education should be supplemented, perhaps by judge and clerk presentations at school and other civic events and by essays or articles published in various media, including online ones. Jury service should be encouraged and appropriately rewarded. Judges and court employees should exemplify high standards of ethics, and high-quality customer service should be the norm.

## Conclusion

The Strategic Plan sets forth the mission, visions, and strategies for the entire court system. It is intended to serve as a broad, general road-map for future court system operations. Court leaders are encouraged to familiarize themselves and court workers with the Plan and to invest time discussing the Plan with key members of the court community to determine what specific things they can do to help implement the Plan's strategies. By allowing broad input on possible actions, the courts can increase the likelihood of success. Creativity, within the limits of statutes and court rules, should be encouraged. The Department of Judicial Planning and other departments of the OES are available to provide advice and assistance to local courts.

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<sup>1</sup> Commission on the Future of Virginia's Judicial System, *Courts in Transition: The Report of the Commission on the Future of Virginia's Judicial System* (Richmond: The Commission, 1989), p. 24 [hereinafter cited as *Courts in Transition*].

<sup>2</sup> Thomas Jefferson: Note in Destutt de Tracy's *A Treatise on Political Economy* (1816) in Andrew A. Lipscomb and Albert Ellery Bergh, eds., *The Writings of Thomas Jefferson - Memorial Edition* (Washington, D.C.: Thomas Jefferson Memorial Association, 1903-04), 14:465.

<sup>3</sup> *Courts in Transition*, p. 18.

<sup>4</sup> *Id.* at 24.

<sup>5</sup> *Id.* at 70.

<sup>6</sup> Attributed to William Gladstone, 19th Century British politician.

<sup>7</sup> *Courts in Transition*, p. 40.

<sup>8</sup> Beginning in the early 1990s, work by the National Association for Court Management (NACM) indicated that the nation's court managers wanted and needed a greater amount of and more diverse education and training. They set out to develop guidelines that would focus educational programming on the development of competencies in core areas of court management skill and responsibility. They eventually identified ten core competencies—the eight listed above plus Leadership and an understanding of the Purposes and Responsibilities of Courts. See "Core Competency Curriculum Guidelines: History, Overview, and Future Uses," *Court Manager*, Winter 1998, at 6; *Core Competency Curriculum Guidelines: Applications and Uses* [NACM Mini Guide] (Williamsburg, VA: National Association for Court Management, 2004); NACM Core Competency Curriculum Guidelines, [http://www.nacmnet.org/CCCG/cccg\\_homepage.htm](http://www.nacmnet.org/CCCG/cccg_homepage.htm).

<sup>9</sup> See *Holding Courts Accountable: Counting What Counts* [NACM Mini Guide] (Williamsburg: NACM, 1999).

<sup>10</sup> *Courts in Transition*, p. 64.



## Appendix C

### CHANGE DRIVERS: TRENDS THAT MAY AFFECT VIRGINIA'S COURTS

The Council of State Governments (CSG) is a nonprofit organization serving the three branches of state and local government. Part of CSG's mission is to alert officials to emerging social, economic, and political trends. In *Trends in America: Charting the Course Ahead* (2005), CSG highlights the major forces shaping our society, our political climate and our world, along with their implications for state government. The report is organized around 10 major change drivers that cut across traditional policy areas, are already affecting states, and will continue to impact them for years to come. Although these change drivers all have long-term implications, CSG's focus is on what they will mean for state officials over the next five years. Using these change drivers as a framework for organizing its own futures research, the Department of Judicial Planning assembled 10 focus groups in 2006 to identify potential implications for the Virginia courts and possible courses of action in response to them. These change drivers were also reviewed by the Futures Commission as it discussed the future of Virginia's courts.

#### The 2006 Focus Groups

In its planning process, the Supreme Court of Virginia has long recognized that a group of people can produce a product that is superior to what the same individuals can produce individually. Likewise, when the members of a group represent a diversity of backgrounds and opinions, the quality of the work-product tends to be better. This is particularly true when the group must address complex, ill-defined societal issues. For this reason, the Supreme Court periodically assembles focus groups or "venture teams" to work with the various findings generated by the information engines of its planning process. The focus groups allow individual judgments to be effectively pooled and used to consider aspects of the future about which uncertainty or disagreement exists as to the nature of problems and opportunities and what to do in response to them. Specifically, the groups have been helpful in:

- identifying problems and opportunities,
- exploring strategies, and
- establishing priorities.

