



**The Supreme Court of Virginia**

The mission of Virginia's judicial system is to assure 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. This pamphlet is offered to promote a better understanding of the operation of the Virginia court system and the manner in which its mission is accomplished.

## **History**

The Supreme Court of Virginia is one of the oldest continuous judicial bodies in the United States. Its roots are deep in the English legal system dating to the early seventeenth century as part of the Charter of 1606 under which Jamestown, the first permanent English settlement in North America, was established. In the 1620's, the Virginia House of Burgesses created an appellate court, which met quarterly to hear appeals from the lower courts. Meeting on the first day of March, June, September, and December, it became known as the Quarter Court.

The June term became unnecessary over the years, and in 1661, the Quarter Court became the General Court with original and appellate jurisdiction in both civil and criminal matters. It was a court of last resort for the Virginia colonists except in those rare circumstances when an appeal could be made to the King in England. Its members were appointed by the King on the basis of social standing, property, and the proximity of their estates to the Williamsburg capital. The majority of the judges possessed no formal legal education, a characteristic of most attorneys in the 17th century.

At the close of the Revolutionary War, the court system was reorganized. An act of the new General Assembly in 1779 created four superior courts, including the Supreme Court of Appeals, to be composed of judges of the other three courts: the Admiralty, the General, and the Chancery Courts. The Supreme Court of Appeals, which served as a model for the United States Supreme Court, first convened in Williamsburg on August 30, 1779. Shortly thereafter, the Court was moved to Richmond and held its sessions in the Henrico County Courthouse. Its jurisdiction was primarily appellate, and its members were elected by the legislature.

Among the Court's first members were several distinguished legal scholars and jurists as well as leaders of the Revolutionary period. Edmund Pendleton, who served Virginia as a delegate to the First Continental Congress, was selected by the judges as its first President. George Wythe, the mentor of Thomas Jefferson and signer of the Declaration of Independence, and John Blair, who later served on the U. S. Supreme Court, were also members of Virginia's first Supreme Court.

Until 1788, the judges never rendered written opinions or gave reasons for their decisions. Pendleton felt that the policy of no written opinions preserved a semblance of unity for the Court and lent more credence to their decisions. Thomas Jefferson disagreed and began recording the decisions of the Court in his reports. The Court convened on the tenth day of April and met for twenty-four days unless they were able to complete their business sooner.

A legislative act of 1788 provided that the Court should be entirely separated from the other courts with five judges to be elected by joint vote of both houses of the General Assembly. These men were commissioned by the Governor and appointed for life subject to good behavior. This resulted in placing the judges beyond control of the legislature once on the bench, and the Court continued to function in this manner for more than half a century.

The Reform Convention of 1850-51 again reorganized the judiciary by limiting the terms of the justices to twelve years and providing for their election by popular vote. The State was divided into five judicial sections, and each candidate was required to be at least thirty-five years old and to reside within the section he wished to represent. The resulting Constitution of 1851 also required the Court to state in writing its reasons for reversing or affirming a judgment or a decree.

Following the Civil War, the Constitution of 1870 re-established election of judges by joint vote of both houses of the General Assembly, retaining the term of twelve years. The Constitution also required that annual sessions be held away from Richmond in the localities of Wytheville, Staunton, and Winchester. This mandate from the days of horse and buggy travel continued into the twentieth century, with sessions being held in Staunton as late as September, 1970.

By Constitutional amendment in 1928, the number of justices was increased to seven and the title of the presiding officer of the Court was changed from President to Chief Justice. At the same time, the amendment significantly increased the power given the Supreme Court by permitting the Court to prescribe forms and to regulate the practice of Virginia's courts.

The Constitution of 1971 changed the name of the Court to its present title of Supreme Court of Virginia.

## **Present Day**

The present Supreme Court of Virginia is made up of seven justices elected by a majority vote of both houses of the General Assembly for a term of twelve years. To be eligible for election, a candidate must be a resident of Virginia and must have been a member of the Virginia Bar for at least five years. Vacancies on the Court occurring between sessions of the General Assembly may be filled by the Governor for a term expiring thirty days after the commencement of the next session of the General Assembly. By statute, the Chief Justice is chosen by a majority vote of the seven justices for a term of four years.

## **Jurisdiction**

Although the Supreme Court of Virginia possesses both original and appellate jurisdiction, its primary function is to review decisions of lower courts, including the Court of Appeals, from which appeals have been allowed. Virginia does not allow an appeal to the Supreme Court as a matter of right except in cases involving the State Corporation Commission, certain disciplinary actions regarding attorneys, and review of the death penalty. The Court's original jurisdiction is limited to cases of habeas corpus (ordering one holding custody to produce the detained person before the Court for the purpose of determining whether such custody is proper), mandamus (ordering the holder of an office to perform his duty), prohibition (ordering an action stopped in a lower court), and actual innocence (based on the results of scientific testing of human biological evidence). The Supreme Court also has original jurisdiction in matters filed by the Judicial Inquiry and Review Commission relating to the censure, retirement, and removal of judges.

