SUPREME COURT OF VIRGINIA

SUPREME COURT BUILDING
RICHMOND, VIRGINIA 23219
804-786-2251

February 19, 2014

The Honorable John S. Edwards
Chairman
Virginia Code Commission
General Assembly Building
201 North 9th Street, Second Floor
Richmond, Virginia 23219

Dear Senator Edwards:

In response to your November 8, 2012 letter, I appointed a committee to study the notice provisions in Titles 16.1, 17.1, 18.2, and 19.2 of the Code of Virginia. I am enclosing the study committee's report. The report references a Boyd Graves study of other titles of the Code. (See attachment #6.). The Court reviewed and approved the report dealing with Titles 16.1, 17.1, 18.2, and 19.2. The Court did not specifically review the Boyd Graves study and report on the other titles of the Code.

If you have any questions, please feel free to contact me.

Very truly yours,

Cynthia D. Kinser

Enclosure

c: Professor Kent Sinclair

REPORT

November 27, 2013

Hon. Cynthia D. Kinser
Chief Justice
Supreme Court of Virginia
VIA Electronic Mail

Study of Notice Provisions
Titles 16.1, 17.1, 18.2 & 19.2
Code of Virginia

Dear Chief Justice Kinser,

In response to the letter sent to you last year by Senator John Edwards, Chair of the Code Commission of Virginia (Attachment 1), you appointed a committee to report on a review of the provisions in the four Titles of the Code of Virginia listed above, looking at the diverse welter of sections containing provisions for the giving of notice, and similar events (*e.g.*, scheduling hearings), in litigations and similar proceedings. The Committee members, who have extensive civil and criminal experience, in government and private contexts, on both sides of the plaintiff/defendant, prosecution/defense aisles, are:

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Summary

Conclusions and Recommendation. The present memorandum is the report of this Committee. For the reasons explored in the **Discussion** section immediately below, the Committee recommends that the Court consider advising the Code Commission that generalized or global provisions allowing electronic and other forms of delivery of papers does not seem either needed, or safe, given the wide variety of legal contexts in which such papers are to be delivered. However, one narrow form of global cross-reference section is recommended for possible inclusion in the Code of Virginia relating specifically to use of commercial delivery services as an alternative where Code provisions call for "mail" notice (ordinary, registered or certified). No other change is recommended. For most of the contexts explored it did not appear to the Committee that the Court would want to be in the position of recommending legislation, but this one very modest proposal seemed impact-neutral, and is both safe and beneficial.

Other Study of Code Titles. In addition to contacting the Court, Senator Edwards and the Commission also asked other groups to study different titles of the Code, and in particular the Boyd Graves Conference (on which John Fletcher and Professor Sinclair both serve) was asked to appoint a study Committee to review a number of other titles: Titles 8.01, 11, 20, 25.1, 43, 50, 55, and 64.2. That study resulted in a report issued in late September of 2013, concluding that no change should be proposed in the notice provisions of any of the Titles studied by that group. Its report is discussed below, and is annexed in its entirety to the present memorandum as Attachment #6.

Present Report and Attachments. The discussion in this report is supplemented by a number of attachments:

Attachment #1 – Code Commission Letter (Senator Edwards)
Attachment #2 – Survey of Notice Mechanisms in Title 16.1 of the Code
Attachment #3 – Survey of Notice Mechanisms in Title 17.1 of the Code
Attachment #4 – Survey of Notice Mechanisms in Title 18.2 of the Code
Attachment #5 – Survey of Notice Mechanisms in Title 19.2 of the Code
Attachment #6 – Boyd Graves Report re Study of Other Titles of the Code

Committee Posture. The Committee you appointed has an excellent breadth of experience and perspectives. The Committee has not, however, performed any outreach or specialist fact-finding such as contacting specific Bar sections who practice in specialties such as juvenile or domestic relations law, or the many other interest groups who may have particular and in-depth expertise in specific kinds of litigation and proceedings. We stand ready to undertake that sort of effort in the coming year if the Court would like. However, that may be a task better suited to the work of the Legislature.

Discussion

A. Overview of the Study

The Committee initially contacted the Division of Legislative Services personnel supporting the work of the Code Commission, and learned that no roster of notice mechanics provisions in the Virginia Code exists. Further, staff reported that it was not aware of any other state that had attempted to develop an across-the-board alternative set of provisions along the lines the Code Commission identified – essentially broadening the use of commercial delivery and electronic mail mechanisms.

Thus the present Committee performed numerous electronic searches of the Code databases for the relevant titles, in an effort to capture substantially all of the sections that address these sorts of events and procedures. Key categories searched included:

Service
Notice
Delivery
Mailing
Transmission

The statutory excerpts quoted below in this report and annexed in Attachments #2 through #5, resulted from word searches performed in the electronic databases of the General Assembly and in the Lexis commercial legal research service, using the various key terms relating to these processes.

In the Title 16.1 study, Attachment #2 to this report, the statutory section quotations that were collected from visual inspection of all Code sections containing these concepts and processes are organized into the categories discovered from that study.

In displaying the results uncovered from extended study of Titles 17.1, 18.2 and 19.2, provisions are displayed in similar groupings of provisions, with the operative terms highlighted.

Inclusiveness. While the Committee took a number of steps and cross-checks in its efforts to capture the full range of notice-related provisions in these four Titles of the Code, there would likely be a few similar provisions that were not identified. However, we are confident that the study undertaken over the past year includes essentially all of such provisions and – more importantly – that any additional or obscure parallel provisions would not present any new or different sort of context from those illustrated in the many sections collected and highlighted in this report. Thus the information collected by the Committee in the past year seems fully adequate to permit an assessment of whether any legislative effort would be desirable to expand or unify the delivery and notice provisions now in the Code.

B. Serving initial process in a case or proceeding

There are no service of process sections in Titles 17.1, 18.2 and 19.2, in the sense of process asserting personal jurisdiction over a person or commencing a case.

Essentially all of the Title 16.1 sections that touch upon the concept of making initial service of process to commence a proceeding simply make reference to the one or more of the established service of process options in Chapter 8 of Title 8.01. See, e.g., § 16.1-80, § 16.1-82. A few of the Title 16.1 sections refer to Code § 16.1-264, which generally operates to identify priorities and categories of situations for invoking the various Title 8.01 service of process options (for example, when to do personal service, when to use publication, as governed in the Title 8.01 service sections). Hence, based on our review of these provisions, the Committee does not understand the Title 16.1 sections to be setting up any Title-specific service of process mechanisms.

Conclusion #1: the Committee is not aware of any regular "service of process" mechanism issues of note based on the four Titles which we have been asked to review.

C. Serving summonses.

Specifically with respect to provisions that relate to service of summonses, the general statutes on these matters applicable under Title 8.01 seem to apply by cross-reference or on their face to proceedings affected by the four Titles we were asked to study.

No Title 16.1 section was located that creates any new summons service mechanism. No summons-service provisions were found in Titles 17.1 or 18.2 either.

In Title 19.2 there are summons-service provisions in § 19.2-76, which simply cross-reference the comparable Title 8.01 mechanisms and do not create any other or different service of summons procedures. Also, § 19.2-233 states that "Sections 8.01-292 and 8.01-295 shall apply to process in criminal, as well as in civil cases; and the court may, in the same case against the same person, award at the same time, or different times, several writs of summons or capias directed to officers of different counties or cities," and that a summons "shall be served by delivering a copy thereof to the party in person . . ."

The Committee did note that § 19.2-76.2 creates mail service options for local governments in serving summonses arising from parking violations and trash ordinance violations. "First class mail" is the mechanism specified.

Conclusion #2: there are no summons-service issues in the statutes of Titles 16.1, 17.1 and 18.2 and hence no alternative mechanism issues for consideration.

Conclusion #3: with respect to Title 19.2, no summons service provisions are specified (other than cross-reference to existing Title 8.01 mechanisms) except for a single section dealing with delivery of parking and trash ordinance violation summonses, and hence, apart from that provision, there are no summons-service issues in Title 19.2.

Conclusion #4: with respect to the sole existing summons-service provision in Title 19.2, § 19.2-76.2, the "first class mail" option now on the books is the least burdensome upon on local governments, and it would seem pointless to consider making the vastly more expensive registered or certified mail, or express delivery options available for the service of parking and trash ordinance summonses. In the current state of electronic notification, it does not seem prudent to recommend adding an option for electronic "service" of such summonses. Hence no change appears to be warranted in § 19.2-76.2.

D. Delivering papers to the Sheriff.

Several Code provisions make reference to physically dropping off copies of papers for service, and do not involve any specific procedure. Hence no reform is proposed. See, e.g., § 17.1-214.

Conclusion #5: delivery of papers to the sheriff does not seem to present any legislative drafting issues in any of the four Titles under review by this Committee.

E. Serving papers in existing proceedings after initial service of process.

This focus would refer to transmitting motions, notices of hearings or other papers or applications for interim action or moving the proceeding toward disposition, including scheduling-related communications and those seeking a hearing or ruling.

