Introduction

Expanded Jurisdiction of the Court of Appeals

By Marla Graff Decker, Chief Judge, Court of Appeals of Virginia

This is a historic time for the Court of Appeals and those who practice before the Court. Beginning January 1, 2022, the appellate portion of Virginia's justice system will significantly change. As the intermediate appellate court, created by statute, the Court of Appeals has been a court of limited jurisdiction since its inception. That changes in January. The General Assembly has expanded the Court’s jurisdiction and fundamentally altered appellate practice. All appeals of criminal convictions will begin in the Court of Appeals and will be appeals of right, rather than by petition. Additionally, with limited exceptions, all civil cases will be appeals of right and will originate in the Court of Appeals.

These pivotal changes will be accompanied by other important modifications, including amendments to the portion of the Rules of the Supreme Court of Virginia that govern appellate practice. Another important difference is that the number of judges on the Court has been increased from 11 to 17. The additional judges will enable the Court to better handle the anticipated substantial increase in the number of cases.

The shift from a system of criminal petitions to appeals of right, as well as the expansion from very limited civil jurisdiction to nearly full civil jurisdiction, has required many revisions to the Court's internal policies, procedures, and systems. The Court and staff have spent the past seven months preparing and making necessary adjustments to accommodate the expanded jurisdiction. The internal changes associated with the new laws range from retooling our case management system to completely redesigning how cases proceed through the Court to completion. The Court has also reworked its 2022 calendar to accommodate many more oral arguments in regions throughout the Commonwealth.

These are exciting and challenging times for the Court and those who practice before it. Although the Court’s planning has relied on several logical and data-based assumptions, we undoubtedly “don’t know what we don’t know” yet, and a variety of “unknowns” will be identified and addressed over time.

The VBA’s Appellate Practice Section has wisely chosen to use this issue of On Appeal to highlight the new legislation, which represents a sweeping, fundamental redesign of the justice system that will impact appellate practice. The best way to prepare for the associated changes is through education, training, and collaboration. This issue represents a solid starting point on the educational piece of practitioners' preparation. What is “new and different” for attorneys will also be “new and different” for the Court and staff. I am confident that together we will all learn, adapt, and continue working to ensure equal justice for all.
On March 31, 2021, Governor Northam signed legislation\(^1\) that expands the jurisdiction of the Court of Appeals of Virginia and dramatically changes the way that appeals will be handled in Virginia. This historic legislation, which takes effect on January 1, 2022, sets the stage for the most significant changes to Virginia’s legal system since the Court of Appeals was created in 1985.

For the first time in modern Virginia history, virtually every litigant will have an appeal as a matter of right. This sea change brings Virginia’s legal system in line with every other state in the nation, where appeals of right have already been the norm. More fundamentally, appeals of right will increase access to justice by ensuring that litigants have their cases decided on the merits.

Appeals of right are just one of the sweeping changes to appellate practice in Virginia that will take effect next year. The new law will also bring fresh changes to other aspects of the appellate process.

With these important changes on the horizon, we review Virginia’s current appellate court system, how and why the law is changing, and what to expect when the legislation takes effect next year.

**An Overview of Virginia’s Appellate Courts**

Until 1985, the Supreme Court of Virginia was the only appellate court in Virginia. To alleviate a backlog of cases at the Supreme Court, the General Assembly enacted legislation to create an intermediate appellate court.\(^2\) That court – the Court of Appeals of Virginia – opened its doors on January 1, 1985, as a court of limited jurisdiction.\(^3\)

The Court of Appeals has appellate jurisdiction to hear appeals of almost all criminal and traffic cases.\(^4\) There is no right of appeal in criminal cases; rather, a defendant must file a petition for appeal.\(^5\) For the narrow group of civil cases in the Court of Appeals’ jurisdictional wheelhouse – workers’ compensation, juvenile and domestic relations, and administrative agency – appeals are a matter of right.\(^6\)

In all other civil cases, the Supreme Court has appellate jurisdiction, and those appeals are initiated by petition for appeal.\(^7\) Appeals of right to the Supreme Court are available only in habeas corpus appeals, State Corporation Commission appeals, and Virginia State Bar disciplinary cases.\(^8\) The Supreme Court has appellate jurisdiction to hear appeals of decisions of the Court of Appeals, and those appeals are also brought by petition.\(^9\)

Appeals of right, then, have not been available in the majority of cases appealed in Virginia.

**A Long Road**

The idea of an appeal of right in Virginia is not a new one. In the mid-1990’s, the Virginia Bar Association issued a lengthy report recommending an appeal of right in all civil and criminal cases.\(^10\) But that idea did not gain traction until 20 years later.

In 2016, the idea of expanding the jurisdiction of the Court of Appeals to permit appeals of right began to percolate at the Boyd Graves Conference. The Conference concluded a two-year study of appeals of right, ultimately recommending that the Supreme Court examine the merits and feasibility of such a change.\(^11\)

The high court agreed, and in 2018 it appointed a “Working Group” of bar leaders and judges to explore the

\(^1\)\(^4\)\(^5\)\(^6\)\(^7\)\(^8\)\(^9\)\(^10\)\(^11\)
Appeals of Right
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idea of expanding the jurisdiction of the Court of Appeals. The Working Group issued a report embracing the idea of appeal-of-right jurisdiction in the Court of Appeals.

The General Assembly soon joined the conversation. In 2020, it passed a resolution directing the Judicial Council of Virginia to study the jurisdiction and organization of the Court of Appeals. In response, the Working Group reconvened and reaffirmed its earlier recommendation, observing that Virginia was “alone among the American states in not providing one level of appellate review as a matter of right in both civil and criminal cases.” The rationale for expanding the jurisdiction of the Court of Appeals boiled down to two compelling points: modernizing Virginia’s court system and increasing access to justice by giving every litigant a by-right appeal.

The Commonwealth, after the Judicial Council blessed the Working Group’s report, the General Assembly passed Senate Bill 1261 during the 2021 Special Session. Passage of that bill made Virginia the last state in the nation to provide a universal appeal of right.

A Bird’s Eye View of the New Appellate Process
Beginning January 1, 2022, the Court of Appeals will have jurisdiction to hear appeals in virtually all civil and criminal cases, as well as interlocutory appeals and injunction petitions.

In most civil cases, this means that parties will no longer appeal a circuit court order or judgment by filing a petition for appeal in the Supreme Court. Instead, disappointed litigants will appeal directly to the Court of Appeals. The Supreme Court will continue to consider appeals from the Court of Appeals in its discretion through the familiar petition process existing today.

