

State of the Judiciary Address  
Delivered by Chief Justice Donald W. Lemons  
May 16, 2017

Good morning, judges of the Commonwealth and honored guests. It is my great pleasure to be here with you today, and to have the opportunity to discuss the state of our judiciary with you. I'm happy to report that the state of the judiciary in Virginia is strong, due in large part to the hard work and dedication of the people in this room.

At the entrance to the Supreme Court of Virginia there is a bronze plaque with a quote from Chief Justice John Marshall. Near the end of his career, when addressing a constitutional convention in Virginia, he spoke these words, "The judicial department comes home in its effects to every man's fireside. It passes on his property, his reputation, his life, his all." It is important for all of us to remember that every decision we make as judges, and all the issues I address today, can have enormous impact on the lives of individuals. We must never lose sight of the simple fact that the decisions we make affect the lives of the citizens of the Commonwealth.

There have been significant developments affecting the judiciary over the past year. Last year at this conference I was please to tell you about the 3% pay raise across the board, with an additional \$2.5 million for district court clerks.

Unfortunately, however, that money all disappeared due to the unexpected revenue shortfall. The good news is that this year everyone is really going to get a 3% raise, and we have an additional \$3.5 million for district court clerks. These raises are not contingent upon revenue projections – these raises are real.

The extra \$3.5 million for district court clerks is especially important. You may not be aware that some of our hard working district court clerks actually qualify for public assistance of some form. Others work a second job to make ends meet. Turnover is a problem. It is not uncommon for local lawyers to hire our clerks and offer them better paying jobs in their offices. I'm hopeful that this additional \$3.5 million will make a real difference in the lives of our district court clerks, and also make future percentage raises more meaningful. Our court system could not function without the work of these clerks, and I'm grateful that the General Assembly has recognized the need and appropriated these funds.

As you know the 2014 Weighted Caseload study recommended that Virginia have 429 judgeships. We currently have 407, down from 408 last year. The General Assembly asked the court to submit an updated Weighted Caseload report to them prior to the 2018 Session. I understand the frustration that many of you feel at having to account for your time on the bench again. I asked for your patience in the process and I thank you for the high level of participation and response. The General Assembly believes that this information is important to

assist them in making the best decisions about how many judgeships to fund, and where to allocate scarce resources. As we continue to function with fewer than the recommended number of judgeships, I thank the many retired judges who have assisted us and have eased the burden on so many courts that are under staffed.

Last year we heard the frustration so many of you expressed regarding the 2014 amendments to the Conflict of Interests Act. It was clear that the COIA amendments were enacted with the legislative and executive branches in mind, not the judiciary, and yet we were swept within its provisions. These new provisions presented multiple, unforeseen challenges for judges, including interactions with the localities in which you serve and your interactions with bar associations. Some of the examples of issues that arose were, at best illogical. For example, it is fairly common for localities to pay to send their judges to national conferences. Since some localities were registered as lobbyist principals, judges those in localities could no longer accept the funds to pay to attend these conferences. Judges in other localities, however, which were not registered lobbyists, were able to continue to accept the funds to attend conferences. The fact that the lobbyists were not lobbying the court system made no difference under COIA.

Last summer I convened a working group comprised of judges, representatives of bar associations, the State Corporation Commission (SCC), the Virginia Workers Compensation Commission (VWCC), and staff from the

Virginia Conflict of Interest and Ethics Advisory Council. This group recommended changes to COIA as it applied to judges. The Supreme Court prepared a report to COIA Council, and recommended amendments to the Act that would exclude judges from the prohibited gift provisions of the Act, and remove the requirement that judges publicly disclose the reason for any disqualification from a pending case. COIA Council endorsed all of these recommendations and incorporated them into the Council's comprehensive bills. These bills passed the General Assembly this year, the Governor has signed them, and they go into effect on July 1<sup>st</sup>. While judges must still file disclosures, we have essentially been put back where we were prior to the 2014 amendments that created all the confusion.

I would also like to update you on some developments involving specialty dockets. As of 2017, 44 drug courts have been approved to operate in the Commonwealth, and 41 have started operations. We are also aware of at least seven behavioral health dockets and four veterans' dockets operating in the Commonwealth, with at least three more behavioral health dockets and four more veterans' dockets in the planning stages.