The initial letter from Senator Edwards on behalf of the Code Commission (Attachment #1) focuses on whether either global or opportunistic individual expansions could be made in delivery mechanisms, and he mentions mail, commercial delivery services, and electronic delivery.

Looking at the four Titles assigned to us by the Chief Justice, based on the Code Commission's request to the Supreme Court, the sections seemed to be two categories, the second being much more important or problematic:

(1) providing notice to the clerk of court (e.g., notice of appearance and its opposite).

This seemed to be the equivalent of filing, though it was in a few places expressed as giving the clerk "notice." No "mechanism" is specified, and thus *physical personal delivery of the notice to the clerk* seemed to be the concept. See, e.g., § 16.1-88.03. The Committee noted that a provision could be crafted to say that getting items to the clerk can be done by personal delivery or commercial delivery service, or even by mail. Until e-filing is available everywhere (the pilot program in Norfolk is underway) any change authorizing electronic transmission to the clerks that way would probably not be safe to adopt. For very specific items, such as warrant-application affidavits, a specific provision exists for filing the paper electronically or by fax. See Code § 19.2-54. There are also specific provisions for delivering search warrants on internet or computer service providers, see § 19.2-56, and filing of the "return" on the warrant by various means. § 19.2-57.

Conclusion #6: no issue has arisen in our study with respect to provisions calling for "filing" of papers with the courts. The Committee is aware of the development and pilot implementation of "e-filing" systems in the Virginia courts, a separate issue that the General Assembly has been addressing in the evolving legislation in recent years to authorize and facilitate that process. E-filing is deemed outside the possible unification of notice mechanisms that the Committee was asked to examine.

Conclusion # 7: those few Code provisions speaking of giving the Clerk "notice" *could* be expanded (or treated by cross-reference to a global provision) to specifically state that notice under these specific sections may be accomplished by personal delivery, delivery by commercial service, or mail. *However* the Committee knows of no problems in practice with these few isolated references as they now stand creating any special need for

specifying the means of "notice" to the clerk under the existing Code provisions. Hence no reform is suggested.

(2) providing notice to parties (private or governmental bodies) for motions or hearings/applications in existing cases or administrative proceedings.

Existing provisions use a plethora of concepts in addressing the procedures for communicating or delivery of a paper (the Committee has set to one side all statutes merely referring to "delivery of a person [or witness or detainee] as not presenting the drafting issues the Code Commission has in mind).

NO MECHANICS for NOTICE -- *The General Assembly has provided in a number of the existing Code provisions references to providing notice in the following general terms that do not specify any implementation mechanics:*

- a person "**shall receive notification**" with no specified mechanism -- e.g., § 17.1-107, § 17.1-702, § 18.2-76, § 19.2-11.01, § 19.2-258.1

- notice must be "**provided**" with no specified mechanism -- e.g., § 17.1-331.

- "**notice**" by a court or agency is required with no specified mechanism -- e.g., § 17.1-305, § 18.2-60.3, § 18.2-271, § 18.2-308.010, § 18.2-340.20, § 19.2-130; § 19.2-159; § 19.2-163.01, § 19.2-169.3, § 19.2-182.11, § 19.2-270.4, § 19.2-270.4:1, § 19.2-368.5, § 19.2-386.29

- "**notice**" by a party is required with no specified mechanism -- e.g., § 16.1-69.11:1, § 16.1-252, § 16.1-253, § 16.1-278.18, § 18.2-502, § 18.2-510, § 19.2-168.1, § 19.2-265.01, § 19.2-364, § 19.2-368.5:2, § 19.2-386.34, § 19.2-396

- "**notice**" is to be "**received**" by a court with no specified mechanism -- e.g., § 19.2-169.3

- "**adequate notice**" or "**reasonable notice**," is to be provided to a party, with no specified mechanism -- e.g., § 18.2-258.01, § 19.2-182.3, § 19.2-182.8, § 19.2-182.9, § 19.2-304.

- "**notice forthwith**" is required with no specified mechanism -- e.g., § 18.2-271.1

- "**written notice**" or "**notice in writing**" or "**notify in writing**" required without specified mechanisms -- e.g., § 16.1-88.2, § 16.1-94.01, §

16.1-94.01, § 16.1-88.03, § 18.2-308.08, § 18.2-340.36, § 19.2-9.1; § 19.2-168, § 19.2-182.8, § 19.2-264.3:1, § 19.2-264.3:2, § 19.2-264.3:4, § 19.2-270.5, § 19.2-368.5:1, § 19.2-386.2:1

- "**written notice, or oral notice**" are alternatives to be used in certain specific situations -- e.g., § 16.1-247, § 16.1-250, § 18.2-50.2, § 18.2-119
- a paper shall be "**given**" to the Commonwealth with no specified mechanism -- e.g., § 19.2-264.3:1
- persons are to be "**informed**" with no specified mechanisms -- e.g., § 19.2-11.01
- persons "**shall be advised**" with no specified mechanisms -- e.g., § 19.2-11.01; § 19.2-299
- persons "**shall receive advance notification**" but no specified mechanisms are identified -- e.g., § 19.2-11.01

DELIVERY REQUIRED WITH NO SPECIFIED MECHANICS -- *The General Assembly has provided in a number of the existing Code provisions references to providing notice in the following general terms that do not specify any implementation mechanics for "delivery" or "transmitting" or "sending" various papers:*

- various papers or other items may be "**delivered**" or "**caused to be delivered**" with no specified mechanisms -- e.g., § 16.1-80, § 16.1-82, §16.1-95, § 16.1-103, § 16.1-121, § 16.1-256, § 16.1-256, § 16.1-339, § 16.1-342, § 16.1-352, § 17.1-322, § 17.1-323, § 19.2-45; 19.2-98; § 19.2-114; § 19.2-134; § 19.2-149, § 19.2-278
- some items are to be "**provided**" but with no specified mechanisms -- e.g., §16.1-263, § 19.2-11.01, § 19.2-169.3, § 19.2-187.1
- a report is to be "**furnished**" with no specified mechanisms -- e.g., § 19.2-299
- a report to be "**submitted in advance**" with no specified mechanisms -- e.g., § 19.2-299
- some papers shall be "**sent**" or "**forthwith sent**" with no specified mechanism -- e.g., § 17.1-918, § 18.2-56.1, § 19.2-169.3, § 19.2-182.16, § 19.2-264.3:1
- a paper is to be "**transmitted**" or "**forthwith transmitted**" or "**promptly transmitted**" with no specified mechanisms stated -- e.g., § 16.1-89, § 16.1-112, § 16.1-265, § 16.1-344, § 17.1-100, § 17.1-216, § 17.1-313, § 17.1-328, § 17.1-622, § 17.1-918, § 18.2-186.5, § 19.2-13; § 19.2-142; § 19.2-143, § 19.2-182.6, § 19.2-310, § 19.2-310.01; § 19.2-405

- an order "**shall be caused to be served**" with no specified mechanism -- e.g., § 19.2-68
- an item is to be "**forwarded forthwith**" with no specified mechanism -- e.g. § 19.2-114;

MAILING IS AN OPTION -- *The General Assembly has provided in a number of the existing Code provisions references to providing notice through one or another form of delivery by the United States Mails, prominent examples including:*

- "**mail or electronic mail**" is used to deliver certain permits -- e.g., § 18.2-308.05
- blood samples are to be "**taken or mailed**" to forensic department -- e.g., § 18.2-268.6
- item may be "**mailed or delivered**" to the clerk of court or a party -- e.g., § 16.1-89, § 16.1-106.1, § 16.1-265, § 16.1-269.1, § 16.1-302
- some notices are to be given by "**first class mail**" -- e.g., § 16.1-260, § 18.2-76, § 18.2-271.1, § 19.2-386.24
- other notices are to be "**sent, by certified mail**" -- e.g., § 18.2-118, § 18.2-200.1, § 19.2-327.11, § 19.2-386.2:1
- "**certified mail, return receipt requested**" is specified for use -- e.g., § 16.1-241
- **certified or registered mail** are specified alternatives for use -- e.g., § 16.1-277.01, § 18.2-183, § 18.2-187.1
- **mail or publication of** notice re an obscene book -- e.g., § 18.2-384.
- certain copies are to be sent **by mail or delivery** -- e.g., § 17.1-407.
- notice given "**by mail, delivery, or otherwise**" -- e.g., § 18.2-472.1
- certain process is "**forwarded by mail**" with no particular form of mail specified -- e.g., § 18.2-308.04, § 19.2-235
- a certificate may be "**mailed or delivered**" with no form of delivery specified, and no particular form of mail specified -- e.g., § 19.2-187
- a certificate may be "**mailed or forwarded**" with no form of forwarding specified and no particular form of mail specified -- e.g., § 19.2-187

- a certificate may be "**provide[d] by mail, delivery, or otherwise**" -- e.g., § 19.2-187.1, § 19.2-187.1

MISCELLANEOUS OTHER NOTICE PROVISIONS -- *The General Assembly has provided in a number of the existing Code provisions references to providing notice in the following specific forms in particularized situations:*

- certain reports may be "**forwarded by fax or electronic means**" -- e.g., § 18.2-265.10
- "**actual notice**" done "**in person or by telephone**" is required in very specific circumstances -- e.g., § 16.1-241
- **notice in writing, by telephone, or by electronic means, posting and statewide media** used re breach of personal information security -- e.g., § 18.2-186.6
- **"delivery"** of custody or detention process may be **made by fax or electronic transmission** specified -- e.g., § 16.1-340, § 16.1-340.2
- a party may "**object in writing**" with no specified mechanisms -- e.g., §19.2-187.1
- some notices are to be **published** -- e.g., § 16.1-69.9:3, § 16.1-69.10, § 16.1-94.01, § 16.1-277.01, § 17.1-507, § 17.1-511

Looking at the broad range of contexts in which these notice situations arise, the procedures appear to run the gamut from perfunctory to dispositional, sometimes with dramatic effects on the rights or liberty of a party. The situations could be characterized:

(A) "**regular**" situations (no time urgency; no fundamental rights or liberty interests to be decided in the particular motion or hearing for which notice is to be given).

