

State of the Judiciary
Chief Justice Cynthia D. Kinser, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
2014

Colleagues, judges of the Court of Appeals and circuit courts, members of the General Assembly, judicial branch employees, and guests, I am pleased to talk with you about the state of the Virginia Judicial System.

John Adams, when reflecting on his representation of the British soldiers accused of the Boston Massacre, wrote that it was "one of the best pieces of service I ever rendered my country." Service is a word with many definitions. I want us to focus on one definition today: "Deeds useful or instrumental toward some object." Public service, then, means those deeds useful or instrumental toward the object of the public good--"a service rendered in the public interest."

As members of the Virginia Judicial System, we are all public servants. The service we render every day to the citizens of this Commonwealth is displayed through the decisions we make in cases and the programs and initiatives we implement. During the past year, the Judiciary has worked on important initiatives and reached certain milestones that not only serve the citizens of this great Commonwealth but also fulfill the Judiciary's mission of providing "an independent, accessible, responsive forum for the just resolution of disputes." But, because of the importance of our work, we must frequently examine what we are doing and how we are performing to ensure that at all times our "deeds" serve the public interest. So let us survey what we have accomplished this past year and what we are facing in the days ahead.

Last year, the National Center for State Courts completed its 18-month long Weighted Caseload Study. In November 2013, we submitted the Virginia Judicial Workload Assessment Report to the General Assembly. Before discussing the report, I thank you for your assistance in providing accurate data through the surveys and time study you completed. Your timely responses and cooperation were vital to the workload assessment, which has provided us and the General Assembly with a comprehensive report based on empirical data and objective research.

The Weighted Caseload Study measured the judicial workload in all circuit and district courts, evaluated the current allocation of judicial resources, created a model to use in determining the appropriate level of judicial resources in each circuit and district, and analyzed current judicial boundaries. In its Report, the National Center for State Courts concluded that, when applying the empirically based weighted caseload model to the caseloads in each circuit and district, the overall existing number of authorized judges in the Commonwealth is inadequate to meet the demands of the current judicial workload. The Report included specific recommendations for the number of judges needed in each circuit and district. The data showed that the implied judicial need exceeds the number of authorized judgeships by a total of 27. Additionally, the National Center for State Courts found that "[n]o scheme of judicial boundary realignment can reduce the total judicial workload in the Commonwealth's trial courts or result in an appreciable change in the total number of judges required to handle that workload at the statewide level."

During the 2014 Session of the General Assembly, Senator Tommy Norment and Delegate Jackson Miller introduced companion bills, Senate Bill 443 and House Bill 606, in response to the Judicial Workload Assessment Report. These bills increased or decreased the number of circuit court, general district court, and juvenile and domestic relations district court judges authorized for each judicial circuit and district based on the recommendations made in the Report. Thanks in large part to the work by the staff of the Office of the Executive Secretary, especially the staff of the Legislative and Public Relations Department, the assistance and support of several statewide bar organizations, including the Virginia Bar Association and the Virginia Trial Lawyers Association, and all of you, both bills passed the House and Senate and authorize a total of 429 judgeships in the Commonwealth. Unfortunately, passage of those bills does not necessarily mean funding for all 429 judgeships.

Indeed, as we gather here today, the Commonwealth of Virginia does not have a budget for the fiscal year that starts on July 1, 2014. So, we still have 44 current or announced vacancies in the formerly authorized 402 judicial positions. As has been the situation since 2010 when the freeze on filling judicial vacancies first began, we are struggling to decide cases timely and effectively and the administration of justice continues to suffer. As before, we call upon our retired, recalled judges to assist, and they answer the call and provide extraordinary service. In fact, during the 2013 calendar year, retired/recalled judges sat in the circuit courts 4,279 days and in the district courts 4,565 days, for a total of 8,844 days. In the district courts, substitute judges also sat 4,321.5 days. I thank all of them.

This time last year when I addressed you, I stated that "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." The judicial branch always stands ready to work with the executive and legislative branches, but as we all know, the judiciary does not have a seat at the table with regard to the budget. Nevertheless, as the head of the judicial branch of the Commonwealth's government, I call upon the leaders of the executive and legislative branches to work together, to find common ground, to reach a compromise on the budget, and to fully fund the judiciary so that we can better serve the citizens of the Commonwealth. When I say fully fund the judiciary, I mean funding not only to fill needed judgeships but also to increase the woefully inadequate salaries of our deputy clerks in the district courts, to re-start the Judicial Performance Evaluation Program pursuant to legislation enacted by the General Assembly this year, and to continue providing educational and technological support and resources to judges and courts throughout the Commonwealth. The funding needs of the judiciary cannot wait any longer; the parent who needs child support or a protective order cannot wait; the defendant who has the right to a speedy trial cannot wait; and the business owner or injured victim of an automobile accident who needs a timely resolution of civil litigation cannot wait. In other words, the administration of justice cannot wait. Like us in the judicial branch, the members of the executive and legislative branches are public servants. As public servants, all of us in the three branches of government must be committed to rendering service that promotes the public good.

