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STEVEN M. GARVER

OF COUNSEL:
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9 September 2010

Roger Mullins, Esq.

Re: **BOYD-GRAVES—Sub-Committee to Study the Expansion of the
Jurisdiction of the General District Court**

Dear Roger:

Our committee was comprised of the individuals listed on the bottom of this letter. We were to look at a number of issues which we broke into two major areas of inquiry and set up two sub-committees to prepare proposals and make recommendations that were then evaluated by the committee as a whole.

1. The first issue addressed was whether the civil jurisdictional limits of the general district court should be raised over the current ceiling of \$15,000.00. Our committee recommends a change to the jurisdictional limit such that it would increase to \$25,000.00.

Also, in the same arena we considered expanding discovery in civil cases and amending the Rules of Court to so provide. Likewise the Committee discussed various options and recommends the rule changes which would provide for limited interrogatories in civil cases in which the amount in controversy exceeds \$10,000.00 and to permit limited depositions of parties when all parties are represented by counsel.

2. The second issue was whether the general district court jurisdiction should increase to provide for jurisdiction of the Court to handle matters involving enforcement of homeowners association rules and bylaws as well as similar authority for condominiums. Also an issue was whether the Court should have injunctive authority in these circumstances. Again the committee favorably recommends these changes.

Attached you will find the specific proposals which should be considered by the conference and which the committee recommends.

The committee believes that all of these proposals were tempered to protect the rights of litigants. It also recognized the increased cost and expense of litigation in the Circuit Court and that these proposals represent a savings to the state and litigants in being able to handle matters more expeditiously in the general district courts rather than in the Circuit Court.

At the outset, there was complete agreement to increase of the jurisdictional limit to \$25,000.00. The committee recognized that in tort litigation the increase limits match up with the minimum limits automobile liability policy and that it provides for credit card companies and others who often in "small" contracts are dealing with issues which involve damages less than \$25,000.00 but more than \$15,000.00. The general district courts provide a less expensive way to resolve many of these cases. The committee opined that particularly with the expanded discovery proposed this should not result in any increase in appeals to the Circuit Court. The committee discussed that cases of up to \$50,000.00 are often not cost effective to be handled in the Circuit Court, but in considering the alternatives was comfortable at this time limiting the increased jurisdiction to \$25,000.00.

However, the committee also believed that even now in civil general district court cases, the lack of some discovery is problematic and would be more so if the jurisdictional limits increase. The committee considered that a defendant has a right to know what damages were being sought and based upon what special damages. However, the committee also did not want the general district court to become a place for rampant discovery arguments and also believed that in very small cases, particularly where it was unlikely that counsel could represent a party economically, that there should not be discovery unless the parties otherwise agreed. The Court noted that there is discovery now permitted in the Juvenile and Domestic relations District Court. The committee chose an amount of \$10,000.00 as a bright line cut-off for permitting discovery and recommends that up to ten interrogatories be permitted when the amount in controversy exceeded that amount.

The committee considered several proposals regarding these interrogatories, but agreed that when the amount in controversy exceeds \$10,000.00 there should be a presumption permitting ten interrogatories subject to the courts ability to rein them in, re-write the interrogatories or to strike them. The committee felt that most cases in which the amount in controversy exceeds \$10,000.00 the parties would be represented by counsel though they also believed that most pro se's should be able to answer up to ten interrogatories. (And interrogatories are permitted in the junile and domestic relations district court.) Too, the process of protecting the party was deemed to be made simpler than in the Circuit Court for those situations where there are pro se parties.

As to depositions the consensus of the committee was that in cases where there is in excess of \$10,000.00 in controversy and each party is represented by counsel, that for good cause a deposition of party only, limited in time, might help resolve the cases and also might help protect the parties interests. There was some believe by a minority that depositions should be presumed as of right, but by far the consensus was to the contrary.

The committee was also of the belief that parties by agreement should be able to set any rules they agreed on for discovery.

The current jurisdictional statute for the general district court does not provide the general district court with jurisdiction over claims for injunctive, equitable, or declaratory relief. See Va. Code §16.1-77. Instead, Section 16.1-77 of the Virginia Code grants the general district court authority to hear and decide cases involving claims for injunctive, equitable, or declaratory relief only in specific, limited cases. See, e.g., Va. Code § 16.1-77(3) (granting jurisdiction in actions of unlawful entry or detainer as specified in Virginia Code Sections “8.01-124 et seq.” and “55-217 et seq.”); Va. Code § 16.1-77(4) (granting jurisdiction to general district court over actions where jurisdiction is conferred “under or by virtue of any provisions of the Code of Virginia”); Va. Code § 16.1-77(6) (granting general district courts jurisdiction to “try and decide cases.....for writs of mandamus or for injunctions” under the Virginia Freedom of Information Act as provided in Virginia Code § 2.2-3713 and the Government Data Collection and Dissemination Practices Act as provided in Virginia Code §2.2-3809); and Va. Code § 16.1-77(7) (granting jurisdiction to suspend and restore driving privileges of “habitual offenders” pursuant to the provisions of Virginia Code § 46.2-355.1 et seq.).