In criminal cases, defendants will no longer petition for an appeal with the Court of Appeals. Their appeals will instead proceed as a matter of right. The Commonwealth, on the other hand, will still need to file a petition for appeal. For its part, the Supreme Court will continue to review decisions of the Court of Appeals in criminal cases by petition.

Under this new statutory framework, Virginia’s appellate court system will look a lot like the federal system. The Court of Appeals will become an error-correcting court and the Supreme Court will grant appeals to address matters of significant precedence, novel questions of law, and issues involving the development of the law.

Pending Appeals
What happens to pending appeals on January 1, 2022? For most, nothing will change; they will remain in the appellate court where they started and proceed under existing procedures. This includes civil appeals filed prior to January 1, which will continue in the Supreme Court.

But, for a short time, tactful civil practitioners will have some control over where to appeal final orders entered 30 days before January 1, 2022, by deciding when to note the appeal. Appeals filed before January 1 will head to the Supreme Court on a discretionary basis; those filed on or after January 1 will head to the Court of Appeals as a matter of right.

In criminal cases, though, pending petitions for appeal to the Court of Appeals will be deemed granted on (if not otherwise denied before) January 1, 2022.

The 'New' Court of Appeals of Virginia
Along with appeals of right, there are other transformative changes coming to practice in the Court of Appeals. Here are a few of the big ones.

More judges! To manage the anticipated increase in the Court of Appeals’ caseload, it will get six new judges, increasing its bench-strength from 11 to 17. In selecting new judges, the General Assembly will consider “regional diversity” to attain greater geographic representation among the judges on the Court.

On August 10, 2021, the General Assembly elected eight new judges to the Court of Appeals: Dominique A. Callins (Front Royal), Vernida R. Chaney (Alexandria), Doris Henderson Causey (Henrico), Frank K. Friedman (Roanoke), Hon. Junius P. Fulton (Norfolk), Lisa M. Lorish (Charlottesville), Hon. Daniel E. Ortiz (Fairfax), and Stuart A. Raphael (Arlington). Electing the new judges before the effective date of the appeal-of-right-process gives them adequate time to select and staff their chambers and prepare for implementation of the new procedures that will become effective next year.

Death of the appendix? The General Assembly has authorized the adoption of rules to permit “truncated record or appendix preparation” in the Court of Appeals. The changes, if any, to the appendix rule, Rule 5A:25, will become apparent when the amended appellate rules are adopted. In the meantime, many practitioners are hopeful the Court will permit parties to dispense with an appendix
entirely in appeals where there is a digital record, as the Working Group recommended. Such a change would reduce costs and streamline appeals.

More oral argument? The new law also addresses the right to oral argument in the new appeal-of-right context. Next year, the Court of Appeals may dispense with oral argument in only two situations: (1) when “the appeal is wholly without merit” or (2) when “the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed.” Under current law, the Court of Appeals may bypass oral argument through a procedure called “summary disposition” when an appeal could be decided solely on the record.

The Attorney General takes over. Criminal defense attorneys take note. Under the new legislation, responsibility to defend criminal appeals will shift to the Office of the Attorney General (“OAG”). Previously, local Commonwealth Attorneys were responsible for defending the Commonwealth’s interests at the petition stage of the appeal. Now, with the elimination of the petition process, the OAG will handle all criminal appeals filed in the Court of Appeals from the outset of the appeal. As a result, under the new law, a copy of the notice of appeal in criminal cases must be mailed or delivered to the OAG.

Death of the criminal appeal bond. In another significant development, appeal bonds will no longer be required in criminal appeals.

New Rules

This article tells just part of the story about the changes coming to Virginia’s appellate courts next year. The rest of the story will be told when we have new appellate rules (likely later this year) to fill in the procedural blanks left unanswered in the legislation. Until then, there is time to celebrate — and prepare for — the historic transformation of our appellate courts.

Endnotes

2 When the creation of an intermediate appellate court in Virginia was being debated, Virginia was the only state of its size without an intermediate appellate court. See Stephen McCullough & Marla Decker, The Court of Appeals of Virginia Celebrates Thirty Years of Service to the Commonwealth, 50 U. Rich. L. Rev. 217, 218 (2015).
5 Id.
8 Va. Code § 8.01-670 (2021); Va. Code § 17.1-406(B) (2021). Under the new law, the Supreme Court will continue to have original jurisdiction over complaints filed by the Judicial Inquiry and Review Commission; petitions for habeas corpus; Virginia State Bar disciplinary cases; and appeals from the State Corporation Commission. Va. Code § 17.1-406(B).
9 Va. Code § 17.1-411. However, the decisions of the Court of Appeals are generally final in traffic and misdemeanor cases where no incarceration is imposed, in domestic relations matters, and in cases originating before administrative agencies or the Workers’ Compensation Commission. Va. Code § 17.1-410(A) (2021). The Supreme Court may review those decisions only if it finds that the case involves a substantial constitutional question as a determinative issue or matters of significant precedential value. Va. Code § 17.1-410(B). Under the new law, these limitations on Supreme Court review are abolished. Va. Code § 17.1-410 (eff. 1/1/2022).
12 The official name of this group is the “Working Group to Study Jurisdiction of the Court of Appeals of Virginia.”
18 Va. Code § 8.01-626 (eff. 1/1/2022).

Endnotes (continued from page 4)

23 S.B. 1261 Enactment provision (3).
24 S.B. 1261 Enactment provision (4).
26 Va. Code § 17.1-400(A) (eff. 7/1/2021).
27 Id. (“The General Assembly shall consider regional diversity in making its elections.”). At the direction of the Chair of the Senate Judiciary Committee and the Chair of the House Courts Committee, the new Court of Appeals judges will also be selected based on racial and practice area diversity. See Virginia State Bar - News - VSB to Evaluate Candidates for Virginia Court of Appeals Vacancies.
28 Although Senate Bill 1261 calls for six new judges, the General Assembly also had to fill one existing vacancy (Judge Alston’s seat) and a vacancy that will occur later this year when Judge Petty retires.
29 S.B. 1261 Enactment provision (6).
33 Va. Code § 17.1-403 (2021); see also Rule 5A:28(a) (explaining that oral argument is available in appeals of right or where a petition for appeal has been granted, “except in those cases disposed of pursuant to Rule 5A:27”). The “Summary Disposition” rule, Rule 5A:27, provides that “[i]n cases in which appeal lies as a matter of right, if all the Judges of the panel of the Court of Appeals to which a pending appeal has been referred conclude from a review of the record and the briefs of the parties that the appeal is without merit, the panel shall forthwith affirm the judgment of the trial court or commission.”
34 Va. Code § 2.2-511(A) (eff. 1/1/2022). This code section also provides that “the attorney for the Commonwealth who prosecuted the underlying criminal case” may represent the Commonwealth in the appeal only “with the consent of the Attorney General.” Id.
35 Va. Code § 17.1-407(A) (eff. 1/1/2022), authorizing the Supreme Court, with input from the Court of Appeals, to “prescribe and publish” the rules of the Court of Appeals.
36 Va. Code § 8.01-676.1(A) (eff. 1/1/2022).
The Path to Appeal of Right: A Concise History of the Expanded Court of Appeals of Virginia