As I have already mentioned, the need for additional judicial resources across the Commonwealth has required that we increase our reliance on retired and substitute judges to cover not only conflict cases and short-term judicial absences, but also to hear cases that are

beyond the current capacity of our complement of judges. In the Judicial Workload Assessment Report, the National Center for State Courts noted that the regular use of retired and substitute judges may be negatively impacting the efficiency and quality of case processing and suggested the consideration of a more formalized system using retired or senior status judges.

Legislation enacted in 2013 authorized the Office of the Executive Secretary to contract with an entity to study the feasibility and effect of implementing a senior judge system for the circuit and district courts. Although the 2013 legislation provided no funding, we secured grant monies to conduct this study and have contracted with the National Center for State Courts for its completion.

The study will address ways such a system might be structured to allow for an equitable distribution of senior judges among the circuits and districts; the number of senior judges required and the minimum amount of time each senior judge would be required to sit; methods of selection, designation, and compensation of senior judges; the fiscal impact of such a system; and feasible methods for transitioning to a senior judge system.

An advisory group, comprised of active and retired judges from the circuit, general district, and juvenile and domestic relations district courts, and a district court clerk, has been assembled to assist in this study. The advisory group held its first meeting in March. The study will continue over the summer, and we will submit a final report to the General Assembly by November 15, 2014.

Last year, I mentioned the Access to Justice Planning Committee, which was convened to determine whether an access to justice commission should be formed in Virginia. The Planning Committee recommended to the Supreme Court of Virginia the creation of an access to justice commission. The Virginia Access to Justice Commission was created by order on September 13, 2013. Nineteen members have been appointed to the Commission, including judges, attorneys in private practice as well as corporate counsel, legal aid attorneys, a court clerk, and a statewide social services administrator. Recognizing that support by the state's highest court is critical to access to justice initiatives, I am pleased that Justice Goodwyn agreed to serve as the Supreme Court's representative and co-chair of the Commission. The other co-chair is John Whitfield, the executive director of Blue Ridge Legal Services, Inc., a legal aid organization.

The mission of the Virginia Access to Justice Commission is to promote equal access to justice, with particular emphasis on the civil legal needs of Virginia residents. The goals of the Commission include coordinating access to justice activities, mobilizing legal professionals to provide legal services to low-income individuals, encouraging the development of auxiliary resources for underserved populations, and making the courts more accessible for all citizens. The establishment of the Virginia Access to Justice Commission ensures that an entity is actively coordinating and promoting access to justice efforts in the Commonwealth.

To highlight the importance of pro bono legal services, the Supreme Court in conjunction with the Virginia Bar Association convened the third Pro Bono Summit on April 2, 2014. At the summit, we recognized the need for and the appreciation of pro bono legal services. We focused on what has been accomplished and what can be done in the future to improve the availability

and quality of pro bono legal services. When we enhance access to justice, we are meeting the public's needs.

Perhaps one of the most effective ways the judiciary is serving the public is through the outstanding work of our 37 drug treatment courts. Statistics are continually documenting what we have all known--that problem-solving courts save both lives and money. You will recall that last year I spoke about the recommendation from the Statewide Drug Treatment Court Advisory Committee that the Supreme Court authorize the committee to study other potential problem-solving courts and/or dockets in the Commonwealth. The Court decided to appoint a special committee for that purpose. The special committee is comprised of stakeholders from across the Commonwealth and is tasked with determining what problem-solving courts and/or dockets are needed in Virginia to address the special problems of its citizens who find themselves in the criminal justice system and how to implement the needed courts and/or dockets. The Supreme Court is excited about the committee's work under the leadership of Judge Jerrauld Jones of the Circuit Court of the City of Norfolk and will be receiving the committee's report in the near future.

We are also excited that a group of individuals, including some judges from Southwest Virginia, recently travelled to Tennessee to learn more about two residential treatment and recovery programs in operation there. Virginia is at a crossroads in terms of the development of problem-solving courts. Let's take the path that saves lives and money. It is time for the judiciary to take the next step in designing and implementing new problem-solving courts and/or dockets as alternatives to imprisonment for individuals who are accused of crimes and are struggling with particular problems. It is part of our responsibility as public servants.