This past November, the Governor declared Virginia's opioid addiction crisis to be a public health emergency. Drug overdose deaths in Virginia in 2016 topped 1,400. Overdoses have outpaced motor vehicle accidents and gun-related incidents as the leading cause of unnatural death in the state. Experts predict this

crisis will get worse before it gets better. These are scary statistics. But we must never forget that behind each statistic is a person whose life has been destroyed by addiction, and whose families and communities will never be the same after losing a loved one to addiction. No family or community is immune from this crisis, including me. A few years ago, my cousin, who proudly served in the Air Force as a nurse, died from a heroin overdose. She was found in a bath tub with a needle in her arm. This crisis is personal to many of us in this room.

We are in the midst of a public health crisis and there is a role the judiciary can play. We can support the creation of specialty dockets, like drug court dockets, to help people fighting addiction get the help they need. Last year I had the pleasure of meeting with a young law student in my chambers. It is not uncommon for me to meet with law students, but this one was very different. She had spent her teenage years in and out of detention, arrested numerous times for crimes related to abusing alcohol and drugs. But she got into the Newport News juvenile drug court, and her life was changed. She finally got the help she needed, and was able to finish high school and college. Not only that, she got into law school, and when I met with her, she was considering a career as a prosecutor. I'm happy to report that she just passed the Virginia bar! Judge Logdson, the judge who presided over her cases in drug court years ago, has become her mentor, and he is the one who brought her to my chambers so we could meet. Her story is an

example of how specialty dockets like drug courts can change lives, and how the judiciary can play a role in improving the lives of our citizens.

Whenever I talk about specialty dockets, I like to remind people that legislatures create courts, judges create dockets. As the opioid crisis continues to destroy lives and communities, as our veterans return home from multiple deployments, and as families struggle with mental illness, interest has grown in finding different ways to address these problems. If localities have the resources and the desire to create these dockets as another way to address these problems, I want to support those efforts. I started one of the very first drug court dockets in Virginia, and I am a strong believer in them. But we must have standards to provide structure and guidance to those who want to operate these dockets, and we must have oversight and accountability.

Last year, members of the General Assembly asked the Court to develop a Rule of Court so that there would be a mechanism within the judiciary for approval, oversight and supervision of specialty dockets in Virginia. Last summer I appointed a task force to assist with drafting such a rule and with preparing best practice guidelines and standards. Rule 1:25 was approved by the Court in November, became effective on January 16<sup>th</sup>, and has received positive responses from the public and legislators. This Rule identifies the criteria associated with recognized specialty dockets (drug treatment, veterans, and behavioral health), and

it provides a process for possible recognition and approval of other types of dockets. I hope that this new Rule and the accompanying standards will provide the necessary framework to ensure that these specialty dockets are successful.

Later in the conference, Steven Dalle Mura will give you an overview of some of the significant bills that passed the General Assembly this past session. But I would like to speak briefly with you regarding some bills that did not pass the General Assembly. Although they did not pass this year, I mention them because they were significant in that they sent a message to the judiciary regarding areas of concern to the public and to members of the legislature. Many of these issues remain unresolved and could be back next year in the form of additional legislation, so I think it is important for you to be aware of them.

- 1) With regard to sentencing guidelines, bills were introduced to deal with the problem of judges not completing the required written explanation of the reason for any departure from the sentencing guidelines.

The Virginia Criminal Sentencing Commission was asked to look into the problem and make recommendations. Delegate Albo mentioned this issue last May when he appeared here at our judicial conference, and he requested that judges be educated concerning these requirements to complete the written explanation. I think it is highly probable that judges could face questions regarding their failure to complete a written

- explanation for departure at reappointment hearings, so I want to make sure you are all aware of the concern surrounding this issue.
- 2) With regard to the appointment of substitute judges in district courts, a bill was introduced to have substitute judges for general district courts and JDR courts appointed by the chief judges of those courts instead of the chief judge of the circuit court. This is not a new issue, and circuit court judges have been asked in the past to consult with district court judges on the appointment of substitute judges. I will be frank, there are some substitute judges who have been appointed who have little experience in general district court or J&DR court. In order to retain the authority of Chief Judges of the Circuit courts to make these appointments, there must be consultation with district court judges.
  - 3) With regard to retired/recalled judges, a bill was introduced that would require retired judges under recall to be “qualified” every three years by the Courts of Justice committees. This bill passed the Senate but died in the House. The overwhelming majority of our retired/ recall Judges perform in an exemplary manner. It was introduced because of a few complaints about the performance of retired/recall judges.
  - 4) On the subject of withdrawal of counsel from representation in a pending matter before the courts, a bill was passed in part and carried over in part.