By Graham K. Bryant

This special issue of On Appeal features essays discussing nearly every aspect of the newly expanded Court of Appeals of Virginia. As several authors have mentioned, this landmark moment in Virginia judicial history was a long time in the making. In anticipation of the generational change in Virginia procedure, this article undertakes a brief examination of the social, legislative, and judicial history leading to the General Assembly’s passage of the jurisdiction-expansion legislation.

Envisioning a Second Virginia Appellate Court

Established in 1779 — ten years before the Supreme Court of the United States — Virginia’s original Court of Appeals was the forerunner of the modern Supreme Court of Virginia. This Court, which was variously known as the “Court of Appeals” or “Supreme Court of Appeals,” remained Virginia’s sole appellate court for over 200 years. As Virginia grew from a colony to a modern economic powerhouse, it became apparent that a single appellate court could not handle the swelling caseload.

Calls for establishment of an intermediate appellate court came from all over. In the early 1970s, a study commissioned by the General Assembly determined that the Supreme Court was “overburdened” and recommended creation of an intermediate appellate court. Then-UVA law professor Antonin Scalia reached the same conclusion. A 1979 study by the National Center for State Courts likewise recommended an intermediate appellate court.

While this idea percolated in Virginia, thinkers on the national level began emphasizing the role of initial appeals of right in an ideal appellate system. They concluded that the most beneficial appellate structure comprised an appeal of right to an intermediate appellate court followed by an optional appeal by petition to the court of last resort. Some Virginia commentators also began endorsing the idea of by-right appeal. For instance, the NCSC study recommended that Virginia adopt appeals of right to an intermediate appellate court. But the Judicial Council of Virginia in another intermediate appellate court proposal called for a more limited court with discretionary review.

A Sharply Limited Court

The narrow view espoused by the Judicial Council ultimately prevailed. After nearly two decades of debate and study, the General Assembly in 1983 passed legislation creating the Court of Appeals of Virginia effective January 1, 1985. Although the General Assembly would refine the Court’s technical aspects in subsequent years—such as adding an eleventh judge in 2000 — the politics and concerns surrounding its creation defined the Court’s narrow scope. Its jurisdiction included cases in only four areas: (1) criminal, (2) domestic relations, (3) workers’ compensation, and (4) state administrative agencies.

Perhaps unsurprisingly given this narrow jurisdiction, lobbying for expanded jurisdiction began soon after the Court of Appeals’ creation. The national consensus favoring initial appeals of right fueled this push. In 1990, the American Bar Association reiterated that the two-tiered appellate system with initial appeal of right was the gold standard because it best advanced the twin appellate purposes of error correction and law development. Three years later, the ABA’s Judicial Administration Division, including Virginia Chief Justice Harry L. Carrico, concluded that “[a] party to a proceeding heard on the record should be entitled to one appeal of right from a final judgment.” Back in the Commonwealth, The Virginia Bar Association produced a 260-page study of the Court of Appeals’ jurisdiction in 1994 recommending expansion to provide appeals of right in all civil and criminal cases.

Despite repeated calls for expanded access to appeals, the Court of Appeals’ narrow jurisdiction persisted. By 2000, Virginia, West Virginia, and New Hampshire were the
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only three states that did not offer an appeal of right from all final judgments. The other two states adopted appeals of right from all civil and criminal cases in the ensuing decade, leaving Virginia alone in the nation.

A New Push for Jurisdiction Expansion

The most recent effort to expand the Court of Appeals’ jurisdiction has its origins with the Boyd-Graves Conference. A 2016 Boyd-Graves study committee charged with considering whether all civil cases should have an appeal of right to the Court of Appeals identified strong factors on both sides of the issue. It carried the matter over to 2017 for further study. The committee’s final report was sharply split, recommending expanding jurisdiction by a 4-to-3 margin. Proponents of expansion emphasized that fundamental fairness required an automatic appeal of right, noting that the Supreme Court’s perfunctory orders refusing civil cases without any reasoning may undermine public confidence in the judiciary. Detractors argued that the significant increase in litigation costs accompanying by-right appeals could not be justified when the existing system issued prompt decisions without a backlog.

The full Boyd-Graves Conference ultimately favored a court-sanctioned study of the issue. Apparently spurred by this recommendation, Chief Justice Donald W. Lemons in 2018 convened a blue-ribbon working group to study the Court of Appeals’ jurisdiction. Chaired by Professor Kent Sinclair — University of Virginia professor emeritus, decades-long chair of the Supreme Court’s rules advisory committee, and the Court’s current Reporter of Decisions — the group devoted particular attention to whether the Court should hear appeals of right in all civil and criminal cases. After months of study, the working group endorsed the “long-term goal of an appeal of right in essentially all civil and criminal cases,” noting that by-right review is “simpler, improves access to justice, [and] better reflects the rights of criminal defendants.” The group stopped short, however, of recommending specific structural changes to enable its recommendation.

The jurisdiction-expansion movement temporarily waned in 2019 only to roar back to life when the 2020 General Assembly passed legislation asking the Judicial Council to study the Court of Appeals’ jurisdiction and structure with an eye toward providing appeals of right in all cases. It specifically asked the Judicial Council to make recommendations on adding additional judges and dividing the Court into four geographic circuits as well as to propose a budget and other necessary statutory changes. In response, the Chief Justice reconstituted the working group to face the complex structural questions now squarely presented.