During the focus groups, Judicial Planning modified the names of some of the drivers (e.g., "Aging of Virginia"

and "Changing Face of Virginia") to increase the focus on Virginia but generally kept to the subject matter originally identified in the CSG reports. The principal exception was for the change driver dealing with "Resource Management." The CSG materials associated with this driver dealt exclusively with environmental and ecological concerns. Although Virginia has its share of environmental issues to resolve, the implications of these issues for the operation of Virginia's courts were not felt to be sufficient on their own for discussion by a Judicial Branch focus group. Therefore, Judicial Planning expanded the scope of the Resource Management discussion to include core Judicial Branch resources, namely personnel, technology, and facilities. The original title of the last change driver, "Ambiguous Authority: Who's in Charge?" was somewhat confusing, but the focus group adhered to the central theme presented by the CSG, which was intergovernmental relations in the context of the shifting balance of federal, state, and local power.

Each of the focus groups had a different panel of participants, ranging from 7 to 11 members. Judicial Planning staff identified lists of prospects from which the Chief Justice and Executive Secretary of the Supreme Court of Virginia selected those who were invited to participate. The selection process encouraged diversity on several levels. Most fundamentally, no more than half the invitees for any focus group were employees of the Judicial Branch; the remainder—legislative and executive branch staff; attorneys; college and university professors; advocates for the poor, for immigrants, for corporate and commercial interests; etc.—were selected from various public and private organizations for the personal expertise or institutional perspectives that they might offer. Among the Judicial Branch participants were clerks as well as judges from both the Circuit and District levels and selected managers and directors from the OES. The trial court participants came from several different regions of the state and from urban, suburban, and rural jurisdictions.

The ten focus groups were conducted in October and November 2006, with a day being devoted to each change driver. The meetings started at 10 a.m. with a welcome and a review of the focus group goals, the agenda, and basic ground rules. Introductions rounded out the first fifteen minutes. The next part of each day's activities was a 15- to 25-minute research presentation that briefly reviewed the other nine change drivers then concentrated on the change driver that would be discussed by that day's focus group. This presentation elaborated on

research that was shared with the participants in advance of the meeting. National and Virginia facts and trends were included in these presentations with special attention being given to points of relevance to the Judiciary. A summary of the research findings shared in each focus group is included below. During the remainder of each morning, the facilitator led the participants through an idea-generating exercise to identify 35 to 50 issues or implications for the courts that related to the change driver.

After lunch, the facilitator spent an hour with the participants grouping these issues and implications thematically and determining which groups of issues should have higher strategic priority for the courts. During the last 90 minutes of each day, the participants worked in groups of two or three to draft and present strategic objectives and tasks related to these highest priority areas for consideration by the OES in the preparation of the next strategic plan for Virginia's courts. Each day concluded around 3:30 p.m. with an opportunity for each participant to comment on the day's activities and an explanation by Judicial Planning of the next steps in the court system's planning process.

Brief descriptions of the drivers and some relevant Virginia information are presented below. The *Report of the Focus Groups On Trends Affecting Virginia's Courts* will be available on the Supreme Court's Website. In the *Report*, the work of each focus group is set forth in detail. The implications for the courts of each change driver and the issues raised by each focus group are presented with minimal editing—basically as recorded in the idea generation or brainstorming exercises. Recommended objectives and tasks developed by each focus group are also included. The Focus Group efforts and associated constituent feedback were be communicated to the Judicial Council and the Supreme Court of Virginia in the formulation of the Judiciary's strategic plan.

## Change Driver #1

### Silver Society: Aging of Virginia

Because people are living longer and having fewer children, the percentage of older people in the United States is growing. The number of people older than 65 will more than double between 2000 and 2050, and the population over age 85 will quadruple. Fueling America's population transformation are the 76 million baby boomers born between 1946 and 1964.

- In 2000, 11.2% of Virginians were 65 or older—792,000 people out of 7,079,000.
- The Census Bureau projects that this percentage may reach 18.9% by 2030.

Issues courts should consider:

- Workforce retention and replacement
- Accessibility to court facilities and services
- Possible aversion to electronic resources
- Increases in cases involving the elderly—
  - more probate and guardianship cases (particularly in communities that attract retirees)
  - recognition and interpretation of advance directives
  - identity theft and fraud (even within a family)
  - elder abuse and neglect (both within the home and within institutional homes)
  - traffic accidents involving the elderly
  - elderly cases of substance abuse and mental-health problems
  - age discrimination suits, particularly in employment contexts

## Change Driver #2

### Immigrant Nation: Changing Face of Virginia

The percentage of the population comprised of immigrants is close to record levels, and the number of immigrants is at an all-time high. In recent years, most immigrants have come from Latin America and Asia. And many of these newcomers are dispersing to areas and states where immigrants traditionally have not lived.