(B) "**time urgent**" situations, such as when an involuntary commitment has been initiated and there are strict, short timetables by statute.

(C) **fundamental rights** will be affected by the hearing or proceeding involved, such as terminating parental rights.

(D) **criminal consequences** follow from some outcomes, such as applications involving a juvenile over 14 who could be treated as an adult for felony charges.

Of course, the "regularity" or "urgency" of a particular procedure may be in the eye of the beholder, making any effort to categorize situations into group (A) for example, as a

basis for statutory change to allow use of a wide variety of alternative mechanisms to deliver notice, difficult to implement.

Based on the spectrum just sketched, the idea that any "global" or across-the-board authorization for a roster of mechanisms to deliver notice seems unlikely to prove palatable to the Legislature, and does not respond to any specific problem arising in practice, at least so far as this Committee is aware. No basis for the Court to make a substantive recommendation has been identified by the Committee.

In its deliberations the Committee noted that among the possible "semi-global" mechanism-expansion provisions that present themselves (none of which may work, but which seem responsive to the thrust of what Senator Edwards and the Code Commission wanted to be considered) would be these alternatives:

(i) a section, possibly one in each of the Titles, or located in Title 1, that says in words or substance that *whenever notice is required in this Title and no more specific mechanism is prescribed, such notice may be completed by (1) delivery by hand, (2) delivery by commercial delivery service, or (3) dispatch by First Class mail.*

or,

(ii) a section that says, *whenever a section in this Title provides for "delivery" of an item, without more particularized instructions, that delivery may be completed by (1) personal, in-hand delivery, (2) commercial delivery service, (3) fax if the person to whom notice is to be given has identified a fax number to be used in the proceeding for delivery of papers, (4) by electronic mail if the party to whom the delivery is to be made has agreed in writing to receive delivery proceeding electronically, or (5) First Class mail.*

or,

(iii) alternatively, some sort of cross-reference to Rule 1:12 could be made for certain categories of notice situations. That Rule currently provides:

> *Rule 1:12. Service of Papers after the Initial Process*
> All pleadings, motions and other papers not required to be served otherwise and requests for subpoenas duces tecum shall be served by delivering, dispatching by commercial delivery service, transmitting by facsimile, delivering by electronic mail when Rule 1:17 so provides or when consented to in writing signed by the person to be served, or by mailing, a copy to each counsel of record on or before the day of filing.
> Subject to the provisions of Rule 1:17, service pursuant to this Rule shall be effective upon such delivery, dispatch, transmission or mailing, except that papers served by facsimile transmission completed after 5:00 p.m. shall

be deemed served on the next day that is not a Saturday, Sunday, or legal holiday. Service by electronic mail under this Rule is not effective if the party making service learns that the attempted service did not reach the person to be served.

At the foot of such pleadings and requests shall be appended either acceptance of service or a certificate of counsel that copies were served as this Rule requires, showing the date of delivery and method of service, dispatching, transmitting, or mailing. When service is made by electronic mail, a certificate of counsel that the document was served by electronic mail shall be served by mail or transmitted by facsimile to each counsel of record on or before the day of service.

We noted, however, that the first paragraph of Rule 1:12 makes service using these various service techniques effective when the material is "sent" (not when it is thereafter received by the recipient). The Rule says that service is the initial act of "delivering, dispatching by commercial delivery service, transmitting by facsimile, delivering by electronic mail when Rule 1:17 so provides or when consented to in writing signed by the person to be served, or by mailing,"

The provisions in Rule 1:12 quoted above are also linked in practice with Rule 1:7 which, in effect, takes cognizance of the fact that service of these post-service-of-process papers is effective upon dispatch, and creates extensions of time or "grace periods" extending other interested parties' time to act when delivery of a deadline-triggering paper is made by one of the various mechanisms other than in-hand delivery, adding three days if an operative paper is served by mail, and (amazingly) adding one day if the paper is served by fax, electronic delivery, or commercial delivery service:

Rule 1:7. Computation of Time

Whenever a party is required or permitted under these Rules, or by direction of the court, to do an act within a prescribed time after service of a paper upon counsel of record, three (3) days shall be added to the prescribed time when the paper is served by mail, or one (1) day shall be added to the prescribed time when the paper is served by facsimile, electronic mail or commercial delivery service. With respect to Parts Five and Five A of the Rules, this Rule applies only to the time for filing a brief in opposition.

The Committee concluded that there is serious doubt that any such grace options would be workable in the Code provisions if done by cross-reference to the Rule itself -- a Rule could not alter a statutory time period given the primacy of statutes, and the language in Code § 8.01-3 regarding the supersession of statutes over rules. And even if *a statutory version of Rule 1:7* were adopted, adding the grace periods of different amounts of days depending on the delivery mechanisms used, and applying those possible periods in

myriad non-commensurate factual and legal contexts, would present daunting issues in which, we may predict, individual contextual issues will predominate over any general goals or systemic benefits of greater uniformity, making adoption of such time-extensions impractical, to say the least.

However, without a Rule 1:7 equivalent, any statute that is revised to allow a range of delivery modalities, some of which methods are inherently "slower" in reaching the designated recipients than other methods, is going to create its own fairness issues.

Conclusion #8: in any situation where manual delivery is one option for transmitting a paper, use of mail delivery (in any form) or use of a commercial service company to achieve delivery raises fairness concerns that have caused legal systems across the United States to adopt Rules comparable to Virginia Rule 1:7, and which should give the General Assembly pause in simply adding such "slower" alternatives since the recipient gets less advance notice time when those non-instantaneous methods are used. However, adopting any system of grace periods for use of certain delivery mechanisms works adequately in all American States, but is limited to litigation contexts that are fairly circumscribed. Whether any sort of grace period statute could be safely crafted to balance the interests affected by adding alternative delivery mechanisms is a legislative judgment on which the Committee assumed that the Court would take no position.

Conclusion # 9: the identification of those situations which are "non-sensitive" or "regular" and hence are such that the full range of manual delivery, commercial delivery, electronic delivery, and mail should be available options, versus those situations where the exigencies of the situation or the particular interests and parties involved may require certain assured transmission mechanisms without alternatives, is a legislative judgment in the prerogative of the General Assembly and a matter on which the Court would express no views.

FURTHER BACKGROUND -- **Boyd Graves Committee Throws In the Towel**

The Committee received thoughts by telephone, in person, and through a written report from the Boyd Graves committee, chaired by Steve Busch, which was asked to do a similar study of several other titles of the Code, including the civil procedure provisions in Title 8.01. That committee recently concluded that it cannot identify any common issues or suggestions to support any change in the statutes.

The BG committee was asked by the Code Commission to look at a large number of Code titles on the general issues we were tasked to consider concerning the four titles identified for us. A copy of the BG written report is attached, which itself annexes a law student's compilation of notice provisions in the several titles of the Code that were assigned to the BG committee.

In the report of this Committee to the Boyd Graves Conference on October 25, 2013, several points were made:

- The BG committee learned of no current problems with the diverse provisions about various means of giving notice in the different contexts covered by these Code titles.
- The BG committee found that the existing notice procedures are not perceived as ambiguous, confusing, or unreliable.
- No support exists in the Bar for allowing initial service of process in any Virginia proceeding by any of the alternatives: commercial delivery service, mail and electronic communication. Concerns expressed relate to the need for certainty and the belief that the formality of steps used to assert valid personal jurisdiction over a defendant is an important feature.
- No across-the-board provision – allowing substitution of existing statutory notice requirements for post-service-of-process notice events with alternatives for commercial delivery, mail or e-mail, should be undertaken.
- Specific statutory amendments of individual sections in particular titles should be undertaken only if there is an identified problem, which should then be studied by subject-specific experts practicing that particular subject area of law.

At the end of the oral presentation at the Boyd Graves Conference, which reviewed the written report annexed to the present memorandum as Attachment #6, the BG Conference chair asked for a show of hands for how many of the 110 attendees (which included 12 circuit court judges and two judges from the Court of Appeals) thought that there should be any sort of unified or broad-alternative for use of commercial delivery, mail or e-mail for giving notice relating to Virginia proceedings. Not one of the judges and attorneys present raised a hand. Nor did anyone believe further study of the question was worthwhile.