Building on its earlier progress, the working group labored through the pandemic summer of 2020, poring over statistics, scholarship, and extensive public comment to produce a landmark report. Remarkably, every bar and business group to offer comments supported an appeal of right in all cases. Although opposition from the plaintiffs’ bar was widely expected — so much so that the 2018 working group report expressly anticipated that possibility — the Virginia Trial Lawyers Association endorsed jurisdiction expansion on the condition that it was accompanied by cost-saving measures and that interlocutory appeals remained limited.

The working group made four distinct recommendations:

1. Adopting appeal of right in criminal cases with further appeal by petition to the Supreme Court, with the Attorney General’s office representing the Commonwealth from the outset rather than only in granted cases;

2. Adopting appeal of right in all general civil cases with further appeal by petition to the Supreme Court;

3. Rejecting fixed geographic circuits in favor of retaining randomized judicial panels across the Commonwealth; and

4. Adopting a single standard for petitions to the Supreme Court in all cases by repealing Code § 17.1-410, which imposes a heightened threshold for granting appeals in certain subject areas.

It also recommended reforming certain aspects of appellate procedure to reduce expense. Specifically emphasized were eliminating the appendix requirement in cases with digital records and revisiting bonding and postjudgment interest requirements to disincentivize frivolous appeals.

The Judicial Council took up the working group’s September 24, 2020, report in its October 22, 2020, meeting, voting unanimously to send the recommendations to the General Assembly for consideration in the 2021 session. Although major questions lingered — How many more judges would be needed? What additional staff would be required? How much would it all cost? Who gets oral argument? — legislation to implement the proposal was being drafted in the waning weeks of 2020.
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General Assembly Passes Appeal-of-Right Legislation

The short 2021 Regular Session dawned with parallel bills pending in the House and Senate. Both bills would have implemented the Judicial Council’s proposal, but they differed in certain crucial details. For example, the House bill called for four additional judges while the Senate bill contemplated six judges.

The Senate bill appeared to have more momentum from the start. In the weeks before session began, Senator John Edwards, Chairman of the Senate Judiciary Committee, asked bar groups to begin evaluating candidates for the anticipated judgeships. A Senate committee working group polished the bill’s details, and a revised version emerged from committee in early February by an 8-to-6 vote. The full Senate passed the bill by a 21-to-18 party-line vote on February 5. Meanwhile, the House version languished in committee and expired when legislative crossover deadline passed without action.

Now before the same House committee that allowed its sister bill to expire, the Senate bill sat without action for much of February other than a clerical continuance to 2021 Special Session I. Fortunately, a burst of activity from February 20 to 25 averted any fears that jurisdiction expansion would fail with the finish line in sight. The Senate Bill passed the House committee 13 to 9, albeit with amendments reducing the number of additional judges to four and inserting a clause that would defeat the proposal unless the 2022 General Assembly reenacted the bill. The House passed the bill 54 to 45 on February 25, sending the amended legislation back to the Senate — which immediately rejected the House amendments.

With hours remaining before the special session ended — thus killing any outstanding legislation — the House and Senate formed a conference committee to hammer out their differences. The conferees worked into the last weekend of session and eventually reached a compromise: they rejected the House amendments reducing the number of judges and inserting the reenactment clause; delayed the bill’s effective date to January 1, 2022; and required a report on the Court of Appeals’ expanded workload each January for three years beginning in 2023. The House (54 to 42) and Senate (20 to 17) adopted the conference report, sending the compromise bill to the Governor’s desk on February 27, 2021.

The sole remaining hurdle was appropriations — six new judges and supporting staff, as well as dozens of additional appellate attorneys in the Attorney General’s office, required funding. The Governor’s budget had allocated approximately $5.1 million for four new Court of Appeals judges in December 2020, and the General Assembly included funding for the two additional judgeships in the Budget Conference Report. By the end of the session, the legislation was largely funded.

Conclusion

Governor Northam signed the landmark legislation into law without amendments on March 31, 2021. An exciting new chapter of Virginia’s judicial history will therefore begin on January 1, 2022. As that momentous day looms ever closer, court staff are busy making administrative preparations for the expanded Court of Appeals. Virginia’s litigators should also busy themselves preparing for how appeals of right will affect their practices. The remaining articles in this issue are a good place to start.

Endnotes

1 This article is substantially excerpted from Graham K. Bryant, Appeals of Right in Virginia: Preparing for the New Appellate Landscape, 33 J. Civ. Litig. (forthcoming fall 2021), portions of which originated as an evolving white paper discussing the jurisdiction-expansion legislation’s passage, see Graham K. Bryant, The Path to Appeal of Right: Looking Ahead to Virginia’s New Appellate Landscape (2021), https://byrnecanaanlaw.com/CAV_jurisdiction_expansion.pdf.

2 For the seminal essay reviewing the history of the Court of Appeals of Virginia, see Stephen R. McCullough & Marla Graff Decker, The Court of Appeals of Virginia Celebrates Thirty Years of
Endnotes (continued from page 8)


4 W. Hamilton Bryson, Judicial Independence in Virginia, 38 U. Rich. L. Rev. 705, 707 n.9 (2004) (noting the Court went by the “Court of Appeals” and “Supreme Court of Appeals” before Virginia’s 1971 Constitution renamed it the “Supreme Court”).


9 NCSC Final Report, supra, at 271.


11 Ch. 413, 1983 Va. Acts 520.


18 Boyd-Graves Conference, Committee Report on Appeals of Right in Civil Cases in the Court of Appeals of Virginia 5–6. (Sept. 6, 2017).

19 Id. at 5.

20 Id. at 5–6.


22 Id. at 10.


27 Id. at 2–7.

28 Id. at 7.


30 Id.


What Goes Where? Appellate Jurisdiction in 2022

By John O'Herron

Since the General Assembly expanded appellate jurisdiction in Virginia earlier this year, questions have abounded for lawyers across the Commonwealth. First among these: Which court hears appeals of disputes between jurisdictions involving a dam or water impoundment? You guessed it: the Court of Appeals. Code § 15.2-2140.

Kidding aside, the expansion of appellate jurisdiction in Virginia has rightly caused considerable discussion and anticipation within the Virginia bar. Whether it’s the updated Rules of the Supreme Court of Virginia, the procedure and practice that will now predominate appeals in the Court of Appeals, impact on the time and cost of litigation, or what remains of Supreme Court practice, few things in recent memory have caused as much change so quickly for members of the Virginia bar.

One important focus is the new path of appeals. Few things would be worse, after all, than teeing up a great appeal, preserving error, and timely noting your appeal … only to file in the wrong court.