- Between 1990 and 2000, Virginia experienced a substantial increase in the number of its foreign-born residents, far outstripping previous periods of growth. This trend continues.
  - As of the 2000 Census, there were over 570,000 foreign-born residents in Virginia; the estimated number of illegal immigrants was 103,000 (U.S., 7 million).
  - Recent Census estimates for 2005 report Virginia has 723,667 resident immigrants.
- Most immigrants live in the D.C. metro area and the state's major suburban and university communities. *However,*
- Since 1990, new immigrants have been settling throughout the state, including rural communities for which the cultural and social implications of immigration are new phenomena.

The Joint Legislative Audit and Review Commission found that there are three primary needs that are unique to, or disproportionately experienced by, the foreign-born population:

- access to opportunities to improve English proficiency,
- access to services and information in their native languages, and
- access to affordable health care.

Issues courts should consider:

- Cultural and linguistic barriers complicate constitutional requirements of fundamental fairness (Fifth and Fourteenth Amendments), equal protection (Fourteenth Amendment), and the right to cross examine adverse witnesses (Sixth Amendment).
- Interpreters used by the courts are often not properly qualified.
- How should day-to-day services be modified or adapted to meet the needs of various cultural groups?

### Change Driver #3

#### Growth Dynamics: Regional Hot Spots

While the nation's South and West are growing faster than the rest of the nation, another population trend is taking place: the population in all regions is becoming more concentrated in suburban areas. And people are moving beyond the traditional boundaries of suburbia into what is now known as exurbia.

- There is increasing demand for government services in growing regions.
- The cost of housing has been rising in growing areas.
- Regions of growth are experiencing rising demands for highways and public transportation.
- Growing regions are under pressure to construct new schools and educate more children, while inner-city schools are often underused.
- As people migrate to growing suburbs, critical work force shortages may develop in other regions.
- The changing demographic landscape is altering the political landscape.
- Increasing demands are being placed on environmental resources.
- Demographic shifts are affecting farming practices.

In practice, Virginia counties have only limited tools for controlling growth:

- Virginia has no requirement for payment for the county services that will be required once private land is developed.

- Under Virginia's "Dillon Rule," the counties are also prohibited from establishing a local requirement for mandating development be matched with increased services.

Circuit and District judicial boundaries were last changed in the 1970s; the population has grown more than 40% since that time, much of the growth being of the suburban/exurban variety in areas that were once largely rural in the Washington, D.C., to Hampton Roads crescent formed by I-95 and I-64.

### Change Driver #4

#### Economic Transformation: Knowledge Is King

The United States has gradually shifted from a manufacturing-based economy to a technology- and service-based economy. The new economy will be marked by technological advancements that enable businesses to locate almost anywhere. In the era of knowledge, new high-tech solutions and innovations will continue to foster economic development.

Among the implications that current economic trends may have for the states are:

- a growing need for lifelong learning opportunities;
- the increasing significance of investment in research and development;
- the importance of venture capital and other types of financial capital for the creation and survival of many new economy firms;
- the higher value that the creative workers of the new economy place on quality-of-life issues; and
- the limits that antiquated state tax codes, built around the old economy, may place on revenue streams.

Issues courts should consider:

- Intellectual property (IP) rights cases of many kinds will challenge courts throughout the world with questions of jurisdiction and applicable law and concerns about the ability to enforce judgments.
- Courts will need resources to help in the understanding and handling of complex IP and other business issues.
- The financial problems of individuals and governments may translate into increasing litigation for the state courts—over business failures, contract disputes, employment disputes, and domestic breakdowns fueled by economic stress. Increases in social unrest could spawn more criminal cases.

- Technology will eventually replace court reporters and language interpreters; who else?
- Even as the technology used to handle court transactions becomes more sophisticated, the investments in compensation and training for non-judicial staff lags far behind.

## Change Driver #5

### Globalization Era: New Forces at Work

Globalization will continue to integrate businesses, governments and people across the world. This process will be driven by trade and investment and accelerated by information technology. Rapid changes in the global economy will propel state governments into the international arena and constantly demand greater levels of awareness and engagement among state officials.