In the discussions of the present Committee, it was observed that in an important sense, the conclusion for any study conducted to support consideration of these issues by

the Supreme Court of Virginia seems a fortiori from the above: *if the "law reform" focus of the Boyd Graves Conference does not generate any support for any across-the-board alternative, or for adding alternatives to existing wording of statutes, the Supreme Court of Virginia will likely not wish to be in the position of recommending over-arching modifications to the statutes.* Even in the appellate practice context, the section-by-section approach for improving any problems that may become specifically identified in the future, seems most prudent.

F. Electronic Delivery or Email

For speedy and inexpensive delivery of files e-mail and other electronic transmission systems have great potential. However, the present Committee shares the concerns that the Boyd Graves committee voiced with respect to any generalized option as of 2013 or 2014 to authorize delivery of important notice papers electronically.

While e-filing is arriving in Virginia, and will provide mechanisms for electronic delivery of papers in an electronically filed case, under procedures and safeguards set forth in Rule 1:17, and certain of the Part Three rules of procedure, that system is still in the pilot phase and will likely yield a wealth of experience on the practical issues entailed in using electronic delivery of various dispute-related documents.

Issues noted by the present Committee concern the many glitches experienced today in electronic transmission, such as e-mail and attachments to such communications. Messages that are "not delivered" or are captured or shunted to storage by "spam filters" and hence are not recognized by the recipients were discussed by our Committee. Presently evolving systems require registration or consent to receive materials electronically, and the Committee felt that developing experience gradually through observation and use of the systems going into effect appeared to be a much safer laboratory in which to investigate the mechanical headaches of delivery of papers and notices by electronic means.

Email addresses change frequently, which causes significant concerns in the delivery of legal papers. Moreover, the absence of any authoritative directory of e-mail addresses makes it very difficult to be assured of identifying the correct e-mail address in many instances.

As a result the Committee recommends that no proposal should be advanced to allow electronic delivery as any sort of regular or routinely available across-the-board alternative to presently prescribed delivery mechanisms.

Conclusion # 10: no across-the-board provision should be advanced to allow electronic delivery as any sort of regular or routinely available alternative to the presently prescribed delivery procedures.

G. One Narrow Proposal: Mail and Commercial Delivery

As noted above, a large number of sections presently on the books authorize mailing of notices and similar papers. Some of these statutes allow use of "ordinary mail" while others refer to registered or certified mail. Examples are:

ORDINARY MAIL:

Deliver of certain permits -- e.g., § 18.2-308.05
Blood samples sent to forensic department -- e.g., § 18.2-268.6
Sending to the clerk or a party -- e.g., § 16.1-89, § 16.1-106.1, § 16.1-265, § 16.1-269.1, § 16.1-302
Sending notices -- e.g., § 16.1-260, § 18.2-76, § 18.2-271.1, § 19.2-386.24
Mailing as an alternative to "delivery" -- e.g., § 17.1-407.
As alternative to "publication" re obscene books -- e.g., § 18.2-384.
Sending copies by mail as a form of "delivery" -- e.g., § 17.1-407.
Where delivery is "by mail, delivery or otherwise" -- e.g., § 18.2-472.1
Certain process is "forwarded by mail" -- e.g., § 18.2-308.04, § 19.2-235
Certificate may be "mailed or delivered" -- e.g., § 19.2-187
Certificate to be "provide[d] by mail, delivery, or otherwise" -- e.g., § 19.2-187.1

CERTIFIED OR REGISTERED MAIL:

Notices -- e.g., § 18.2-118, § 18.2-200.1, § 19.2-327.11, § 19.2-386.2:1
With return receipt requested in some cases -- e.g., § 16.1-241
As an alternative -- e.g., § 16.1-277.01, § 18.2-183, § 18.2-187.1

Experience with Commercial Carriers. The Committee is aware of no difficulties with the use of commercial delivery services, for example Federal Express or UPS, as an alternative to use of the U.S. mails in the delivery of legal papers. Lexis searches identified over 100 statutes and court rules in other states recognizing use of "commercial delivery service" as a means of sending papers. In Virginia, we noted that such service is permitted:

* in the Rules governing service of mesne papers in Virginia litigation, ordinary motion papers and the like. See Rule 1:7, quoted in full above, which has included a commercial delivery service option for over a decade without any apparent difficulties.

* in the Rules of Court regarding appellate practice
and the Clerks of both appellate courts have reported no particular difficulties with this sort of delivery mechanism.

* in the Virginia Tort Claims Act, under an amendment to Code § 8.01-195.6 enacted in 2007 to expand the mechanisms for delivery of notices of claim to the Commonwealth, and which specifically added the use of commercial delivery services as an approved means of accomplishing the delivery of notice, and which has not proven problematic in any known respect during the past six years.

* In addition to the Tort Claims Act provision just cited, statutes in Virginia authorize the sending of important papers by commercial delivery service in a variety of situations, including:

Code § 8.01-407.1 (providing information in response to certain subpoenas).
Code § 15.2-209 (lodging notices of claims against localities)
Code § 19.2-70.3 (service of subpoenas for certain electronic records)
Code § 24.1-707 (defining "mail" to include commercial delivery service for purposes of submitting absentee ballots in elections)
Code § 55-69.97:1 (use in delivery of condominium resale certificates)
Code § 55-509.6 (use in delivering property owners' association disclosure packets)
Code § 58.1-9 (provision added in 2011 to recognize commercial delivery of tax returns and payments)

Neither the Advisory Committee on Rules of Practice, serving the Judicial Council of Virginia, nor the Boyd Graves Conference has identified any difficulties with the commercial delivery service option for service of non-service-of-process papers.

In essence this Committee has concluded that – in modern experience – the competing private commercial delivery services are:

-- at least as reliable as the United States mails, and

-- provide tracking and receipting records that are capable of satisfying any proof of service or delivery standards the Virginia court system would require under the Rules of Court and under any of the four Code Titles we were asked to study.

Conclusion # 11: where the United States Mails are currently allowed as an option for service or delivery of papers it would be safe and beneficial to add an option for a party to use one of the commercial delivery services, subject to the same burdens and proof of service requirements now applicable to service or delivery in the same contexts.

Proposal. The Committee respectfully suggests that the Court consider reporting to the Code Commission that:

(1) no global change is recommended to be made with respect to electronic delivery of notices and similar documents, and

(2) across all of the subject matters reflected in the four Titles of the Code that the Court was asked to review, it appears safe and beneficial to contemplate adding a provision – to be located in each Title (or in Title 1) – that would provide in words or substance:

> Where in [specify Titles] service, delivery or transmission of any notice or paper in any proceeding is authorized to be accomplished by "mail," "ordinary mail," "registered mail," or "certified mail," service or delivery by commercial delivery service shall be deemed to be authorized by such provision. Any applicable requirements in the Code of Virginia or the Rules of the Supreme Court for proof of such service, delivery or transmission shall remain in effect when a commercial delivery service is used.

We do not here propose a definition of the term "commercial delivery service." It may be that the Legislature would prefer greater specificity. However, we note that the Virginia Rules of Court have used the term without definition for several years without difficulty, and we did not notice any definition of the term in the existing Virginia statutes cited on the preceding page where use of a "commercial delivery service" is now permitted in several contexts.

Respectfully submitted,

John Fletcher
Catherine Hill
Hon. Stephen McCullough
Kent Sinclair, Chair
David Thomas

ATTACHMENTS

Attachment #1 – Code Commission Letter (Senator Edwards)
Attachment #2 – Survey of Notice Mechanisms in Title 16.1 of the Code
Attachment #3 – Survey of Notice Mechanisms in Title 17.1 of the Code
Attachment #4 – Survey of Notice Mechanisms in Title 18.2 of the Code
Attachment #5 – Survey of Notice Mechanisms in Title 19.2 of the Code
Attachment #6 – Boyd Graves Report re Study of Other Titles of the Code

COMMONWEALTH of VIRGINIA

Senator John S. Edwards
Chairman

VIRGINIA CODE COMMISSION
General Assembly Building

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Richmond, Virginia 23219
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November 8, 2012

The Honorable Cynthia D. Kinser
Chief Justice of the Supreme Court of Virginia
100 North Ninth Street
Richmond, VA 23219-1315

Dear Chief Justice Kinser:

For the past year, the Virginia Code Commission has been studying the various ways that notice provisions are handled in the Code of Virginia. While the issue of sending notice via registered mail versus certified mail is addressed in Title 1 of the Code, a question arose as to whether or not it would be proper to send notices via commercial delivery service (such as UPS or FedEx) when the Code specifies that the notice be sent via United States Mail.