## **Procedure**

The Court meets for five-day sessions beginning in September and continuing every seventh week thereafter until the completion of the June docket. All sessions are held in Richmond. During the recess between each session, the justices conduct extensive legal research on the cases awaiting decision, draft and review opinions, study cases in which petitions for appeal have been filed, conduct hearings on petitions for appeal, and attend to administrative duties.

In Virginia, appellate review before the Supreme Court is a two-step process in most cases. In the first or petition stage of the process, a petition is filed with the Clerk of the Supreme Court. Petitions are then assigned to a staff attorney or law clerk for research and further preparation. Oral arguments may be heard before a panel of justices, or, in some cases, oral arguments may be heard by the Chief Staff Attorney who then presents the case to a panel of justices for decision. The justices conduct a thorough review on the merits of each case with the assistance of memoranda summarizing the facts and basic issues of each appeal. If the panel does not grant the appeal, the appeal is denied. If the petition is denied, the appellant may petition for a rehearing. If the petition for rehearing is denied, the appeal process ends and the judgment of the lower court is upheld. If the petition is granted, the second phase of the appeal proceeds with eventual argument of the case before the full court.

During the second phase of an appeal and before each session of the Court, the Clerk forwards to each justice a copy of the printed docket showing the cases to be heard at that session, together with a copy of the printed record and briefs filed in each case. This allows each justice to study the cases before they are argued orally.

A rotation system is used in designating the justices who are to prepare the opinions of the Court. Prior to each session of the Court, the assignment of the cases is determined by lot. Seven slips of paper are prepared by the Clerk of the Court with one slip bearing the number "1" and the remainder being blank. The slips are placed in a hat, and the member of the Court (or a proxy) drawing the marked paper is assigned the first case on the docket. The remaining cases are assigned to the justices in descending order of seniority until all cases are assigned.

Sessions are held in the Courtroom of the Supreme Court with the justices being seated on the bench in order of seniority. The Chief Justice is seated in the center with the justice next in seniority on his/her right, the justice third in seniority on his/her left, and so on in alternating order such that the newest justice is seated on the far left of the Chief Justice. Attorneys for both sides are allowed fifteen minutes each to present their arguments. The justices often interrupt the attorneys to ask questions on some issue in the case. During a typical session of the Court, the justices hear oral arguments each morning and convene that afternoon for a private discussion

of the cases heard that morning. This discussion and debate provide the opinion writer guidance in preparing an opinion reflecting the views of a majority of the justices. Once a justice has completed a draft of an opinion, copies are circulated to the other members of the Court and the Court Reporter. Opinion conferences are held prior to the beginning of each session. At this time, the justices conclude their review of the cases and the draft opinions receive final approval. Opinions are made public on the last day of each session of the Court and are published in the *Virginia Reports*. In addition to its appellate functions, the Supreme Court is also authorized to adopt rules of practice and procedure.

## **Administration of Virginia's Judicial System**

The Virginia judicial system is comprised of the Supreme Court, the Court of Appeals, circuit courts in thirty-one judicial circuits, general district and juvenile and domestic relations district courts in thirty-two districts, and magistrates in offices in thirty-two districts. Pursuant to the Constitution of Virginia, the Chief Justice of the Supreme Court serves as the administrative head of Virginia's judicial system. The Chief Justice is charged with overseeing the efficient and effective operation of the entire system. The Chief Justice may temporarily assign any judge of a circuit court to any other circuit court and may recall a retired circuit court judge to active duty. The Chief Justice may also designate a retired judge, an active district court judge, or an active circuit court judge, with his/her consent, to assist with a congested workload in any district.

The Executive Secretary of the Supreme Court is charged under the Code of Virginia with assisting the Chief Justice and the Supreme Court in the administration of the judicial system to the end that litigation may be expedited and the administration of justice improved. The Office of the Executive Secretary supports the courts in these duties through its eleven departments; the Assistant Executive Secretary and Counsel, the Court Improvement Program, Educational Services, Fiscal Services, the Historical Commission, Human Resources, Judicial Information Technology, Judicial Planning, Judicial Services, Legal Research, and Legislative and Public Relations.

The administrative structure of the Supreme Court of Virginia also includes the Clerk of the Court, the Reporter of the Supreme Court, the Chief Staff Attorney, and the Law Librarian, each of whom, together with

the Executive Secretary, is appointed by and serves at the pleasure of the Supreme Court.

