State of the Judiciary
Chief Justice Cynthia D. Kinser, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
May 14, 2013

Colleagues, members of the General Assembly, judicial branch employees, and guests, the mission of the Virginia Judicial System 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." In discussing with you today the judiciary's achievements during the past year and the challenges it faces, I want to focus on three elements of our mission: to provide a forum that is (1) independent; (2) accessible; and (3) responsive.

First, judicial independence is the principle that justice is best served when judges are free to render decisions without influence from political, economic or other pressures. Certainly, judges must be accountable. But, attacking courts and judges solely on the basis that decisions are considered wrong as a matter of political judgment impedes judicial independence - that is the independence needed to enforce the rule of law regardless of popular or political sentiment.

We all understand and subscribe to that aspect of judicial independence, but I want to concentrate on economic pressures that affect our ability to provide an independent forum to adjudicate disputes. To begin, we must have salaries and benefits that attract and keep the most qualified individuals as judges and judicial branch employees. During the 2013 General Assembly session, the judiciary requested $4.2 million to increase compensation for district court deputy clerks to lessen the significant disparity between their average salaries and that of other state employees. Although the General Assembly did not appropriate the requested funds, it nevertheless recognized the disparity and included language in the budget requiring the Secretary of Finance and the Secretary of Administration to convene a workgroup to review compensation for state employees. The workgroup is required to give priority to reviewing the compensation of public-safety related personnel and district court deputy clerks. So, we remain optimistic that the judiciary will be able to secure additional funds to increase the compensation of those particular employees. And, we certainly appreciate the salary increases that all state employees will receive this year. We thank the Governor and the General Assembly for those raises. Judicial independence is also enhanced by ongoing education and training for judges and judicial branch employees. To that end, the Office of the Executive Secretary has entered into a Licensee Agreement with the National Center for State Court's Institute for Court Management to offer Virginia judicial branch employees court administration credentials of a national caliber. The goal of this program is to enhance the proficiency of court personnel and to help them develop as court managers. Participants will complete courses to attain a Certified Court Manager designation by the National Center for State Courts. The Department of Judicial Services in the Office of the Executive Secretary will administer this program with the assistance of a grant from the State Justice Institute.

While we believe that expanding judicial training opportunities is worthwhile, Senate Bill No. 1058, as introduced, would have restricted the annual mandatory judicial conferences to no more

than once every other year. The patron was receptive to our concerns about the bill and, ultimately, asked that it be passed by. However, language was included in the budget requiring the Office of the Executive Secretary to report to the Judicial Council and the Committee on District Courts by September 1, 2013 as to options for reducing judicial training costs by the use of such things as distance learning and regional meetings in lieu of annual conferences. Obviously, the most troubling economic pressure that the judiciary faces is judicial vacancies. You will recall that in 2010, the General Assembly included language in the budget that froze the filling of judicial vacancies as of February 15, 2010. That language remains in the budget. When the 2011 General Assembly Session convened, there were 35 existing and announced vacancies, and 21 were funded. When the 2012 General Assembly Session convened, the judiciary had 48 existing and announced vacancies, and only 34 were funded. When the 2013 Session convened, we had 49 existing and announced vacancies. Governor McDonnell funded 26 vacancies, 15 in his initial budget and additional ones through his budget amendments. Ultimately, 32 vacancies were funded, and an additional judgeship was created in the 15th Judicial Circuit.

We all know that the only way that the judiciary has been able to survive these extraordinary vacancies across the Commonwealth is through the assistance of our retired, recalled judges. Our retired, recalled judges have heard cases not only in familiar surroundings but also in distant courthouses. There are currently 177 retired, recalled trial court judges statewide, and together they presided on 8,294 days during 2012, which is more than a 21% increase over the 6,827 days that retired, recalled judges sat in 2009, the last full calendar year before the freeze on filling judicial vacancies took effect. The willingness of our retired, recalled judges to help the judiciary has enabled us to bridge the gap during these years of vacant judgeships. On behalf of the entire judiciary in the Commonwealth, I express my heartfelt thanks for their hard work and continued dedication to the judiciary and to the Commonwealth.

Also, in regard to retired judges, legislation enacted in 2013 authorizes the Office of the Executive Secretary to contract with the National Center for State Courts to study the feasibility and effect of implementing a senior judge system for the circuit and district courts. Because the General Assembly did not appropriate any funds to pay for the study, it is doubtful that we will be able to proceed with it at this time. The Weighted Caseload Study, which is being conducted by the National Center for State Courts, has been underway for over a year, and we will have the Study's report this fall. Like the Judicial Boundary Realignment Study, the Weighted Caseload Study has required the participation of all judges in completing certain surveys and keeping track of judicial duties for periods of time. I thank all of you for your timely responses. Your cooperation has been vital to the development of the end product we will receive - a comprehensive report based on empirical data and objective research.