This seemingly straightforward question unexpectedly uncovered more complicated issues throughout the Code. Notice is required in many different circumstances in virtually every title of the Code of Virginia--from notices related to court proceedings to notices by government of emergency situations to notices legally required between two private parties. In addition, the Code does not currently use consistent language indicating how such notice must be provided. Finally, the question arose as to whether electronic notice, such as via electronic mail, might be appropriate in some circumstances. In order to unravel the issues and make a comprehensive recommendation, each and every notice provision in the Code of Virginia must be examined.

It became apparent that the Code Commission could neither conduct this exercise nor make sound recommendations without working closely with those who deal with the relevant Code provisions and the notices therein on a regular basis. As a result, the Code Commission respectfully requests that the Supreme Court of Virginia review the notice provisions in Titles 16.1, 17.1, 18.2, and 19.2. We would hope that such a review include consideration of when it might be appropriate for notice to be provided via United States mail, via commercial carrier, or via electronic mail and discussion and consideration of any unintended consequences of expanding notice provisions.

If you have any questions about this request or the Code Commission's work on this issue, please feel free to contact Lisa Wallmeyer, senior attorney at the Virginia Division of Legislative Services. She can be reached at (804) 786-3591 or at lwallmeyer@dls.virginia.gov.

Sincerely,

John S. Edwards

Service

Service of process is generally governed in Virginia by Code sections located in Chapter 8 of Title 8.01, between § 8.01-285 and § 8.01-327.2

Mechanisms included include

- Personal in hand service
- Leaving process with person
- "Nail & Mail" service at the abode
- Publication service
- Waiver of Service by Written Consent
- Service of subpoenas by leaving at place of work

Code sections in Title 16.1 referring to "service" of a paper most often amount to a cross-reference to the Title 8.01 service mechanisms, or through § 16.1-264, which itself cross-references the Title 8.01 mechanisms. These include:

§ 16.1-80. Service of warrant and return thereof

The officer issuing a warrant shall deliver to the officer to whom it is directed, or to the plaintiff, for service, one or more original warrants and as many copies as there are defendants upon whom it is to be served. Service of the warrant shall be made as provided in Chapter 8 (§ 8.01-285 et seq.) of Title 8.01, but the warrant must be served not less than five days before the return day. Returns shall be made on the original, or on one or more of them if there be more than one issued, and shall show when, where, how and upon whom service was made. The warrant or warrants with the returns thereon shall be delivered to the court prior to the return day thereof, but if not so delivered may, in the discretion of the judge of the court, be delivered before the court convenes on the return day.

§ 16.1-82. Service of motion; return thereon and delivery to the court; how disposed of

The plaintiff shall file with the clerk of the court an original motion for judgment and as many copies as there are defendants upon whom it is to be served, with the proper fees. The original motion and copies thereof shall then be delivered to the sheriff or other person for service. Service of such motion shall be as provided in Chapter 8 (§ 8.01-285 et seq.) of Title 8.01, but the motion must be served not less than five days before the return day.* * * *

§ 16.1-112. All papers transmitted to appellate court; further proceedings

The judge or clerk of any court from which an appeal is taken under this article shall promptly transmit to the clerk of the appellate court the original warrant or warrants or other notices or pleadings with the judgment endorsed thereon, together with all pleadings, exhibits and other papers filed in the trial of the case, the required bond, and, if applicable, the money deposited to secure such bond and the writ tax and costs paid pursuant to § 16.1-107, and the fees for service of process of the notice of appeal in the circuit court. Upon receipt of the foregoing by the clerk of the appellate court, the case shall then be docketed. When such case has been docketed, the clerk of such appellate court shall by writing to be served, as provided in §§ 8.01-288, 8.01-293, 8.01-296 and 8.01-325, or by certified mail, with certified delivery receipt requested, notify the appellee, or by regular mail to his attorney, that such an appeal has been docketed in his office; provided, that upon affidavit by the appellant or his agent in conformity with §

8.01-316 being filed with the clerk, the clerk shall post such notice at the front door of his courtroom and shall mail a copy thereof to the appellee at his last known address or place of abode or to his attorney; and he shall file a certificate of such posting and mailing with the papers in the case. No such appeal shall be heard unless it appears that the appellee or his attorney has had such notice, or that such certificate has been filed, 10 days before the date fixed for trial, or has in person or by attorney waived such notice.

§ 16.1-264. Service of summons; proof of service; penalty

A. If a party designated in subsection A of § 16.1-263 to be served with a summons can be found within the Commonwealth, the summons shall be served upon him in person or by substituted service as prescribed in subdivision 2 of § 8.01-296. * * *

If after reasonable effort a party other than the person who is the subject of the petition cannot be found or his post-office address cannot be ascertained, whether he is within or without the Commonwealth, the court may order service of the summons upon him by publication in accordance with the provisions of §§ 8.01-316 and 8.01-317.

§ 16.1-277.01. Approval of entrustment agreement * * * *

The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

4. The child's parents, guardian, legal custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. * * * The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264.

§ 16.1-278.18. Money judgments

A. Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance of any person in cases in which * * * * However, no judgment shall be entered unless the motion of a party, a probation officer, a local director of social services, or the court's own motion is duly served on the person against whom judgment is sought, in accordance with the applicable provisions of law relating to notice when proceedings are reopened. The motion shall contain a caption stating the name of the court, the title of the action, the names of all parties and the address of the party against whom judgment is sought, the amount of arrearage for which judgment is sought, and the date and time when such judgment will be sought. No support order may be retroactively modified. It may, however, be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

Notice

Note that sections using terms like "notice of appeal," "after due notice," or "notice in writing," or "has given notice pursuant to Code § X-YYY," and "after 10 days' notice" are not included in this tabulation because no mechanisms are specified in those provisions. Also omitted: statutes like Code § 16.1-263 which prescribe that a particular "notice" be included in another document, such as a summons (omitted because service mechanisms for the summons itself are separate).

NOTICE REQUIRED BIT NO SPECIFIED METHOD IS SPECIFIED

§ 16.1-69.11:1. Acting chief judge

If the chief judge of a district court is unable to perform the duties required by law, the chief judge shall notify the other judges of such district court, or if the chief judge is unable to notify the other judges, the judge longest in continuous service who is available shall provide such notice, and the judge longest in continuous service who is available shall be the acting chief judge, and perform such duties during the chief judge's absence.

§ 16.1-252. Preliminary removal order; hearing

B. Prior to the removal hearing, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is twelve years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing; (ii) * * * *

§ 16.1-253. Preliminary protective order * * * *

C. Prior to the hearing required by this section, notice of the hearing shall be given at least 24 hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is 12 years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and * * * * order.

§ 16.1-263. Summonses * * * *

B. The summons shall advise the parties of their right to counsel as provided in § 16.1-266. A copy of the petition shall accompany each summons for the initial proceedings. The summons shall include notice that in the event that the juvenile is committed to the Department or to a secure local facility, at least one parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for support and treatment of the juvenile pursuant to § 16.1-290. Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has notified the court that he no longer represents such party.

§ 16.1-278.18. Money judgments

A. * * * No support order may be retroactively modified. It may, however, be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

"WRITTEN NOTICE" TO PRIVATE PARTIES IS REQUIRED, WITHOUT MORE SPECIFICITY

§ 16.1-88.2. Evidence of medical reports or records; testimony of health care provider or custodian of records

In a civil suit tried in a general district court or appealed to the circuit court by any defendant to recover damages for personal injuries or to resolve any dispute with an insurance company or health care provider, either party may present evidence as to the extent, nature and treatment of the injury, the examination of the person so injured and the costs of such treatment and examination by a report from the treating or examining health care provider as defined in § 8.01-581.1 and the records of a hospital or similar medical facility at which the treatment or examination was performed. Such medical report shall be admitted if the party intending to present evidence by the use of a report gives the opposing party or parties a copy of the report and written notice of such intention 10 days in advance of trial and if attached to such report is a sworn statement of the treating or examining health care provider that: ****

"WRITTEN NOTICE" TO THE CLERK OF COURT OR COMMONWEALTH REQUIRED

§ 16.1-94.01. When and how payment or discharge entered on judgment

A. When payment or satisfaction of any judgment rendered in a court not of record is made, the judgment creditor shall by himself, or his agent or attorney, give written notice of such payment or satisfaction, within thirty days of receipt, to the clerk of the court in which the judgment was rendered. Such notice shall include the docket number, the names of the parties, the date and amount of the judgment, and the date of the payment or satisfaction. The clerk of the court shall then mark the judgment satisfied.

§ 16.1-133. Withdrawal of appeal ****

A person withdrawing an appeal shall give written notice of withdrawal to the court and counsel for the prosecution prior to the hearing date of the appeal. If the appeal is withdrawn more than ten days after conviction, the circuit court shall forthwith enter an order affirming the judgment of the lower court and the clerk shall tax the costs as provided by statute. ****

§ 16.1-88.03. Pleadings and other papers by certain parties not represented by attorneys

D. Parties not represented by counsel, and who have made an appearance in the case, shall promptly notify in writing the clerk of court wherein the litigation is pending, and any adverse party, of any change in the party's address necessary for accurate mailing or service of any pleadings or notices. In the absence of such notification, a mailing to or service upon a party at the most recent address contained in the court file of the case shall be deemed effective service or other notice.