I mentioned earlier legislation passed during the 2014 General Assembly regular session to re-start the Judicial Performance Evaluation Program (JPE Program). The legislation requires that the JPE Program provide reports to the General Assembly each year for judges who are candidates for reappointment. The legislation also makes two significant changes to the JPE Program that existed previously. First, it specifically provides that the reports furnished to the General Assembly are public records open to inspection. Second, it provides that, with the exception of the reports to the General Assembly, all records "created or maintained by or on behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge are confidential and shall not be disclosed." Thus, interim evaluations remain confidential, allowing judges the opportunity to receive feedback privately during their terms for the purpose of self-improvement. As with the previous JPE program, the survey contractor will not share any evaluations or related material with the Office of the Executive Secretary or court staff.

For those of you familiar with the JPE Program as it operated previously, the program should look familiar. The survey questions will be unchanged and will be sent to the same groups of respondents. Judges will be evaluated three times during a first term and twice during second and subsequent terms on a particular court. We anticipate again using facilitator judges to consult with evaluated judges in interpreting the evaluation results. A major difference will be that, to the extent possible, the surveys will be distributed and completed electronically. This change will facilitate operation of the program at a significantly reduced cost.

If funds are appropriated timely, the first reports will be due December 2014. The Office of the Executive Secretary of the Supreme Court of Virginia will contract with the Survey and Evaluation Research Laboratory at Virginia Commonwealth University to conduct the surveys that form the basis of the evaluations. Judges who were previously evaluated as part of the JPE Program, who have continued to serve in the same court, and who will be eligible for reappointment during the 2015 General Assembly session, will be reevaluated during 2014. Those reports will be sent to the General Assembly as required. Again, I emphasize that re-evaluations in 2014 are contingent on the timely appropriation of the needed funds.

On the electronic front, the Virginia Judiciary E-Filing System went live in the Circuit Court of the City of Norfolk in April 2013. Thirteen circuit courts and 623 attorneys are currently using the Virginia Judiciary E-Filing System. To date, over 3,000 cases have been e-filed through the system. In September, the Virginia Judiciary E-Filing System was awarded the Governor's Technology Award in the "IT as Efficiency Driver - Government to Citizen" category.

A project is underway to permit circuit courts to transmit records electronically to the Supreme Court of Virginia and to the Court of Appeals of Virginia. Document standards are being reviewed and, so far, test electronic records have been accepted from circuit courts in two different appeals.

The State Police Record IT Exchange also won a Governor's Technology Award in the "IT as Efficiency Driver - Government to Government" category. This exchange eliminates the need for faxing and mailing orders for mental commitments to the Virginia State Police, thereby speeding up the transmittal of information from district courts as well as greatly streamlining the workflow of civil commitments at the Virginia State Police Headquarters. To date, 28,559 civil commitment orders have been transferred via the State Police Record IT Exchange.

Online pre-court and post-court payments in the general district courts are now averaging 47,000 transactions and \$7.2 million each month. These numbers represent over 33% of the total collections in general district courts.

To respond to significant legislative changes in how collection agents process delinquent court fines and costs, we developed the Virginia Judiciary Collections System. This system is used by collection agents to calculate, accurately, owed monies and to enter payments made by defendants. Since August 1, 2013, 139 Virginia Judiciary Collections System users have processed almost \$10 million.

Finally, imaging and document management systems are now installed in 88 courts in the Commonwealth. Twenty-one of these courts use the electronic file exclusively – even the judges while on the bench.

The judiciary's commitment to improve access and efficiency for both attorneys and citizens is also demonstrated in our decision to post on the judiciary's website audio recordings of the oral arguments before the Supreme Court of Virginia and the Court's unpublished orders.

In 2013, we celebrated the 75th anniversary of the Virginia State Bar. Since 1938, the Virginia State Bar has strived to improve the legal profession and has stressed the importance of legal ethics, professionalism, and civility. The Virginia State Bar provides to our attorneys the guidance, resources, and opportunities for growth and improvement that ensure a vibrant and excellent legal system to serve our citizens.

We are blessed with outstanding legal organizations here in Virginia that help us improve our judicial system. One of those is the Virginia Law Foundation, whose mission is to promote the rule of law, access to justice, and legal education through philanthropy. This year, the Virginia Law Foundation celebrates its 40th Anniversary. Through its history, the Virginia Law Foundation has provided over \$23 million in grants, providing invaluable support for many worthwhile legal organizations and projects. Please join me in congratulating the Virginia State Bar and the Virginia Law Foundation for their years of hard work and success.

As Chief Justice, it is a privilege to work with all the judges and employees of the Virginia Judicial System. I thank each one of you for all that you do every day to ensure equal justice for all. I thank you for your public service.

Despite budgetary uncertainties, diminishing resources, and increasing caseloads, let us renew our commitment as public servants to use the public's resources entrusted to us wisely, to decide cases fairly, impartially, and expeditiously, and to be always mindful that our "deeds" must promote the public good. Otherwise, our actions are something less than public service.

Paraphrasing the words of John F. Kennedy, "Let [our] public service be . . . proud and lively career[s]."