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ACCESS TO RECORDS OF THE JUDICIARY

Under the Constitution of Virginia, our government consists of three separate branches: the executive branch, the legislative branch and the judicial branch. Our Constitution expressly recognizes that “[t]he legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others ...” Va. Const. art. III, § 1. *See also* Va. Const. art. I, § 5. This is known as the separation of powers doctrine. The Supreme Court of Virginia is not an agency of the executive or legislative branches. It is responsible for operation of the judiciary, a separate and independent branch of government.

The Supreme Court supports reasonable and responsible transparency in accessing judicial records. That goal would be accomplished by establishing processes for accessing records other than those maintained by court clerks, while recognizing that the notes and records kept by individual judges, including their communications with law clerks and other court staff, are confidential. This confidentiality of communications among judges and court staff is necessary to ensure thorough and candid consideration of all relevant issues being considered by the judges. Court trials and hearings with few exceptions are public. The decisions ultimately issued are public; however, the deliberative process is not.

The proposal for the Supreme Court to develop rules is consistent with the approach taken in other states where the judiciary has developed court rules governing access to judicial records. It is also consistent with the Federal Freedom of Information Act, which specifically excludes the federal courts.

Under a court rule, accessibility to judicial records would be provided in a manner that is transparent and consistent with existing law and the Constitution of Virginia. Financial records and case statistics are currently made available to the public, with much of that information available online on the court system’s website, and these records will continue to be made available to the public. The Supreme Court will promulgate a Rule of Court concerning public access to records of the judiciary on or before December 1, 2018.

Additionally, the Supreme Court is committed to working with clerks, legislators, attorneys and other interested parties to develop statewide access to online case information by July 1, 2019.

About the Supreme Court of Virginia: The Supreme Court of Virginia possesses both original and appellate jurisdiction. The Court reviews 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 against an attorney, and review of the death penalty. The Court's original jurisdiction is limited to cases of habeas corpus, mandamus, prohibition, and actual innocence. The Supreme Court also has original jurisdiction in matters filed by the Judicial Inquiry and Review Commission relating to judicial censure and retirement, and removal of judges. 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 Judicial Branch.

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