The jurisdictional statute does not confer a generally-available power to grant equitable or injunctive relief to parties appearing before it. Rather, claims for injunctive relief may only be adjudicated by general district courts where the jurisdictional statute specifically so provides or where another provision of the Virginia Code specifically so provides.

Virginia Code §16.1-77 has been supplemented by other sections of the Virginia Code to confer on general district courts the authority to grant injunctive and equitable relief. See, e.g., Va. Code §19.2-152.8 (granting power to general district courts to issue emergency protective orders in certain cases). Most pertinently, the General Assembly of Virginia revised the Virginia Code provisions relating to zoning to confer jurisdiction on the general district courts to “order the violator to abate or remedy the violation in order to comply with the zoning ordinance.” Va. Code § 15.2-2209. A similar provision in the Virginia Property Owners Association Act would permit general district courts to order parties in violation of a property owners association’s governing documents to “abate or remedy” that violation. Otherwise, a separate action in circuit court, with the attendant costs to both litigants and the court system, would be required to obtain equitable relief where necessary. A separate action in circuit court is particularly inefficient where, as would be the case in actions alleging a violation, the general district court judge has already become familiar with the facts of the case and the governing documents.

The committee is of the belief that the issues should be addressed by the conference separately such that we should first vote on the increase in jurisdictional limit and then consider each proposal to change the rules as to interrogatories and as to depositions. Too, the issue of the condominium and homeowners act recommendations can be addressed together. The committee is of the belief that these proposals should be welcome by the legislature given the need to save money by the state and that it would also be more economical for litigants. As an example, a

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personal injury case for \$25,000.00 may take one and a half days in circuit court and only take two hours in general district court and provide a savings for both the judicial system and by parties. These proposals recognize the increased costs of litigation and the need to reduce costs to all.

Yours,

/s/

Steven M. Garver,
Chair

CC to Committee Members:

Thomas G. Bell, Jr.
Lisa A. Bertini
The Honorable Daniel Bouton
Maureen Matsen
William Marr, Jr.
Lucia Trigiani
J. Gray Lawrence, Jr.
Robert Hagans
W. David Harless

Committee to Study Expansion of Jurisdiction of General District Court

Proposal with regard to civil cases:

1. The civil jurisdictional limit of the General District Court shall be increased to \$25,000.00. (Amend Virginia Code §16.1-77.) (This is not intended to change any higher limits which may currently apply in certain limited circumstances.)
2. The Rules of the Supreme Court of Virginia should be amended to include the following authority in part 7B (General District Court-Civil) as 7B:15 or !2, as the Court deems proper:
 - a. Either party may propound up to ten interrogatories (including sub-parts) in cases where the amount in controversy exceeds \$10,000.00. In the event a party objects to any or all of the interrogatories, makes a motion for a protective order or if the party propounding the interrogatories makes a motion to compel answers the Court shall have broad discretion to determine the reasonableness of the interrogatories in the then premises and may make any appropriate order in its discretion to limit or modify the interrogatories in scope or number or content. When interrogatories are propounded it shall not be until the first return date and if the Court orders that a bill of particulars be filed, responses to the interrogatories shall not be due before any bill of particulars is due. Enforcement and other issues shall otherwise be governed by the rules as set forth in Rule 4 of the Rules of the Supreme Court of Virginia.
 - b. In cases in which the amount in controversy exceeds \$10,000.00, the Court may in its discretion and for good cause authorize a deposition of a party when all parties are represented by counsel. The time limit for said deposition shall not exceed two hours. In all other respects, Rule 4 of the Rules of the Supreme Court of Virginia shall apply as to the said deposition.
 - c. If the all of the parties are represented by counsel and the parties agree to modify or expand the scope of discovery they may do so.

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**Proposal to Amend
Virginia Condominium Act and
Virginia Property Owners' Association Act
to Expand General District Court Jurisdiction**

6 § 55-79.80:2. Assessment of charges for violations; suspension of services for failure to pay
7 assessments; hearing.

8 A. The unit owners' association shall have the power, to the extent the condominium
9 instruments or rules duly adopted pursuant thereto expressly so provide, to (i) suspend a unit
10 owner's right to use facilities or services, including utility services, provided directly through the
11 unit owners' association for nonpayment of assessments which are more than sixty days past due,
12 to the extent that access to the unit through the common elements is not precluded and provided
13 that such suspension shall not endanger the health, safety, or property of any unit owner, tenant,
14 or occupant and (ii) assess charges against any unit owner for any violation of the condominium
15 instruments or of the rules or regulations promulgated pursuant thereto for which such unit
16 owner or his family members, tenants, guests or other invitees are responsible.