The Clerk's Office receives, processes, and maintains permanent records of all appeals and other official documents filed with the Court. The Clerk also maintains records of qualified attorneys and other administrative records.

The Chief Staff Attorney's Office reviews petitions for appeal, appeals of right, and petitions in original jurisdiction cases, and prepares written summaries for the justices to aid their decisional process.

The Court Reporter is a distinguished member of the faculty of one of the law schools in Virginia, whose main responsibility is to supervise the compilation, indexing, printing and publication of the written opinions of the Court in the *Virginia Reports*. There are over two hundred and fifty volumes of the *Reports*, which, together with the Constitution of Virginia and the Acts of the General Assembly of Virginia, form the body of law by which all Virginians are governed. The Law Librarian supervises a library of approximately 100,000 volumes for the use of the Court and the Bar.

Four policy-making bodies have been created by the legislature to aid in the operation of the court system, and the Chief Justice presides over these four policy-making bodies: the Judicial Council, the Committee on District Courts, the Judicial Conference of Virginia and the Judicial Conference of Virginia for District Courts.

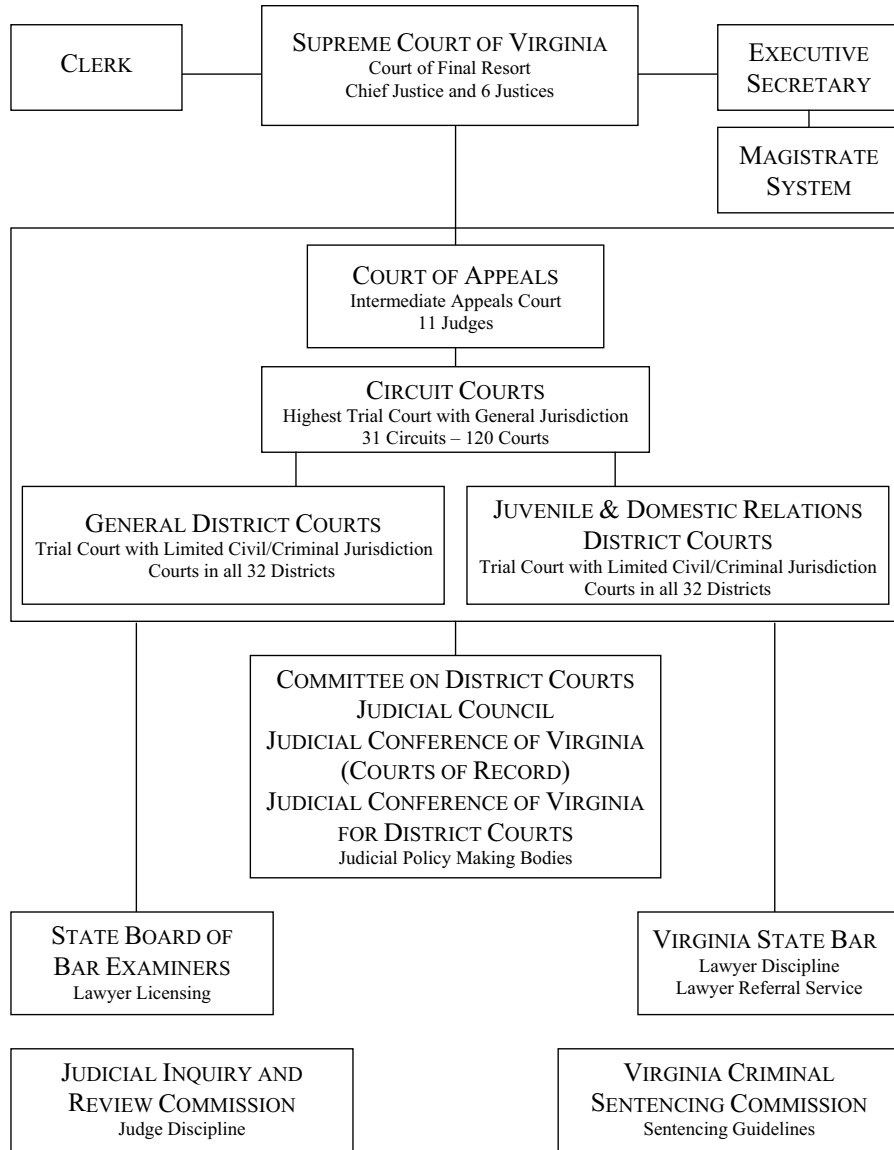
The Judicial Council is charged with the responsibility of making a continuous study of the organization, rules, and methods of procedure and practice of the judicial system of the Commonwealth. It is responsible for examining the work accomplished and results produced by the system and its individual offices and courts. The Council also studies the need for additional judges in the circuit courts.