For several decades, the general path of appeals has been relatively simple. If your case was criminal (except for death penalty cases), administrative, family law, or workers’ compensation, your appeal was filed in the Court of Appeals. And an appeal of that Court’s ruling could then be made, on a discretionary basis, to the Supreme Court of Virginia. Everything else was appealed directly — and with few exceptions, on a discretionary basis — to the Supreme Court of Virginia.

In one sense, the new reality is as simple, albeit conversely. That is, with few exceptions, an appeal now generally goes to the Court of Appeals as a matter of right.

Criminal Appeals

For the most part, criminal appeals remain in the Court of Appeals. Code § 17.1-406. Appeals in death penalty cases technically remain in the Supreme Court of Virginia, Code § 17.1-406(B), but with the abolition of the death penalty in Virginia, this aspect of criminal appellate procedure will become a historical footnote. As noted by Monica Monday in her article in this issue, the practice and procedure of criminal appeals has changed in several significant ways. But their location remains unchanged.

Civil

This is really where the action is with the 2021 amendments. While nearly every civil appeal was filed in the Supreme Court of Virginia in the Old Days™, almost every civil appeal must now first be brought in the Court of Appeals.

Code § 17.1-405 delineates the jurisdiction of the Court of Appeals. Although the statute used to specify the narrow range of cases that could be appealed there, it now casts a wide net. In addition to retaining appeals of domestic relations cases, and those from an administrative agency, state grievance procedures, and the Virginia Workers’ Compensation Commission, an “aggrieved party” may appeal to the Court of Appeals from

• “any final judgment, order or decree of a circuit court…in a civil matter” other than those that lie directly to the Supreme Court (see below);

• Any interlocutory order that is appealable (see below); and

• A final judgment involving an application for a concealed weapons permit, involuntary treatment of prisoners, or for declaratory or injunctive relief under Code § 57-2.02 (Act for religious freedom).

In addition, parties appealing circuit court rulings on a request for an injunction must now do so first in the Court of Appeals. Code § 8.01-626. Aggrieved parties may then petition the Supreme Court. Id.

Conversely, while it used to delineate the broad
categories of appeals to be filed in the Supreme Court, Code § 8.01-670 now states simply: “A party aggrieved by a final decision of the Court of Appeals may petition the Supreme Court for an appeal in accordance with § 17.1-411.” That is, a losing party at the Court of Appeals may file a petition for appeal with the Supreme Court, which retains discretionary review under that section.

Interlocutory Appeals

In 2020, interlocutory appeals changed dramatically in Virginia with the amendment of Code § 8.01-670.1. Then, the big change was broadening the permissiveness of interlocutory appeals: party agreement was no longer required, orders related to sovereign, absolute, or qualified immunity were expressly made eligible, and the Code clarified that parties could wait to bring an eligible interlocutory appeal after entry of a final order.

These provisions remain in effect (in Code § 8.01-675.5 — the old Code § 8.01-670.1 will be repealed on January 1, 2022, as part of the jurisdiction-expansion legislation), but interlocutory appeals must be prosecuted with a petition for review filed in the Court of Appeals. This includes interlocutory appeals under the Multiple Claimant Litigation Act: Code § 8.01-678.8 removed the authority of the Supreme Court of Virginia to consider interlocutory appeals of such orders, and they too must go to the Court of Appeals.

Direct Appeals to and Original Jurisdiction of the Supreme Court of Virginia

Here, the law remains the same. The Constitution of Virginia gives the Supreme Court of Virginia original jurisdiction:

in cases of habeas corpus, mandamus, and prohibition; to consider claims of actual innocence presented by convicted felons in such cases and in such manner as may be provided by the General Assembly; in matters of judicial censure, retirement, and removal [of disabled or unfit judges] under Section 10 of this article, and to answer questions of state law certified by a court of the United States or the highest appellate court of any other state.

Va. Const. art. VI, § 1. Short of future amendment, this remains true. The Supreme Court of Virginia also retains original jurisdiction over complaints filed by the Judicial Inquiry and Review Commission. Code § 17.1-406(B).

The same is true of direct appeals to the Supreme Court of Virginia because Code § 17.1-406(B) was not amended: appeals lie directly to the Supreme Court for convictions for which a sentence of death is imposed, final orders of a circuit court involving a petition for writ of habeas corpus, final orders of the State Corporation Commission, and from proceedings under Code §§ 54.1-3935 and -3937 related to attorney and law firm disciplinary proceedings.

There’s More!

Did you know a circuit court can institute proceedings in the name of the Commonwealth to show cause why mandamus should not issue against a city council or board of supervisors to repair a dilapidated courthouse? Me neither.

One of the benefits of the General Assembly scrubbing the Code to expand appellate jurisdiction in Virginia is it identified every provision permitting an appeal to the Supreme Court of Virginia. And for most, it wrote: “Supreme Court of Virginia Court of Appeals.” So, for example, an appeal of a decision that such mandamus should issue for a court in disrepair now lies to the Court of Appeals. Code § 15.2-1643.

Other less visible appeals that now must go the Court of Appeals include:

• Appeals from decisions related to boundary lines between localities, annexation of land, or corporate limits of a town, Code §§ 15.2-3104, -3217, -3221, and -3241;

• Appeals from proceedings regarding the removal of a public officer from office or a person from voter registration, Code §§ 24.2-237, -433;

• Appeals from a denial of probable cause, commitment, or conditional release related to sexually violent predators, Code § 37.2-920.

And so on. Reviewing the 2021 amendments is an illuminating exercise in seeing how many Code provisions relate to discrete appeals. In general — and excepting the situations laid out above — if an appeal formerly went to the Supreme Court of Virginia, it now goes to the Court of Appeals first.
Continued on the next page of the Federal Constitution,” leaving it to the legislature to determine whether to create “intermediate appellate courts.”

Also in 1971, University of Virginia law professor Graham Lilly and then-professor Antonin Scalia recommended the creation of a “lower appellate court” to lighten the caseload on the Supreme Court of Virginia. Ten years later, the Judicial Council recommended the creation of an intermediate appellate court, envisioning a court with discretionary review by petition for appeal “from any final judgment, conviction, order, or decree of a circuit court.”

The subsequent bill that created the Court of Appeals of Virginia was more modest in scope, however, and did not include general jurisdiction over civil appeals. It gave the Court jurisdiction over appeals of right in capital cases involving a sentence of death. Appeals in other criminal cases were by petition for appeal to the Court of Appeals. The legislature also conferred on the Court of Appeals original jurisdiction to issue writs of mandamus, prohibition, and habeas corpus in any case over which the Court would have appellate jurisdiction, and in 2004, over writs of actual innocence based on non-biological evidence.