ORAL OR WRITTEN NOTICE MAY BE SELECTED, NO SPECIFICS ON THE WRITTEN OPTION

§ 16.1-247. Duties of person taking child into custody

A. A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto, bring the child to the judge or intake officer of the court and the judge, intake officer or arresting officer shall, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, orally

or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis. (REPEATED IN LATER SUBSECTIONS)

§ 16.1-250. Procedure for detention hearing * * * *

C. Notice of the detention hearing or any rehearing, either oral or written, stating the time, place and purpose of the hearing shall be given to the parent, guardian, legal custodian or other person standing in loco parentis if he can be found, to the child's attorney, to the child if 12 years of age or older and to the attorney for the Commonwealth.

NOTICE MUST BE GIVEN "IN PERSON OR BY TELEPHONE"

§ 16.1-241. Jurisdiction; consent for abortion ****

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

FIRST CLASS MAIL NOTICE TO PARTIES REQUIRED

§ 16.1-260. Intake; petition; investigation * * * *

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

§ 16.1-88.03. Pleadings and other papers by certain parties not represented by attorneys

D. Parties not represented by counsel, and who have made an appearance in the case, shall promptly notify in writing the clerk of court wherein the litigation is pending, and any adverse party, of any change in the party's address necessary for accurate mailing or service of any pleadings or notices. In the absence of such notification, a mailing to or service upon a party at the most recent address contained in the court file of the case shall be deemed effective service or other notice.

"MAIL OR DELIVERY" OPTIONS PAIRED

§ 16.1-89. Subpoena duces tecum; attorney-issued subpoena duces tecum * * * *

A subpoena duces tecum may also be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena duces tecum shall be on a form approved by the Committee on District Courts, signed by the attorney as if a pleading and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney.

§ 16.1-265. Subpoena; attorney-issued subpoena * * * *

A subpoena may also be issued in a civil proceeding by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena shall be on a form approved by the Committee on District Courts, signed by the attorney as if a pleading and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule

1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney.

§ 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 years of age or older is charged with [various named felonies] * * * provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. * * *

§ 16.1-302. Dockets, indices and order books; when hearings and records private; right to public hearing; presence of juvenile in court * * * *

D. In any hearing held for the purpose of adjudicating an alleged violation of any criminal law, or law defining a traffic infraction, the juvenile or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person. The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. * * *

MAIL OR IN PERSON OPTIONS PAIRED (functionally the same as mail/delivery?)

§ 16.1-106.1. Withdrawal of appeal in civil cases

A. A party who has appealed a final judgment or order rendered by a general district court or a juvenile and domestic relations district court in a civil case may seek to withdraw that appeal at any time.

1. If the appeal has not been perfected by posting a required appeal bond or paying required costs, or within 10 days after entry of the judgment or order when no appeal bond or costs are required to perfect the appeal, the appeal may be withdrawn by filing in the district court that entered the judgment or order and serving, in person or by first-class mail, on all parties or their counsel a written notice of intent to withdraw the appeal. * * *

2. After the appeal is perfected by posting a required appeal bond or paying required costs, or after 10 days have elapsed since the entry of the judgment or order when no appeal bond or costs are required to perfect the appeal, an appealing party may request that the appeal be withdrawn by filing in the circuit court and serving, in person or by first-class mail, on all parties or their counsel a written notice of intent to withdraw the appeal.

B. Upon receipt of a notice of intent to withdraw an appeal filed in the circuit court, any party to the appeal, or the circuit court on its own motion, may give notice of a hearing, which shall be scheduled no later than the date set by the circuit court for trial of the appeal. Unless the hearing is scheduled at the time previously set for trial of the appeal, notice of the hearing shall be given, in person or by first-class mail, to all parties or their counsel, any non-party who has posted an appeal bond, and, when appropriate, the Department of Social Services, Division of Child Support Enforcement.

C. At the hearing, the circuit court shall determine whether any party objects to the proposed withdrawal. A party may object to the withdrawal of an appeal by filing in the circuit court and serving, in person or by first-class mail, on all parties or their counsel a written notice of objection to withdrawal of the appeal. If such a written objection is filed and served within a reasonable period after service of the notice of intent to withdraw the appeal, upon a showing of good cause by the party objecting to the

withdrawal of the appeal, the circuit court may decline to permit the withdrawal of the appeal. If no such written objection is timely filed, the appeal shall be deemed to be withdrawn and, subject to subsections E and F, the circuit court shall enter an order disposing of the case in accordance with the judgment or order entered in the district court.

CERTIFIED AND/OR CERTIFIED MAIL NOTICE IS REQUIRED

§ 16.1-241. Jurisdiction; consent for abortion ****

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

§ 16.1-277.01. Approval of entrustment agreement * * * *

The remaining parent's parental rights may be terminated even though that parent has not entered into an entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best interest of the child and that (i) the identity of the parent is not reasonably ascertainable; (ii) the identity and whereabouts of the parent are known or reasonably ascertainable, and the parent is personally served with notice of the termination proceeding pursuant to § 8.01-296 or 8.01-320; (iii) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings by certified or registered mail to the last known address and such parent fails to object to the proceedings within 15 days of the mailing of such notice; or * * *, and such parent fails to object to the proceedings.

PUBLICATION NOTICE IS REQUIRED

§ 16.1-69.9:3. Judicial vacancies

When a vacancy occurs in the office of any judge of any district, the vacancy shall not be filled until, after investigation, the Committee on District Courts certifies that the filling of the vacancy is necessary. The Committee shall publish notice of such certification in a publication of general circulation among attorneys licensed to practice in the Commonwealth. No notice of retirement submitted under § 51.1-305 or § 51.1-307 shall be revoked after certification of the vacancy by the Committee.

§ 16.1-69.10. Number of judges * * * *

(d) If the Committee [on District Courts] recommends the creation of an additional judgeship in any district, it shall publish notice of such recommendation in a publication of general circulation among attorneys licensed to practice in the Commonwealth.

§ 16.1-94.01. When and how payment or discharge entered on judgment

B. If the judgment creditor fails to comply with subsection A, the judgment debtor, his heirs or personal representatives, may, on motion, after ten days' notice thereof to the judgment creditor, or his assignee, his personal representative, or his agent or attorney, apply to the court in which the judgment was rendered to have the judgment marked satisfied. Upon proof that the judgment has been paid, discharged or otherwise satisfied, the clerk shall mark the judgment satisfied. If the judgment creditor or his legal representatives cannot be reasonably located, the notice may be published and posted as an order of publication is required to be published and posted under §§ 8.01-316 and 8.01-317.

§ 16.1-277.01. Approval of entrustment agreement * * * *

The remaining parent's parental rights may be terminated even though that parent has not entered into an entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best interest of the child and that * * * (iv) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings through an order of publication pursuant to §§ 8.01-316 and 8.01-317, and such parent fails to object to the proceedings.

REQUIRED FORM OF NOTICE MUST ACCOMPANY PROCESS SERVED UNDER REGULAR SERVICE STATUTES

§ 16.1-88. Procedure when plaintiff sues on sworn claim

If a civil action in a general district court is upon a contract, express or implied, for the payment of money, or unlawful detainer pursuant to § 55-225 or § 55-248.31 for the payment of money or possession of the premises, or both, or is brought by the Commonwealth or any political subdivision or agency thereof for the collection of taxes or to enforce any other obligation for the payment of money, an affidavit and a copy of the account if there be one and, in actions pursuant to § 55-225 or § 55-248.31, proof of required notice may be made and served on the defendant in accordance with § 8.01-296 with the warrant or motion for judgment as provided in § 8.01-28 for actions at law, whereupon the provisions of § 8.01-28 shall be applicable to the further proceedings therein. The affidavit and the account if there is one and proof of appropriate notice may be attached to the warrant or motion, in which event the combined papers shall be served as a single paper.

Delivery

Several Code sections in each title of the Code of Virginia refer to "delivery" of something, possibly a paper notice or pleading or form. Delivery implies physically presenting it to the recipient, See Black's Law Dictionary.

Sections referring solely to delivery of a detainee are omitted.

Title 16.1 sections making opaque references to "delivery" of an item include:

DELIVERY APPARENTLY MEANING PERSONALLY PRESENTING IT TO THE RECIPIENT

§ 16.1-80. Service of warrant and return thereof

The officer issuing a warrant shall deliver to the officer to whom it is directed, or to the plaintiff, for service, one or more original warrants and as many copies as there are defendants upon whom it is to be served. Service of the warrant shall be made as provided in Chapter 8 (§ 8.01-285 et seq.) of Title 8.01, but the warrant must be served not less than five days before the return day. Returns shall be made on the original, or on one or more of them if there be more than one issued, and shall show when, where, how and upon whom service was made. The warrant or warrants with the returns thereon shall be delivered to the court prior to the return day thereof, but if not so delivered may, in the discretion of the judge of the court, be delivered before the court convenes on the return day.

