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CALL FOR COMMENT – June 22, 2020

JUDICIAL COUNCIL OF VIRGINIA REQUESTS COMMENTS ON THE JURISDICTION AND ORGANIZATION OF THE COURT OF APPEALS OF VIRGINIA

During its 2020 Session, the General Assembly passed Senate Joint Resolution 47, which requests the Judicial Council of Virginia to study the jurisdiction and organization of the Court of Appeals of Virginia. In conducting its study, the Judicial Council is required, among other considerations, to:

- 1) Make recommendations on implementing an appeal of right in all cases decided by and appealed from the circuit courts to the Court of Appeals, with further review by the Supreme Court available thereafter on a petition (certiorari) basis;
- 2) Make recommendations on organizing the Court of Appeals into four geographic circuits, approximately encompassing central Virginia, eastern Virginia, northern Virginia, and western and southwestern Virginia; including how many additional judges would be necessary to effectuate such a system; and
- 3) Make recommendations on a proposed implementation schedule.

Any observations you wish to make on the issues raised by the Joint Resolution are welcome and will be carefully studied. A copy of the Joint Resolution is attached. To allow the Judicial Council to comply with the timetable established in the Resolution by the General Assembly, please submit any comments by August 21, 2020, to the following address:

SJ47study2020@vacourts.gov

Anyone without access to email may submit comments by mail, noting the topic as **SJ47 Study**, to the following address:

Karl Hade, Secretary of the Judicial Council
Executive Secretary
Supreme Court of Virginia
100 N. Ninth Street, Third Floor
Richmond, VA 23219

About the Judicial Council:

The Judicial Council is established by statute (Va. Code § 17.1-700) in the Judicial Branch and is composed of 14 members. The Chief Justice chairs the Council, which consists of one judge of the Court of Appeals, six circuit court judges, one general district court judge, one juvenile and domestic relations district court judge, two attorneys qualified to practice in the Supreme Court, and the Chairmen of the Committees for Courts of Justice of the Senate and the House of Delegates or their designees who shall be members of the Courts of Justice committees. The Council is charged with making "a continuous study of the organization and the rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished and the results produced by the system and its various parts; and shall make studies of the need, or lack of need, of additional judges or justices of the Supreme Court of Virginia, the Court of Appeals of Virginia, and the circuit courts." Va. Code § 17.1-703.

SENATE JOINT RESOLUTION NO. 47

Requesting the Judicial Council of Virginia to study the jurisdiction and organization of the Court of Appeals of Virginia. Report.

Agreed to by the Senate, January 29, 2020
Agreed to by the House of Delegates, March 3, 2020

WHEREAS, the Court of Appeals of Virginia was created in 1985 with the intention to alleviate the caseload of the Supreme Court of Virginia; and

WHEREAS, the Court of Appeals' jurisdiction over appeals from the circuit courts is limited to domestic relations matters, traffic infraction cases, and criminal cases (except cases involving the death penalty), as well as appeals from the decisions of administrative agencies; and

WHEREAS, appeals of right to the Court of Appeals are only authorized in domestic relations and workers' compensation matters; and

WHEREAS, since 1985, the quality, diligence, and predictability of jurisprudence has improved in the circuit courts due to the increased likelihood of appellate review in certain matters; and

WHEREAS, appeals of right to the Supreme Court of Virginia are limited to only appeals from the State Corporation Commission and capital cases, and parties in civil cases are often denied appellate review from judgments in the circuit courts; and

WHEREAS, a lack of appellate review increases the likelihood of judicial mistakes, wrongful convictions, and unjust outcomes; and

WHEREAS, appeals of right are guaranteed at every level of the federal judicial system; and

WHEREAS, Virginia has been the only state in the United States without a guaranteed right of appeal in criminal cases for over a decade and has recently become the only remaining state in the United States without a guaranteed right to appeal in all other cases; and

WHEREAS, a bona fide right to appeal has been recognized as a part of fundamental procedural due process that has its ultimate roots in the Virginia Declaration of Rights; and

WHEREAS, in 2013, the Judicial Council of Virginia concluded in a two-year study, submitted to the 2014 Session of the General Assembly pursuant to House Joint Resolution 111 (Regular Session, 2012) and published as House Document 7 (Regular Session, 2014), that "the current judicial capacity of the Court of Appeals, to continue quality and timely appellate review, would not be impaired if given additional jurisdiction provided it is given appropriate staffing levels and resources"; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Judicial Council of Virginia be requested to study the jurisdiction and organization of the Court of Appeals of Virginia.

In conducting its study, the Judicial Council of Virginia shall (i) make recommendations on implementing an appeal of right in all cases decided by and appealed from the circuit courts; (ii) make recommendations on organizing the Court of Appeals into four geographic circuits, approximately encompassing central Virginia, eastern Virginia, northern Virginia, and western and southwestern Virginia with appeal by certiorari to the Supreme Court of Virginia, including how many additional judges would be necessary to effectuate such a system; (iii) make recommendations as to whether any additional statutory changes are necessary; and (iv) develop a proposed budget and implementation schedule.

Technical assistance shall be provided to the Judicial Council of Virginia by the Executive Secretary of the Supreme Court of Virginia. All agencies of the Commonwealth shall provide assistance to the Judicial Council of Virginia for this study upon request. The Judicial Council of Virginia shall further solicit public comment from the Virginia State Bar, the Boyd-Graves Conference, the Virginia Bar Association, the Virginia Trial Lawyers Association, the Virginia Association of Defense Attorneys, the Virginia Association of Commonwealth's Attorneys, the Virginia Association of Criminal Defense Lawyers, the Virginia Indigent Defense Commission, and all minority bar associations.

The Judicial Council of Virginia shall complete its meetings by November 30, 2020, and shall submit to the Governor and General Assembly an executive summary and a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2021 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

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