Similarly, the Supreme Court, not the Court of Appeals, has jurisdiction over the discipline of judges in proceedings brought by the Judicial Inquiry and Review Commission.

Although the Judiciary Committee of the Virginia Bar Association in 1994 recommended expanding the Court of Appeals’ jurisdiction, it was not until 1998 that the General Assembly passed legislation creating a new appellate court with jurisdiction over a variety of matters.

The Expanded Jurisdiction of the Court of Appeals of Virginia

By Stuart A. Raphael*

When the Senate of Virginia adopted SB 1261 last February, its sponsor, Senator John Edwards, said that it “may be the most important bill we’re passing this year,” a remarkable statement in a year in which the General Assembly took up many other weighty issues. Signed by Governor Northam on March 31, 2021, SB 1261 expanded the jurisdiction of the Court of Appeals of Virginia, effective January 1, 2022, creating an appeal of right in both civil and criminal cases. Its enactment ends Virginia’s outlier status “as the only state in the Nation” without a generalized appeal of right.

Before this sea change in Virginia practice, the Court of Appeals, which began operating on January 1, 1985, exercised appellate jurisdiction in limited areas: criminal cases (except sentences of death, reviewable by direct appeal to the Supreme Court of Virginia); domestic relations cases; and appeals from the decision of an administrative agency or the Industrial Commission of Virginia (now the Virginia Workers’ Compensation Commission). Disappointed litigants seeking review of a circuit court judgment in a civil case (other than domestic-relations, agency, and workers’ compensation cases) had to petition for appeal to the Supreme Court of Virginia. And the Judicial Council reports that only “approximately one in four civil litigants ... is granted an appeal on any of the assignments of error.”

Starting January 1, 2022, litigants will now have a right to appeal to the Court of Appeals in all cases except a handful where the appeal remains to the Supreme Court. On June 17, 2021, the Advisory Committee on Rules of Court advertised proposed changes to the Rules of the Supreme Court of Virginia. The Supreme Court is expected to issue final rules this fall.

While a comprehensive treatment of SB 1261 and the proposed rule changes exceeds the scope of this article, some highlights are noted below that may be of particular interest to Virginia practitioners.

Origins

Virginia’s Constitution of 1971 established the power of the General Assembly to create courts “of appellate jurisdiction subordinate to the Supreme Court.” The structure “closely parallels that of Article III, section 1 of the Federal Constitution,” leaving it to the legislature to determine whether to create “intermediate appellate courts.”

Also in 1971, University of Virginia law professor Graham Lilly and then-professor Antonin Scalia recommended the creation of a “lower appellate court” to lighten the caseload on the Supreme Court of Virginia. Ten years later, the Judicial Council recommended the creation of an intermediate appellate court, envisioning a court with discretionary review by petition for appeal “from any final judgment, conviction, order, or decree of a circuit court.”

The subsequent bill that created the Court of Appeals of Virginia was more modest in scope, however, and did not include general jurisdiction over civil appeals. It gave the Court jurisdiction over appeals in criminal and domestic-relations cases, as well as appeals from decisions of administrative agencies and the Virginia Workers’ Compensation Commission. The Supreme Court retained jurisdiction over appeals of right in capital cases involving a sentence of death. Appeals in other criminal cases were by petition for appeal to the Court of Appeals. The legislature also conferred on the Court of Appeals original jurisdiction to issue writs of mandamus, prohibition, and habeas corpus in any case over which the Court would have appellate jurisdiction, and in 2004, over writs of actual innocence based on non-biological evidence.

Certain cases are reserved for appeal to the Supreme Court alone (and remain so after SB 1261). Appeals lie directly to the Supreme Court from a final order of a circuit court involving a habeas petition; from a final decision of the State Corporation Commission; from an order of a three-judge circuit court imposing professional discipline on an attorney; or from a judgment imposing discipline on a professional corporation or professional limited liability company for violating ethical standards. Similarly, the Supreme Court, not the Court of Appeals, has jurisdiction over the discipline of judges in proceedings brought by the Judicial Inquiry and Review Commission.

Although the Judiciary Committee of the Virginia Bar Association in 1994 recommended expanding the Court of Appeals’ jurisdiction, it was not until 1998 that the General Assembly passed legislation creating a new appellate court with jurisdiction over a variety of matters.

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Appeals’ jurisdiction to appeals of right in both civil and criminal cases, the idea did not gain immediate traction. Asked by the General Assembly to update that report, the VBA’s Judiciary Committee advised in 1997 that it believed that the jurisdictional shift would “ultimately” be necessary, but not quite yet.

The March Toward SB 1261

In 2016, the Boyd-Graves Conference tasked a committee, chaired by Monica Monday, to study whether the Court of Appeals’ jurisdiction should be expanded to encompass appeals of right in all civil cases. By a 4-3 vote, the Committee recommended expanding the jurisdiction of the Court of Appeals to include an appeal of right in both civil and criminal cases, and also recommended the formation of a legislative or judicial committee to help advance that proposal. The full Conference accepted that recommendation at its 2017 meeting. In 2018, Chief Justice Lemons established a working group to study the issue, chaired by Kent Sinclair.

The effort gained momentum in 2020, when the General Assembly adopted SJ 47, introduced by Senator Scott Surovell, requesting that the Judicial Council study the idea, elicit stakeholder comment, and evaluate the likely costs. The working group previously established by the Chief Justice issued a comprehensive report in September 2020, which the Judicial Council adopted in its December 2020 report to the General Assembly. The Council recommended that the legislature give the Court of Appeals “appeal-of-right jurisdiction in all ordinary criminal and civil cases.” That recommendation had unusually broad support. “Every bar and business group that commented favored appeal of right in civil and criminal cases.”

Major Elements of SB 1261

SB 1261, introduced in the regular session of the 2021 General Assembly, was carried over and adopted in Special Session I. The bill systematically switched the path for appeal to the Court of Appeals in statutes that previously allowed a petition for appeal to the Supreme Court, including, for example, the statutes authorizing appeals in bond-validation cases and in special-court proceedings involving disputes between local governments.