The bill provides that after certification of a felony retained counsel may withdraw as a matter of right in a criminal case because of failure of the client to abide by a fee agreement. The bill contained an enactment clause that directs Judicial Council to study this issue further as it pertains to civil cases. I will be convening a work group comprised of judges, legislators and attorneys to study this issue over the summer and report to Judicial Council at its October meeting. The Judicial Council will then submit its report to the Chairmen of the Courts Committees by November 1, 2017.

Moving on to some good news, I'm happy to report that all the judges who sought additional terms this past year were re-elected by the General Assembly. I would like to thank Justice Powell, Pat Davis, and the members of the Advisory Committee on Judicial Performance Evaluation Program. They have been working continuously to improve this program, and have been responsive to your concerns and those of the General Assembly. Starting this spring, the JPE program is expanding to include appellate court judges as well. Justice Powell, Judge Chafin, and I will be the first three to go through the JPE process for appellate judges.

There are some updates to share from the IT world. The judiciary is in the process of migrating from Lotus Notes to Microsoft Exchange. The Supreme Court of Virginia, the Court of Appeals of Virginia, and the Office of the

Executive Secretary have been migrated, and we hope to have all other users on the system by the end of 2017.

The use of Virginia's E-Filing System continues to increase, with 26 circuit courts and over 900 attorneys currently using this system, and over 20,000 cases filed through this system since 2013 when the e-filing system in circuit courts went into effect. In July 2015, the Court of Appeals and Supreme Court started accepting electronic transmission of appeals from circuit courts. To date, 3,496 appeals have been electronically transmitted from circuit courts to appellate courts.

This past year, the Department of Judicial Information Technology developed a process for General District Courts to electronically transfer appealed cases to circuit courts. So far, this application has been used to transfer almost 2,200 cases to circuit courts. In the future, we hope to enhance this system to include the ability to digitally remand cases and transfer them across jurisdictions.

This past session, the General Assembly directed OES to work with State Police to come up with a plan for an electronic summons system. Some localities are already doing this, but the goal is to create a state-wide electronic summons system so that an officer can scan a license on the side of the road, and the system will then automatically generate an appropriate summons. The system would automatically transfer the data to the courts, and will eliminate data entry work for the clerks and get officers back on the road faster.

I would also like to mention that the replacement for the financial accounting system used in all circuit and district courts was completed in 2016. This new system is more user friendly and has more features, including the ability to generate financial reports. Last year alone, the court system collected over ¾ of a billion dollars, so it's important that our financial accounting system be up to date and user friendly. We have and continue to collect significantly more revenue than our budgeted expenses.

Justice Goodwyn and his co-chair, John Whitfield, continue to make great progress with the Access to Justice Commission. Here are some highlights of their recent work:

- This past June, the Virginia Judicial System's Self-Help Website for self-represented litigants went live. This website was developed by the Access to Justice Commission and has averaged over 1500 hits a month since it went online.
- The Commission continues to refine the Practice Points for Civil Matters Involving Self-Represented Litigants, which provides guidance to judges in these challenging cases.
- Consistent with the Commission's goals and purposes, the Canons of Judicial Ethics were amended to make it clear that judges can promote and encourage lawyers to provide pro bono services.

- The Commission has been working to improve the design and use of court forms, including plain language revisions and better instructions, to make them easier to use for the general public. One of their goals is to develop video tutorials and interactive form completion software for various types of litigation.
- The Commission developed the Pro Bono Consulting Consortium to increase communication and pooling of resources between the many groups that provide pro bono services in the Commonwealth.
- The Commission has developed posters and handouts for all Clerk's offices that advise people what kind of assistance can be provided by Clerk's office employees, and where additional assistance can be obtained.

We must not lose sight of the fact that increasing access to justice and pro bono services can dramatically change people's lives for the better. Here are a few real life examples. With the help of legal aid and a pro bono attorney:

- A 75-year-old woman was able to get her grandson's SSI benefits restored without the need for an appeal hearing;
- A family whose belongings were mistakenly destroyed by their landlord were able to obtain a monetary settlement;

- A woman whose auto insurance was rescinded after an accident was able to get her coverage reestablished and was saved from having to pay out of pocket on a claim she could not afford;
- A victim of payday lending in violation of the Payday Loan Act was able to get her loans forgiven as well as a settlement.
- A 16-year-old girl, who survived a terrifying kidnapping attempt in Honduras, was able to relocate to Virginia with her mother and get Special Immigrant Juvenile Status.