17 B. Before any such suspension or charges may be imposed, the unit owner shall be
18 given an opportunity to be heard and to be represented by counsel before the executive organ or
19 such other tribunal as the condominium instruments or rules duly adopted pursuant thereto
20 specify.

21 Notice of such hearing, including the charges or other sanctions that may be imposed,
22 shall, at least fourteen days in advance thereof, be hand delivered or mailed by registered or
23 certified United States mail, return receipt requested, to such unit owner at the address or
24 addresses required for notices of meetings pursuant to § 55-79.75.

1 The amount of any charges so assessed shall not exceed fifty dollars for a single offense,
2 or ten dollars per diem for any offense of a continuing nature, and shall be treated as an
3 assessment against such unit owner's condominium unit for the purpose of § 55-79.84. However,
4 the total charges for any offense of a continuing nature shall not be assessed for a period
5 exceeding ninety days. After the date a lawsuit is filed *in General District Court by the unit*
6 *owners' association to collect the charges and correct the violation or a lawsuit is filed*
7 challenging any such charges, no additional charges shall accrue. If the court rules in favor of the
8 unit owners' association, ~~it~~ *the unit owners' association* shall be entitled to collect such charges
9 from the date the action was filed as well as all other charges assessed pursuant to this section
10 against the unit owner prior to the action *and if the court finds the violation remains*
11 *uncorrected, the court may order the unit owner to abate or remedy the violation in order to*
12 *comply with the unit owners' association's rules and regulations or condominium*
13 *instruments.*

14 The hearing result shall be hand delivered or mailed by registered or certified mail, return
15 receipt requested, to such unit owner at the address required for notices of meetings pursuant to §
16 55-79.75 within seven days of the hearing.

17 C. This section shall not be construed to prohibit the grant, by the condominium
18 instruments, of other powers and responsibilities to the unit owners' association or its executive
19 organ.

1 § 55-513. Adoption and enforcement of rules.

2 A. Except as otherwise provided in this chapter, the board of directors shall have the
3 power to establish, adopt, and enforce rules and regulations with respect to use of the common
4 areas and with respect to such other areas of responsibility assigned to the association by the
5 declaration, except where expressly reserved by the declaration to the members. Rules and
6 regulations may be adopted by resolution and shall be reasonably published or distributed
7 throughout the development. A majority of votes cast, in person or by proxy, at a meeting
8 convened in accordance with the provisions of the association's bylaws and called for that
9 purpose, shall repeal or amend any rule or regulation adopted by the board of directors. Rules
10 and regulations may be enforced by any method normally available to the owner of private
11 property in Virginia, including, but not limited to, application for injunctive relief or damages,
12 during which the court may award to the association court costs and reasonable attorney's fees.

13 B. The board of directors shall also have the power, to the extent the declaration or
14 rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a
15 member's right to use facilities or services, including utility services, provided directly through
16 the association for non-payment of assessments which are more than 60 days past due, to the
17 extent that access to the lot through the common areas is not precluded and provided that such
18 suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant
19 and (ii) assess charges against any member for any violation of the declaration or rules and
20 regulations for which the member or his family members, tenants, guests, or other invitees are
21 responsible.

22 Before any such charges or suspension may be imposed, the member shall be given an
23 opportunity to be heard and to be represented by counsel before the board of directors or other

1 tribunal specified in the documents. Notice of a hearing, including the charges or other sanctions
2 that may be imposed, shall be hand delivered or mailed by registered or certified mail, return
3 receipt requested, to the member at the address of record with the association at least fourteen
4 days prior to the hearing.

5 The amount of any charges so assessed shall not be limited to the expense or damage to
6 the association caused by the violation, but shall not exceed 50 dollars for a single offense or 10
7 dollars per day for any offense of a continuing nature and shall be treated as an assessment
8 against the member's lot for the purposes of § 55-516. However, the total charges for any
9 offense of a continuing nature shall not be assessed for a period exceeding 90 days. After the
10 date a lawsuit is filed *in General District Court by the association to collect the charges and*
11 *correct the violation or a lawsuit is filed* challenging any such charges, no additional charges
12 shall accrue. If the court rules in favor of the association, it shall be entitled to collect such
13 charges from the date the action was filed as well as all other charges assessed pursuant to this
14 section against the lot owner prior to the action *and if the court finds the violation remains*
15 *uncorrected, the court may order the member to abate or remedy the violation in order to*
16 *comply with the association's rules and regulations or declaration.*

17 The hearing result shall be hand delivered or mailed by registered or certified mail, return
18 receipt requested, to the member at the address of record with the association within seven days
19 of the hearing.

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