- **Criminal Appeals**
  In criminal appeals, SB 1261 eliminates the prior procedure in which, if an assignment of error were refused by a single judge, the petitioner was entitled to oral argument before a panel of three judges to show why the appeal should be granted. SB 1261 makes appeals by criminal defendants in all cases “appeals of right.” By contrast, appeals by the Commonwealth in criminal cases remain by petition for appeal in the same limited instances as before, such as where a circuit court dismisses a charge on speedy-trial or double-jeopardy grounds, or when the court suppresses evidence after finding that it resulted from an illegal search or seizure or from a violation of the privilege against self-incrimination.

- **Timing of the Opening Brief**
  SB 1261 provides that the appellant’s opening brief in a criminal appeal is due not more than 40 days after the record is filed in the Court of Appeals. The legislation is silent about the deadline for the opening brief in a civil case. But the proposed rules advertised for public comment provide for the same 40-day deadline for the opening brief in all cases, unless a “statute or order of” the Court provides for different timing. The trial court record is not typically filed in the Court of Appeals until 80 days or longer after the date of the order from which the appeal is taken. Thus, for lawyers accustomed to having 90 days from the final decision in the circuit court to file a petition for appeal in the Supreme Court, the preparation time should likely be the same or longer, although the timing will vary in individual cases according to how quickly the circuit court clerk forwards the record.

  The previous rules governing discretionary appeals to the Supreme Court of Virginia allowed a one-time “30-day extension” of the deadline to file the petition for appeal “in the discretion of the court, in order to attain the ends of justice.” Similarly, the Court of Appeals may grant an extension of time to file the opening brief “to attain the ends of justice.”

Practitioners should carefully examine the statutes governing particular proceedings. For instance, in bond-validation proceedings, the notice of appeal must be filed “within 15 days” after the final judgment in the circuit court, and the opening brief in the Court of Appeals must be filed “within 30 days” of that final judgment. Other statutes imposing unique timing requirements include the Multiple Claimant Litigation Act, the statute authorizing petitions for certified-question appeals, and the statute governing certain petitions for appeal by the Commonwealth in criminal cases. SB 1261 preserves the procedural distinction between a traditional appeal and a “petition for review” under Code...
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§ 8.01-626. Section 8.01-626 has long provided a vehicle to obtain expedited review of injunction rulings. It enables an aggrieved party to seek review in the appropriate appellate court of an order granting or refusing an injunction (or an order dissolving or refusing to enlarge an existing injunction). The statute contemplates that a single judge or justice may act on the petition, but the general practice in both appellate courts has been to assign a petition for review to a panel of three or more members of the court. A decision on a petition for review typically comes more quickly than in a traditional appeal.49

In 2020, the General Assembly created a new procedure enabling litigants to use the petition-for-review procedure to appeal an order granting or denying a plea in bar based on “sovereign, absolute, or qualified immunity” where the plea in bar, “if granted, would immunize the movant from compulsory participation in the proceeding.”50 This procedure was recommended by the Boyd-Graves Conference.51 It serves as a Virginia-law analogue to the practice in federal court allowing interlocutory appeals of orders denying qualified immunity.52 The 2020 amendment also eliminated the loophole that allowed any party to block an interlocutory appeal on a dispositive question of law that was certified for review by the trial court and accepted for review by the Supreme Court.53

SB 1261 retains both procedures but moves the prior statute (Code § 8.01-670.1) from Chapter 26 (Appeals to the Supreme Court) to Chapter 26.1 (Appeals to the Court of Appeals), renumbering it as Code § 8.01-675.5. Note that the procedure is different for the two types of appeals. A certified-question appeal under § 8.01-675.5(A) will be governed by proposed Rule 5A:12, addressing petitions for appeal.54 An appeal of an immunity or an injunction determination under § 8.01-675.5(B) will be governed by proposed Rule 5A:12A, addressing petitions for review.55

• More Judges
Anticipating the expanded caseload, SB 1261 increased the number of judges on the Court of Appeals from 11 to 17,56 causing a cascading effect on the en banc rules. En banc review may be granted when: (i) a judge dissents from a panel ruling and at least six judges (not four) vote in favor of en banc review; (ii) any judge on the panel certifies that the decision conflicts with a prior decision and five other judges (not three) concur; or (iii) a majority of the Court

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the rules; read the rules; read the rules. Read the blackline changes shown in SB 1261 (here). Read the revised rules expected from the Supreme Court this fall. And read the statutory provisions governing the particulars of your proceeding, as the applicable requirements and deadlines may be unique.

This long-awaited innovation offers the promise of an appeal right in both civil and criminal cases and the benefit to the bench and bar of more decisional law. But with the benefits of change will come some growing pains, as everyone must adjust to the differences between the old and new systems. This is an exciting time for appellate litigation in Virginia.

Endnotes

* Stuart Raphael was elected by the General Assembly on August 10, 2021, to serve as a judge on the Court of Appeals of Virginia, and he currently chairs the Advisory Committee on Rules of Court. He previously co-chaired the Issues and Appeals practice at Hunton Andrews Kurth LLP; served as the Solicitor General of Virginia from January 2014 to September 2017; and chaired the Boyd-Graves Conference in 2016 and 2017.


7 Court of Appeals Jurisdiction Study, supra note 4, at 24.


9 Proposed Amendments to Part One, Part Five and Part Five A; Addressing Court of Appeals Jurisdiction (Rule 5A:19(b)(1) (June 17, 2021), https://tinyurl.com/x2t79a4.

10 Va. Const. art. VI, § 1.


14 29 Va. B. News, supra note 13, at 13 (§ 17-116.05(a)).


16 Id., § 17-116.05(A)(1)–(3).

17 Id. § 17-116.05(A)(1).


Attachment 2, New Topic 5.


30 See Report to the Judicial Council of Virginia, supra note 28.

31 Court of Appeals Jurisdiction Study, supra note 4, at 1.

32 Id. at 4.

33 Id. at 10.


41 See Proposed Amendments to Part One, Part Five and Part Five A, supra note 9, at 55 (Rule 5A:12(a) (1)).

42 Va. Code Ann. § 8.01-671(A) (Supp. 2021); cf. Va. Sup. Ct. R. 5:5(a) (permitting up to a 30-day extension “if at least two Justices of the Supreme Court of Virginia concur in a finding that an extension for papers to be filed is warranted by a showing of good cause sufficient to excuse the delay”).


46 Va. Code Ann. § 8.01-267.8(C) (Supp. 2021) (requiring application for appeal “within ten days” after the order appealed from).


52 See Johnson v. Fankell, 520 U.S. 911, 914–23 (1997) (describing qualified-immunity appeals under the collateral-order doctrine, but holding that federal law does not require State courts to permit interlocutory appeals of orders denying qualified immunity in federal civil-rights cases).