Another issue that has received a significant amount of attention, both on the national and state level, involves the collection of court fines and costs. It is important that Commonwealth collect fines and costs that are owed. However, having one's driver's license suspended for failure to pay is a harsh penalty, and may result in a person losing their job - putting them into a cycle of debt from which it is very difficult to escape. The judiciary has a responsibility not to punish people merely for being poor. One way to balance these competing interests to make sure that reasonable and fair payment plans are available to those who need them.

In the past two years, the legal landscape in Virginia regarding the collection of court fines and costs has changed a great deal. Although Virginia law has long required courts to offer payments plans, some courts were not in compliance with

that requirement. For the courts that did offer these plans, the requirements and parameters of these plans varied significantly across the Commonwealth. In 2015, the General Assembly passed HB 1506, which required all courts to reduce their payment plan guidelines to writing and post them in the clerk's office and on the Court's website. At that time, the Judicial Council also released a set of recommended practices regarding the collection of fines and costs.

In 2016, the Department of Justice sent a letter to all chief justices and state court administrators to call attention to what was characterized as illegal enforcement of court fines and costs in certain jurisdictions. That spring the General Assembly also "invited" the Supreme Court to create a Rule of Court to create additional uniformity and clarity regarding payment plans and the collection of fines and costs. I put together a working group, which drafted a rule meant to facilitate collection of fines and costs, while at the same time assuring the fair treatment of the citizens of this Commonwealth, many of whom are low-income or indigent.

On November 1, 2016, the Court adopted Rule 1:24, which became effective on February 1<sup>st</sup>. During the 2017 session, the General Assembly went one step further, and codified about 90% of Rule 1:24. The hope is that out of all this hard work and legislation, more defendants will have access to payment plans that take into account their individual circumstances and ability to pay. This will result in

fewer defaults and license suspensions and a more efficient and equitable collection system.

To keep our judiciary running smoothly, it is important that we anticipate the changing needs of our population. In Virginia, projections show that approximately 18% of the population will be aged 65 years or older by the year 2030. The aging of the population will have wide-ranging social and economic implications, including the likelihood of a greater number of adults in need of guardianships and/or conservatorships. The National Center for State Courts estimates that there are approximately 1.3 million open guardian or conservator cases nationwide, with an estimated \$50 billion under state courts' watch.

Twenty years ago a public guardian program was created in Virginia. Today, according to the Department of Aging and Rehabilitative Services, 822 people are able to be served by this program, but 639 people are on a waiting list for services.

A recent survey conducted of circuit court clerks reveals that only 6% of courts had any type of training or orientation for those appointed as guardians/conservators. Less than 20% of courts had an active monitoring program of guardians and conservators. Only 22% of courts responded that they regularly conducted a review of the annual reports filed by guardians. And when

no annual report is filed, less than 30% of courts responded that they take any action.

To respond to our aging population and these rather disturbing statistics, I established the Virginia “Working Interdisciplinary Network of Guardianship Stakeholders,” also known as WINGS, which is a court-community partnership to improve practices in the guardianship and conservator system. Virginia WINGS is composed of representatives from a broad spectrum of professional fields, including judicial, legal, aging, disability, guardianship, banking, health care, social security administration, and mental health networks. The first meeting was held in November, and we look forward to improvements in the guardianship and conservator system that will help protect the well-being and assets of this vulnerable population.

In addition to being responsive to the needs of citizens, I want the judiciary to be responsive to the needs of judges. I encourage you all to make use of the Judicial Ethics Advisory Committee. Kenney Grigg will be speaking to you later in greater detail about this Committee, but remember that it was created as a resource for you to seek answers to some of the difficult ethical questions that may arise from your unique position as a judge. And please, if there are other things that I, Karl, or the Supreme Court can do to support you in the important work you do every day, please don’t hesitate to let us know.



It is an honor and a privilege to be a judge in Virginia and we must never forget John Marshall's words regarding the impact our decisions have on the citizens of this Commonwealth – on their property, their reputations, their lives, their all. It is a great responsibility, but one I know we can handle, and I thank you for your service to the citizens of the Commonwealth.