- Virginia's official economic aims include goals emphasizing the need:
  - to create new business opportunities in an internationally competitive environment
  - to develop a competitive 21st century workforce and
  - to support technology businesses and other emerging and developing sectors of the economy which are of critical importance to the Commonwealth's global competitiveness.
- Various international trade regimes (e.g., the WTO) may supercede state laws regarding the environment, consumer protection, government procurement, business subsidies, bar regulation, etc.
- Global competition has led to the loss of some jobs particularly in the manufacturing sector, however,
  - there is a long and continuing history of workers coming to Virginia to fill jobs in critical fields such as health and education—not just menial labor.
  - subsidiaries of foreign firms (e.g., Airbus, BASF, Infineon, Nestle, Sodexo, and Volvo) employed 146,000 Virginia workers in 2006, an increase of 25% over 5 years.
- Ease of global travel makes protecting public health from bioterrorism, infectious diseases, and other public health emergencies more difficult.
- Globalization presents unique challenges in environmental management, with concerns for habitat loss, pollution, global warming, and invasive species.
- Globalization presents challenges in the field of public safety and justice, such as transnational terrorism and drug cartels.

## Change Driver #6

### Information Revolution: Sorting it Out

The Internet has revolutionized information dissemination. Because of increased access to vast amounts of information, people will become more demanding of both business and government. There will be an increased emphasis on the art of communication. And there will be a growing need to integrate and make sense out of the fragmented information that's available.

- May jurors blog jury duty?
- How may judges and court employees participate in blogs and other online communications (e-mail, message boards, etc.)?
- Since 1991, at least 19 states and the District of Columbia have adopted some form of electronic filing at either the trial or appellate level. Is Virginia falling behind?
- What court services could now be effectively privatized/outsourced thanks to technology?
- In the policy-making process, the public is making increasing use of new technologies to address controversial issues, including some court cases and judicial selection. Keeping concerns of bias in mind, are there situations where courts do or could use such technologies?
- The lack of any formal mechanism to indicate what information people can trust on the Internet increases the need for highly skilled policy analysts and communications specialists.
- Technology opens new possibilities for courts to resolve familiar situations:
  - Virtual visitation; see [www.InternetVisitation.org](http://www.InternetVisitation.org).
  - Home confinement with advanced electronic monitoring technology
  - Remote appearances
  - Remote training workshops

## Change Driver #7

### Privacy vs. Security: A Balancing Act

New technologies will present businesses and governments opportunities to increase their efficiency and offer new products and services. But they will also have the potential to dramatically erode personal privacy. Homeland security concerns, data mining, personal profiling and identity theft are just some of the evolving issues transforming our society. States are finding themselves on the frontlines of far reaching privacy and security policy questions.

- Will the time and financial resources required by states' new homeland security responsibilities compromise traditional public safety concerns?
- States are fighting new types of crime, such as identity theft and cyber crimes, that technological advances have made possible but that outdated laws and inadequate resources make hard to deter, investigate, or prosecute.
- Access to new technologies for sharing information enhances government efficiency and effectiveness, but the new abilities require increased diligence to protect personal information.
- What should be the government's role in ensuring personal privacy?
- Of greatest significance to the courts—What information should be in public records, and how should courts balance open access and privacy interests with respect to those records?

### Change Driver #8

#### Resource Management: Sustaining Our Future

States face resource management challenges in two contexts, one relating to the larger, general societal concerns about the environment and the other relating specifically to the resources required by governments to do their work. Americans will continue to use large amounts of energy, electronic devices, paper, and natural resources and generate large volumes of wastes. The growing U.S. population, combined with economic growth and increased consumption in other nations, will continue to increase demands on natural resources and the environment's capacity to assimilate wastes. Meanwhile, an aging workforce, the demand for greater technological sophistication, and a changing economic base will challenge governments to secure the workers and modern technologies needed to meet the public's service expectations.

- While the population can continue to grow beyond the point of carrying capacity, the harmful consequences (species extinctions, global warming, desertification, disease, etc.) multiply.
- States face environmental and economic consequences from climate change.
- States are dealing with a growing amount of waste, including e-waste.
- States are exploring ways to encourage alternative energy sources and energy conservation.
- Changes in environmental quality affect human health.

Courts are likely to see an increasing number of suits related to environmental problems.