At this time, I do not know the results of the Weighted Caseload Study. But, I do know that whatever they are, the time has arrived to fund and fill all vacant judgeships. In 2010, when the freeze on filling judicial vacancies first began, we had 402 authorized judgeships in the Commonwealth. Today, in 2013, we have 385 funded judgeships, a reduction of 17 judges. Despite the extraordinary work of our retired, recalled judges, the administration of justice has suffered. As the judicial branch, we must work with the executive and legislative branches to fund the judiciary fully, and to have the judges we need to decide cases timely and effectively. In a recent State of the Commonwealth address, the Governor asked the General Assembly to find

the “resolve” to fund a certain program and remarked that the funds needed would be less than one percent of the entire budget of the Commonwealth. Let me remind you that the entire budget for the judicial branch is less than one percent of the Commonwealth’s total budget. And, even in the recent economic downturn, the judiciary produced more revenues than it expended.

How do we find that resolve? I could spend the entire time at this conference discussing that question. But, let me suggest just one thing. The judicial branch does not have a natural constituency. Sadly, many people lack a true appreciation of the crucial role the judiciary plays in the lives of individuals and businesses. So we need to build a constituency, and we need to do so on a local level. We start by educating individuals about the costs to the public and to the economy when dockets are backlogged because there are not enough judges to decide the cases. Certainly, the executive and legislative branches need to hear from judges, lawyers, and statewide bar organizations. But, they also need to hear from a parent who is waiting fora court date to obtain child support and from the owner of a local business who cannot get its case heard because criminal dockets take precedence over civil cases. So, I ask for your assistance in building a coalition with individuals on a local level to carry the message that, as Justice Anthony Kennedy stated, “A functioning legal system is part of the capitol infrastructure. It is as important as roads, bridges, schools.” If justice has to be rationed because the judiciary is not adequately funded, we cannot provide an independent forum to adjudicate disputes. Likewise, inadequate funding of the judiciary adversely affects our ability to provide an accessible forum, which is the second element of our mission that I wish to discuss. In simple terms, access to justice means that courts must be accessible to every person who desires or is required to use them. Access to justice is realized through such things as pro bono legal services, foreign language interpreters, appropriate accommodations for anyone with a disability, and rules and procedures, including forms that make navigating the judicial system easier for pro se litigants.

The Supreme Court has a longstanding interest in improving access to justice in Virginia. In February of this year, utilizing a grant from the American Bar Association, Justice Goodwyn, at my request, agreed to Chair an Access to Justice Planning Committee. This Committee is composed of bar leaders, legal services corporation representatives, judges from all levels of our courts, and others. The Committee was tasked with “determining whether an access to justice commission is needed in Virginia and, if so, what functions it should perform and what direction such a commission should take.” The committee has met several times with support staff provided by the Office of the Executive Secretary and will soon be making recommendations to the Supreme Court. Last October, several individuals representing Virginia’s judiciary joined me in attending the National Summit on Language Access in the Courts that was made possible by a State Justice Institute grant. During the summit, we were honored with the opportunity to showcase our own successful strategies which have been due--in large part--to the staff interpreter program. Together with chief justices, court administrators, and trial court judges from around the country, we developed a plan for increased judicial system access for the 394,000 individuals with limited English proficiency who call Virginia home. Building on system enhancements and the collaborative relationships we have developed with courts across the state, we have created more tools and language resources in support of the critical services clerks, magistrates, and judges provide. Our aim is to promote consistent language access services across languages and venues, an ambitious goal made possible by the proactive leadership of judges around the state. Ensuring meaningful access to those with limited English

proficiency through language access services imparts confidence in our judicial system and in the decisions we render.

Greater access to our courts via a statewide judicial e-filing system is becoming a reality. A pilot project in the City of Norfolk Circuit Court was launched on April 15, and the Virginia Judiciary E-filing System is working exceptionally well thanks to the many hours of planning, development, and testing that preceded the launch of the pilot project. As of yesterday, there were 19 e-filed cases in the Norfolk Circuit Court. We soon plan to make the e-filing system available to all circuit courts across the Commonwealth. The Virginia Judiciary E-Filing System provides a service to attorneys, enhances efficiency in the clerks' offices of the circuit courts, and coupled with the Case Imaging System that is currently installed in 54 circuit courts, ultimately makes our courts more accessible. The magistrate system became more efficient in providing access to individuals needing hearings through the implementation of a magistrate call center in Magisterial Region I, located in southwest Virginia. In many counties in that area, magistrates conduct hearings via videoconferencing technology. The call center concept allows law enforcement agencies to connect to magistrates throughout Region I by calling one telephone number, which has dramatically decreased the wait time for video hearings in that region.