The Committee on District Courts was created to assist the Chief Justice in the administrative supervision of Virginia's district courts, including making recommendations on new and vacant judgeships, authorizing the number of clerks, magistrates and personnel in each district, establishing guidelines and policies for court system personnel, and fixing salary classification schedules for district court personnel and magistrates.



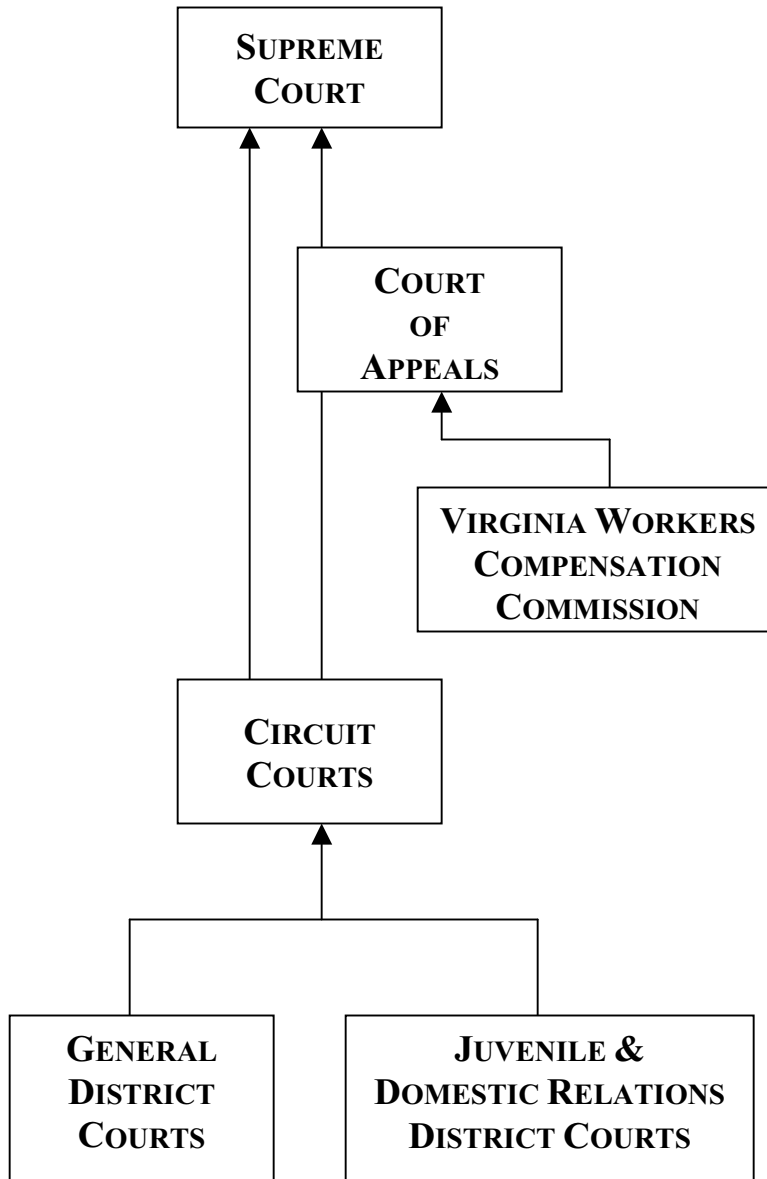
The Judicial Conference of Virginia and the Judicial Conference of Virginia for District Courts meet at least once in each calendar year for the purpose of discussing and considering means and methods of improving the administration of justice in this Commonwealth. The Judicial Conference of Virginia for District Courts also holds one session a year devoted to the consideration of and instruction on the Commonwealth's motor vehicle and traffic laws and their proper administration.

## THE VIRGINIA JUDICIAL SYSTEM



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## Routes of Appeal



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

In accordance with the Americans with Disabilities Act, Virginia's Judicial System has adopted a policy of non-discrimination 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 Judicial System functions are invited to request assistance from court staff. Individuals who need printed material published by the Judicial System in another format or who have general questions about the Judicial System's non-discrimination policies and procedures may contact the ADA Coordinator, Department of Human Resources, Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786-6455. Detailed information on this [policy](#) is available on Virginia's Judicial System Web site, [www.courts.state.va.us](http://www.courts.state.va.us). Individuals with disabilities who believe they have been discriminated against may file a complaint in accordance with the Judicial System's ADA Grievance Procedure, which is available from the ADA Coordinator and on Virginia's Judicial System Web site. Virginia's Judicial System does not discriminate on the basis of disability in hiring or employment practices.