With respect to government workplaces, the courts in particular, consider whether:

- Changes will be needed in retirement options and views of old age to reduce the loss of experienced workers.
- Courts must offer more competitive compensation and professional development options to recruit and retain competent, technologically-sophisticated and service-oriented employees.
- Courts should allow more flexible work schedules.
- Virginia courts should have better technological resources, offering a better Web presence (easier to navigate and with more information) and capable of handling more on-line services.
- Courts should have a more reliable revenue stream, less dependent on court costs but rightly reflecting that Virginia courts collect revenues for state government that are two to three times their expenditures.

### Change Driver #9

#### Polarized Populace: Eroding Common Ground

The political process is more polarized now than it has been since the early 20th century, and the polarized debate has focused largely on "culture wars." At the same time that the country has become more polarized in the political arena, there is also a trend of greater income inequality.

- The political process has become more adversarial, with gridlock a more frequent consequence because compromise and consensus are harder to achieve. For example, there has been recurring gridlock on budget and other issues in state legislatures, including the Virginia General Assembly. Others have included California, Kentucky, Minnesota, New Jersey, New York, North Carolina, and Pennsylvania.
- There is a greater emphasis on social issues, on which people are more likely to take stands on principle, at the expense of basic services, about which compromise is easier.
- Close elections have increased pressure on states to examine their elections processes.
- Access to quality education is critical to prevent increased economic inequality.
- States may face an increased demand for social services and public programs from low-income people.

Courts in many states, including Virginia, find themselves having to resolve highly charged political cases related to budgets, schools, election results, abortion, programs for the poor, etc. Being drawn into such controversies, even through legitimate cases, opens the Judiciary to accusations of “judicial activism,” attacks on judicial independence, and loss of public trust and confidence.

At the same time, courts have had the opportunity to work with other interested agencies to fashion new solutions to long-festering problems. Many of these solutions seem far more effective than any ideas coming out of the policy-making branches, but is this a proper role for the Judiciary?

## Change Driver #10

### Intergovernmental Relations: Who’s in Charge?

Governing in the 21st century will be increasingly complex and dynamic. Although states have taken on more responsibility for implementing federal programs, the balance of power is shifting to the federal government. At the same time, the relationship between citizens and state government will continue to evolve and change, placing new demands on state government.

A. Federal actions both increasing demands on/costs to state government and constraining revenue generation:

- Mandates and conditions of aid—
  - No Child Left Behind
  - Help America Vote Act
  - Medicare Modernization Act
  - Individuals with Disabilities Education Act
  - Medicaid
- Homeland security demands and a larger national defense role (e.g., National Guard deployments to Iraq, Afghanistan, and the Mexican border)
- Federal tax cuts in recent years have reduced many states tax revenues because of linkages between the federal and state tax codes.
- Federal policies bar states from imposing normal state taxes on certain types of transactions, such as out-of-state electronic transactions and access fees for Internet Service (see the Internet Tax Freedom Act).

B. Increasing federal preemption of powers that used to belong to the states:

- Civil rights
- Commerce
- Health
- Environmental protection
- Finance
- Banking

Recently proposed or enacted legislation would continue this trend in areas ranging from driver’s licenses to class action lawsuits to regulation of the insurance industry

- Both state and federal court decisions have significantly affected state spending in areas such as education and health care
- Mechanisms to promote cooperation among federal, state, and local governments, such as the U.S. Advisory Commission on Intergovernmental Relations, have disappeared.

C. States are taking a more proactive and cooperative approach to some regional and national issues:

- Formal interstate compacts dealing with water apportionment, pollution control, and public safety, such as the Interstate Compact for Adult Offender Supervision
- 1998 Tobacco Settlement
- Recent state efforts to promote reimportation of prescription drugs despite federal prohibition

D. State officials face increasing and competing demands

- Increasing ratio of constituents to legislators (in some states, a 500% rise in 20 years)
- Rising number of bills introduced (tripling in some states)
- Term limits have led to losses in institutional memory
- Lack of staff and support to help less-experienced officials handle more work
- Interim Result: Quicker decisions based on ideology rather than detailed, nonpartisan analysis
- Ultimate Result: More legal problems and disputes for the courts to deal with

E. Emphasis on efficiency has led to the rise of consumer-driven government

- Will one-stop shops for government services and encouragement of a consumer mentality spoil citizens’ sensitivity to the common good, engendering selfish outlooks that inhibit compromise and consensus-building?
  - Virginia’s transportation needs versus tax aversion
  - The national debt and mounting interest load versus entitlement programs and tax cuts

In its ongoing gathering of information for the planning process, the OES will continue to review trends and futures-related publications, including the periodic *Trends in America* reports and briefs of the CSG.







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