§ 16.1-82. Service of motion; return thereon and delivery to the court; how disposed of

The plaintiff shall file with the clerk of the court an original motion for judgment and as many copies as there are defendants upon whom it is to be served, with the proper fees. The original motion and copies thereof shall then be delivered to the sheriff or other person for service. Service of such motion shall be as provided in Chapter 8 (§ 8.01-285 et seq.) of Title 8.01, but the motion must be served not less than five days before the return day.* * * *

§ 16.1-95. Abstract of judgment

At any time while the papers in any case in which a judgment has been rendered by a general district court are retained by the court, the judge or clerk of the court shall certify and deliver an abstract of the judgment to any person interested therein. * * * *

§ 16.1-103. Proceedings by interrogatories

Whenever a fieri facias has been issued upon a judgment rendered in a general district court the judge or clerk of the court may issue the summons provided for in § 8.01-506. * * * All interrogatories, answers, reports and other proceedings under such summons, and also all money, evidences of indebtedness and other security in the hands of an officer which are directed by any section of Chapter 18 (§ 8.01-466 et seq.) of Title 8.01 to be returned or delivered to such court or judge, or to the clerk's office of such court, shall, when the summons was issued by a judge of a general district court be returned or delivered in like manner to the court from which the summons issued.

§ 16.1-121. Order after hearing

After hearing the parties or such of them as may attend after being summoned, and such witnesses as may be introduced by either party, the judge shall order the officer, or the possessor of any money or other personal estate, to deliver the same to the claimant, if he be of opinion that the same belongs to the claimant; but if he be of opinion that the property, money or other personal estate, or any part thereof, belongs to the person against whom the execution or warrant of distress issued, he shall order the officer who levied on the same to sell the property so liable, to satisfy the execution or warrant of distress; or when there is money or other personal estate in the possession of a bailee or garnishee, he shall order the bailee or garnishee, as the case may be, to make delivery to the execution creditor of all such money or other personal estate so found to belong to the execution debtor, or so much thereof as may be necessary to satisfy the execution; and he may give such judgment respecting the property, the expense of keeping it, any injury done by it, and for the costs, as may be just and equitable among the parties.

§ 16.1-256. Limitations as to issuance of warrants for juveniles; detention orders

No warrant of arrest shall be issued for any juvenile by a magistrate, except as follows: * * * *

Warrants issued pursuant to this section shall be delivered forthwith to the juvenile court.

§ 16.1-278.18. Money judgments * * * *

B. The judge or clerk of the court shall, upon written request of the obligee under a judgment entered pursuant to this section, certify and deliver an abstract of that judgment to the obligee or Department of Social Services, who may deliver the abstract to the clerk of the circuit court having jurisdiction over appeals from juvenile and domestic relations district court. The clerk shall issue executions of the judgment.

C. If the judgment amount does not exceed the jurisdictional limits of subdivision (1) of § 16.1-77, exclusive of interest and any attorneys' fees, an abstract of any such judgment entered pursuant to this section may be delivered to the clerk of the general district court of the same judicial district. The clerk shall issue executions upon the judgment.

§ 16.1-339. Parental admission of an objecting minor 14 years of age or older

C. Upon admission of a minor under this section, the facility shall file a petition for judicial approval no sooner than 24 hours and no later than 96 hours after admission with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. To the extent available, the petition shall contain the information required by § 16.1-339.1. A copy of this petition shall be delivered to the minor's consenting parent.

§ 16.1-342. Involuntary commitment; clinical evaluation

A. Upon the filing of a petition for involuntary commitment, the juvenile and domestic relations district court shall direct the community services board serving the area in which the minor is located to arrange for an evaluation by a qualified evaluator, * * * The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of treatment or education of the minor.

§ 16.1-352. Written designation of a standby guardian by a parent; commencement of authority; court approval required

A. A parent may execute a written designation of a standby guardian at any time. * * * The signed designation shall be delivered to the standby guardian and any alternate named as soon as practicable.

B. Following such delivery of the designation, the authority of a standby guardian to act for a qualified parent shall commence * * *

DELIVERY DEFINED AS BEING BY ELECTRONIC DELIVERY OR BY FAX

§ 16.1-340. Emergency custody; issuance and execution of order * * * *

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. * * * * Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

§ 16.1-340.2. Transportation of minor in the temporary detention process

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. * * * * Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transmission

§ 16.1-89. Subpoena duces tecum; attorney-issued subpoena duces tecum
A subpoena duces tecum may also be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. * * * A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of evidence is desired. When an attorney-at-law transmits one or more subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply.

§ 16.1-112. All papers transmitted to appellate court; further proceedings
The judge or clerk of any court from which an appeal is taken under this article shall promptly transmit to the clerk of the appellate court the original warrant or warrants or other notices or pleadings with the judgment endorsed thereon, together with all pleadings, exhibits and other papers filed in the trial of the case, the required bond, and, if applicable, the money deposited to secure such bond and the writ tax and costs paid pursuant to § 16.1-107, and the fees for service of process of the notice of appeal in the circuit court. Upon receipt of the foregoing by the clerk of the appellate court, the case shall then be docketed.

§ 16.1-265. Subpoena; attorney-issued subpoena * * * *
When an attorney-at-law transmits one or more subpoenas or subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply. * * *

§ 16.1-344. Involuntary commitment; hearing * * * *
C. * * * *When a community services board attends the hearing on behalf of the community services board serving the area where the minor resides, the attending community services board shall inform the community services board serving the area where the minor resides of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board serving the area where the minor resides. * * * *

Title 17.1

§ 17.1-100. Judicial performance evaluation program

The Supreme Court, by rule, shall establish and maintain a judicial performance evaluation program that will provide a self-improvement mechanism for judges and a source of information for the reelection process. By September 1 of each year, the Supreme Court, or its designee, shall transmit a report of the evaluation in the final year of the term of each justice and judge whose term expires during the next session of the General Assembly to the Chairmen of the House and Senate Committees for Courts of Justice.

§ 17.1-107. Designation of judge to assist regular judge holding case under advisement for unreasonable length of time

* * * In any civil case in which a judge holds any cause under advisement for more than 90 days after final submission, fails to report as required by this section, or fails to render a decision within the expected time stated in the report, any party or their counsel may notify the Chief Justice of the Supreme Court. * * *

§ 17.1-214. Clerk to deliver or send process to sheriff

The clerk of the circuit court from whose office may be issued any process, original, mesne or final, or any order or decree to be served on any person, shall, unless the party interested, or his attorney, direct otherwise, deliver the same to the sheriff of the county or city for which the court is held, if it is to be executed therein, and if it is to be executed in any other county or city, shall enclose the same to the sheriff thereof, properly addressed, put it in the post office and pay the postage thereon.

§ 17.1-216. Handling fee for service of process

The fee for serving such process, order or decree may be delivered to the clerk, who shall transmit it with the papers to be served to the sheriff and the fee paid shall be taxed by the clerk as a part of the costs of the proceeding.

§ 17.1-305. Special sessions [Supreme Court]

The Supreme Court by an order entered of record, may direct a special session to be held at such time as it may deem proper.

A special session may also be held, by order of the Chief Justice in vacation, on the written request of the Governor to him, or whenever it is proper in the opinion of the Chief Justice. The time of holding the special session shall be designated in the order, which shall be directed to the clerk, who shall enter it in his record book and give notice thereof to each justice of the Court.

§ 17.1-313. Review of death sentence * * * *

B. The proceeding in the circuit court shall be transcribed as expeditiously as practicable, and the transcript filed forthwith upon transcription with the clerk of the circuit court, who shall, within ten days after receipt of the transcript, compile the record as provided in Rule 5:14 and transmit it to the Supreme Court.

§ 17.1-322. Duties

The Reporter shall prepare and deliver from time to time to such printer as the Comptroller may direct manuscript reports of such decisions of the Court as the judges thereof shall direct * * *

§ 17.1-323. Clerk to deliver opinions to Reporter

In those cases which the Reporter is directed to report, copies of the reasons stated in writing, under Section 6 of Article VI of the Constitution of Virginia, shall be delivered by the clerk of the Court to the Reporter.

§ 17.1-328. Fees charged and collected by Clerk of Supreme Court * * * *

B. The tribunal wherein a motion to associate counsel pro hac vice and an application of an out-of-state lawyer are filed shall collect the fee specified in Rule 1A:4 of the Rules of the Supreme Court and transmit such fee to the Clerk of the Supreme Court, who shall deposit such fee in the Pro Hac Vice Fund established pursuant to § 17.1-205.

§ 17.1-331. Notice [of judicial emergency by Supreme Court]

Any order declaring a judicial emergency shall be recorded in the order book maintained by the clerk of the Supreme Court, and notice shall be provided to the clerk of the Court of Appeals and all judges and clerks of the courts within any affected circuit or district. Notice to the public shall be given by any means reasonably calculated to inform interested persons and may, without limitation, include publication in a newspaper of local or state-wide distribution, posting of written notices at courthouses and other public facilities, and announcements on television, radio, and the Internet.