54 See Proposed Amendments to Part One, Part Five and Part Five A, supra note 9, at 47 (Rule 5A:12(a)).

55 Id. at 50 (Rule 5A:12A).


61 See Proposed Amendments to Part One, Part Five and Part Five A, supra note 9, at 60 (Rule 5A:25(a) (1)).

62 Id. (Rule 5A:25(a)(2)).

63 Id. (Rule 5A:25(a)(2), (d)).
Impact on the Supreme Court of Virginia of the Expanded Court of Appeals

Some Possibilities to Consider

By Justice Stephen R. McCullough

The expansion of the jurisdiction of the Court of Appeals will have an obvious and significant impact on the way appeals are handled in Virginia. Nearly all appeals will now first go to the Court of Appeals of Virginia as a matter of right. This raises the question of what effect this change may have on the Supreme Court of Virginia. I offer some possibilities for the reader to consider but, alas, no certainties.

1. Will the Supreme Court of Virginia continue to devote itself to error correction, or will it focus instead on cases of significant precedential value?

Historically, the Supreme Court of Virginia has viewed its function as correcting lower court error, as well as developing and clarifying the law. Counsel petitioning the Court for a writ of error were not expected to argue (although they could and often did) that the case was one of great significance. It was sufficient to point out in the petition for appeal that the lower court erred. In contrast, the United States Supreme Court, and many state supreme courts, have made it clear that they generally are not in the business of correcting lower court error. See, e.g., S. Shapiro, K. Geller, etc., Supreme Court Practice § 5.12(c)(3), p. 5-45 (11th ed. 2019) (“[E]rror correction ... is outside the mainstream of the Court’s functions and ... not among the ‘compelling reasons’ ... that govern the grant of certiorari.”).

One significant difference between the United States Supreme Court and the Supreme Court of Virginia is the sheer volume of petitions for a writ of certiorari that the United States Supreme Court must consider. The United States Supreme Court must sort through seven or eight thousand cert. petitions each year.1 The trend over a number of years has been in the direction of fewer appeals (for nearly all appellate courts, state and federal).

Given the comparatively limited docket pressure and the existing institutional culture, it is likely that, in the near term, the Supreme Court of Virginia will continue to grant cases for the purpose of error correction. Over the longer term, however, it is possible for the Supreme Court of Virginia to evolve into a Court that, like the United States Supreme Court and some state supreme courts, devotes itself chiefly to developing and clarifying the law.

2. What impact will the transition have on domestic, administrative, and workers’ compensation cases?

Previously, Code § 17.1-410 provided that a decision of the Court of Appeals of Virginia in traffic, misdemeanor cases where no incarceration is involved, domestic, administrative agency appeals, and workers’ compensation cases was final unless the case was one involving a “substantial constitutional question” or “matters of precedential value.” As one Justice of the Supreme Court reportedly quipped, “the Court of Appeals has a right to be wrong” in such cases. That is, the Court of Appeals may have erred in applying settled principles, but because the case did not involve a substantial constitutional question or a matter of significant precedential value, the Supreme Court would refuse the appeal. These limitations could deter litigants from taking an appeal in such cases to the Supreme Court.

The legislation expanding the jurisdiction of the Court of Appeals removes these restrictions, i.e., such cases no longer need to involve a substantial constitutional question or a matter of significant precedential value. 2021 Va. Acts ch.

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489 (Spec. Sess. I). As a practical matter, few persons who have received a traffic ticket will be willing fund litigation all the way to the Supreme Court. However, it is possible that in some of the other categories, particularly domestic relations, workers’ compensation, or administrative agency appeals, lawyers will now pursue appeals more frequently to the Supreme Court of Virginia. The door has now been opened more widely.

3. Will the Supreme Court grant appeals in precedentially significant cases simply to place its stamp of approval on a Court of Appeals opinion?

The expansion of the jurisdiction of the Court of Appeals will afford that Court greater opportunities to decide cases of first impression and to make precedentially significant rulings. This raises a question concerning whether the Supreme Court will be interested in granting appeals from the Court of Appeals, even though it may be satisfied that the Court of Appeals has the right answer, for the purpose of placing its imprimatur on the result reached by the Court of Appeals. This would insulate a decision from being revised or overturned later by the Court of Appeals sitting en banc.

4. Will there be an increase in certified cases?

The Supreme Court on its own or by motion from the Court of Appeals can certify a case and thereby take the case over from the Court of Appeals. Code § 17.1-409. Such a certification transfers jurisdiction over the case to the Supreme Court “for all purposes.” There are two preconditions:

1. The case is of such imperative public importance as to justify the deviation from normal appellate practice and to require prompt decision in the Supreme Court; or

2. The docket or the status of the work of the Court of Appeals is such that the sound or expeditious administration of justice requires that jurisdiction over the case be transferred to the Supreme Court.

Currently, this device is very rarely invoked. With the expansion of the jurisdiction of the Court of Appeals, it is possible that we will see an increase in certified cases. Suppose, for example, that the Court of Appeals is confronted with a serious question about the ongoing viability of existing precedent from the Supreme Court of Virginia, perhaps because of new federal precedent or recent statutory enactments. The Court of Appeals cannot overrule precedent from a higher court. In that instance, the Court of Appeals might ask the Supreme Court to take the case to resolve the issue. Similarly, if there is a case of great significance that must be resolved quickly, the Supreme Court might reach down to take the case from the Court of Appeals to expedite its resolution.

5. Will the Supreme Court consider expanding oral argument time?

Currently, the default time allotted for oral arguments in the Supreme Court of Virginia is 15 minutes per side. By way of contrast, in the United States Supreme Court, the default oral argument time is 30 minutes per side. Presumably, the expanded Court of Appeals will resolve many of the simpler error-correction cases that now take up part of the Supreme Court’s docket. If the Supreme Court’s docket comes to chiefly consist of a smaller number of complex or precedentially significant cases, it is possible the Court will consider expanding the oral argument time to more fully explore the issues at oral argument.

Conclusion

What long term impact the expanded jurisdiction of the Court of Appeals of Virginia might have on the Supreme Court of Virginia remains unclear. Some possibilities to look for include a shift in the Supreme Court’s role away from error correction, more appeals in certain areas like workers’ compensation and family law, more cases certified from the Court of Appeals to the Supreme Court, and expanded oral argument time.

Endnotes


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