Providing a responsive forum is the last component of our mission that I wish to discuss. Certainly, protecting the judiciary's independence and increasing accessibility allow the courts to be more responsive to litigants, attorneys, and the public. Another aspect of providing a responsive forum involves the implementation of programs to solve the problems of the users of our courts.

Across the nation, the executive, legislative and judicial branches of state governments are working together to develop problem-solving courts committed to core principles of therapeutic jurisprudence that address an offender's underlying problems. Increasingly, the public and the other branches of government are looking to the courts to address complex social issues that are not being effectively resolved by the traditional legal processes and sentencing methods. In addition, state and local governments are realizing they can save taxpayer dollars through the use of problem-solving courts. To name only a few, some of the problem-solving courts found in many states are drug treatment courts, mental health courts, veterans courts, and domestic violence courts. In Virginia, we currently have 36 drug treatment courts in operation. In the Drug Treatment Court Act, the General Assembly recognized "acritical need . . . for effective treatment programs that reduce the incidence of drug use, drug addiction, family separation due to parental substance abuse, and drug-related crimes." However, during 2011, five bills relating to drug treatment courts and problem-solving courts failed in the House of Delegates. In 2012, bills for eight localities, each seeking to establish a drug treatment court in its respective jurisdiction, failed. But, thanks to Governor McDonnell and the language he added to the budget last year, those drug treatment courts and others can now be established without General Assembly approval if no state revenues are requested. In 2011, legislation similar to the Drug Treatment Court Act addressed criminal justice procedures for veterans and active military service members. As introduced, the legislation paralleled the Drug Treatment Court Act, but as passed, it eliminated the courts' involvement. As a result, the veterans' program is not a veterans court but is, instead, an early intervention of mental health and substance abuse services for

veterans and active military personnel who are involved in the criminal justice system.

The Statewide Drug Treatment Court Advisory Committee has recommended to the Supreme Court that the Committee be authorized to study problem-solving courts and dockets. The Committee further recommends that "[a]ny jurisdiction interested in implementing a problem-solving docket should present information to the Advisory Committee on the need, implementation, funding, resources, community collaboration, or other matters requested by the Committee." The Supreme Court is currently considering the recommendation. Providing a responsive forum also requires us to render timely decisions incases. I trust that all of you are familiar with the provisions of Code § 17.1-107. This statute states:

A judge of a circuit court in a civil case shall report, in writing, to the parties or their counsel on any cause held under advisement for more than 90 days after final submission stating an expected time of a decision. In any civil case in which a judge holds any cause under advisement for more than 90 days after final submission, fails to report as required by this section, or fails to render a decision within the expected time stated in the report, any party or their counsel may notify the Chief Justice.

When I receive such a report, I am required to keep the name of the complainant confidential, inquire as to the cause of the delay, and designate another judge to assist in disposing of the case, if needed.

I regret to report that I have received too many such complaints since I have been Chief Justice. I beseech all of you to comply with this statute. Notwithstanding the statute, we have a responsibility to render decisions timely so we do not delay the administration of justice. Peoples' lives, their families' well-being, and their businesses often hang in the balance waiting on a decision in a case. I know that virtually every circuit has experienced a judicial vacancy, or perhaps more than one, in the past few years. But in all the complaints that I have received, that problem was never cited by the judge as the cause of the delay.

As we strive to fulfill our mission to be responsive by timely disposing of our cases, we must also remember the importance of professionalism. To enhance professionalism, civility, and ethical conduct in the practice of law, I asked Justice Lemons to chair an ad hoc Committee on Professionalism, comprised of lawyers and judges from across the Commonwealth. The Committee has recommended that the Supreme Court create a Professionalism Commission in Virginia to study current efforts by the bench, the bar, and the law schools to advance professionalism, and to recommend and/or develop other programs for that purpose. The Court is currently considering the Committee's recommendations. Nevertheless, I am sad to report that it is not uncommon for either me or the Office of the Executive Secretary to receive a complaint about a judge's demeanor and lack of civility. The Canons of Judicial Conduct require us to "be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity." At all times, we are to "respect and comply with the law" and to "act . . . in a manner that promotes public confidence with the integrity and impartiality of the judiciary."

In closing, let us remain true to our mission to be an independent, accessible, and responsive judiciary. In this year in which we have celebrated the 150th anniversary of the signing of the Emancipation Proclamation, let us serve with a renewed commitment to our highest promise to provide equal justice under the law to all. And, let us never fail to be courteous, impartial, and fair.

Thank you.