§ 17.1-407. Procedures on appeal [Court of Appeals]

A. The notice of appeal in all cases within the jurisdiction of the court shall be filed with the clerk of the trial court or the clerk of the Virginia Workers' Compensation Commission, as appropriate, and a copy of such notice shall be mailed or delivered to all opposing counsel and parties not represented by counsel, and to the clerk of the Court of Appeals. The clerk shall endorse thereon the day and year he received it.

§ 17.1-507. Number of judges; residence requirement; compensation; powers; etc * * * *

C. If the Judicial Council finds the need for an additional circuit court judge after a study is made pursuant to subsection B, the study shall be made available to the Compensation Board and the Courts of Justice Committees of the House of Delegates and Senate and Council shall publish notice of such finding in a publication of general circulation among attorneys licensed to practice in the Commonwealth. * * * *

§ 17.1-511. Investigation and certification of necessity before vacancies filled

When a vacancy occurs in the office of judge of any court of record, the vacancy shall not be filled until, after investigation, the Supreme Court certifies that the filling of the vacancy is or is not necessary. If the Court certifies that the filling of the vacancy is necessary, the Court shall publish notice of such certification in a publication of general circulation among attorneys licensed to practice in the Commonwealth. * * * *

§ 17.1-622. Clerk to transmit orders making allowances to Supreme Court, treasurer and jurors

Such clerk shall immediately, after the adjournment of the court, transmit to the Supreme Court a list of all orders under § 17.1-621 making allowances against the Commonwealth, and to the treasurer of the political subdivision a list of all such orders making allowances against the political subdivision, with a certificate to the correctness of the list and the aggregate amount thereof annexed thereto and signed by the judge of the court and himself, and such clerk shall also deliver to each juror copies of any orders making an allowance to him, whether the same be payable by the Commonwealth or by the political subdivision.

§ 17.1-702. Meetings of Council and committees [Judicial Council of Va.]

The Chief Justice, or, in case of his inability to do so, one of the other justices of the Supreme Court, shall summon the Council to meet at Richmond during the month of October in each year, and at such other times and places as the Chief Justice, or such other justice, may designate. If any member, when so summoned, shall for any cause be unable to attend, he shall promptly notify the justice who issued the summons, of such fact, and such justice shall thereupon summon some other person possessing similar qualifications to attend and act in his stead.

§ 17.1-918. Transmission of certain information to Virginia State Bar, House and Senate Committees for Courts of Justice, and other members of the General Assembly

A. The Judicial Inquiry and Review Commission shall transmit to the appropriate District Committee of the Virginia State Bar any complaint or evidence that may come to its attention with reference to the alleged misconduct of a judge, substitute judge or pro tempore judge which relates to his private practice of law.

B. The Commission shall also transmit any evidence that it has in its possession with reference to the alleged misconduct of any judge whose election is to be considered at the next session of the General Assembly to (i) the House and Senate Committees for Courts of Justice and (ii) any member of the General Assembly, upon request. * * * A copy of any evidence in whatever form so transmitted shall be sent to the judge in question. Any such evidence transmitted to the House and Senate Committees for Courts of Justice or to any member of the General Assembly shall lose its confidential character.

Title 18.2

§ 18.2-50.2. Emergency control of telephone service in hostage or barricaded person situation * * * *

E. The supervising law-enforcement officer may give an order under subsection C only after that supervising law-enforcement officer has given or attempted to give written notification or oral notification of the hostage or barricade situation to the telephone company providing service to the area in which it is occurring. If an order is given on the basis of an oral notice, the oral notice shall be followed by a written confirmation of that notice within forty-eight hours of the order.

§ 18.2-56.1. Reckless handling of firearms; reckless handling while hunting

C. Upon a [hunting license] revocation pursuant to subsection B hereof, the clerk of the court in which the case is tried pursuant to this section shall forthwith send to the Department of Game and Inland Fisheries (i) such person's revoked hunting or trapping license or notice that such person's privilege to hunt or trap while in possession of a firearm has been revoked and (ii) a notice of the length of revocation imposed. * * * *

§ 18.2-60.3. Stalking; penalty

F. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least 15 days prior to release of a person sentenced to a term of incarceration of more than 30 days or, if the person was sentenced to a term of incarceration of at least 48 hours but no more than 30 days, 24 hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

§ 18.2-76. Informed written consent required; civil penalty

D. For purposes of this section:

"Informed written consent" means * * * *

5. An offer to review the printed materials described in subsection F. If the woman chooses to review such materials, they shall be provided to her in a respectful and understandable manner, without prejudice and intended to give the woman the opportunity to make an informed choice and shall be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by first-class mail or, if the woman requests, by certified mail, restricted delivery. * * * *

§ 18.2-118. Fraudulent conversion or removal of leased personal property

* * * * B. The fact that such person signs the lease or rental agreement with a name other than his own, or fails to return such property to the lessor thereof within 30 days after the giving of written notice to such person that the lease or rental period for such property has expired, shall be prima facie evidence of intent to defraud. For purposes of this section, notice mailed by certified

mail and addressed to such person at the address of the lessee stated in the lease, shall be sufficient giving of written notice under this section.

§ 18.2-119. Trespass after having been forbidden to do so; penalties

If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian, or the agent of any such person * * * he shall be guilty of a Class 1 misdemeanor.

§ 18.2-183. Issuance of bad check prima facie evidence of intent and knowledge; notice by certified or registered mail

In any prosecution or action under the preceding sections, the making or drawing or uttering or delivery of a check, draft, or order, payment of which is refused by the drawee because of lack of funds or credit shall be prima facie evidence of intent to defraud or of knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company or other depository unless such maker or drawer, or someone for him, shall have paid the holder thereof the amount due thereon, together with interest, and protest fees (if any), within five days after receiving written notice that such check, draft, or order has not been paid to the holder thereof. Notice mailed by certified or registered mail, evidenced by return receipt, to the last known address of the maker or drawer shall be deemed sufficient and equivalent to notice having been received by the maker or drawer.

If such check, draft or order shows on its face a printed or written address, home, office, or otherwise, of the maker or drawer, then the foregoing notice, when sent by certified or registered mail to such address, with or without return receipt requested, shall be deemed sufficient and equivalent to notice having been received by the maker or drawer, whether such notice shall be returned undelivered or not. * * * *

§ 18.2-186.5. Expungement of false identity information from police and court records; Identity Theft Passport * * * *

When the Office of the Attorney General issues an Identity Theft Passport, it shall transmit a record of the issuance of the passport to the Department of Motor Vehicles. * * * *

§ 18.2-186.6. Breach of personal information notification

"Notice" means:

1. Written notice to the last known postal address in the records of the individual or entity;

2. Telephone notice;

3. Electronic notice; or

4. Substitute notice, if the individual or the entity required to provide notice demonstrates that the cost of providing notice will exceed $ 50,000, the affected class of Virginia residents to be notified exceeds 100,000 residents, or the individual or the entity does not have sufficient contact information or consent to provide notice as described in subdivisions 1, 2, or 3 of this definition. Substitute notice consists of all of the following:

a. E-mail notice if the individual or the entity has e-mail addresses for the members of the affected class of residents;

b. Conspicuous posting of the notice on the website of the individual or the entity if the individual or the entity maintains a website; and

c. Notice to major statewide media.

Notice required by this section shall not be considered a debt communication as defined by the Fair Debt Collection Practices Act in 15 U.S.C. § 1692a.

§ 18.2-187.1. Obtaining or attempting to obtain oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service without payment; penalty; civil liability

A. It shall be unlawful for any person knowingly, with the intent to defraud, to obtain or attempt to obtain, for himself or for another, oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service by the use of any false information, or in any case where such service has been disconnected by the supplier and notice of disconnection has been given. * * * *

C. The word "notice" as used in subsection A shall be notice given in writing to the person to whom the service was assigned. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last known address, requiring delivery to the addressee only with return receipt requested, and the actual signing of the receipt for such mail by the addressee, shall be prima facie evidence that such notice was duly received.

§ 18.2-200.1. Failure to perform promise for construction, etc., in return for advances

If any person obtain from another an advance of money, merchandise or other thing, of value, with fraudulent intent, upon a promise to perform construction, removal, repair or improvement of any building or structure permanently annexed to real property, or any other improvements to such real property, including horticulture, nursery or forest products, and fail or refuse to perform such promise, and also fail to substantially make good such advance, he shall be deemed guilty of the larceny of such money, merchandise or other thing if he fails to return such advance within fifteen days of a request to do so sent by certified mail, return receipt requested, to his last known address or to the address listed in the contract.

§ 18.2-258.01. Enjoining nuisances involving illegal drug transactions

The attorney for the Commonwealth, or any citizen of the county, city, or town, where such a nuisance as is described in § 18.2-258 exists, may, in addition to the remedies given in and punishment imposed by this chapter, maintain a suit in equity in the name of the Commonwealth to enjoin the same; provided, however, the attorney for the Commonwealth shall not be required to prosecute any suit brought by a citizen under this section. In every case where the bill charges, on the knowledge or belief of complainant, and is sworn to by two witnesses, that a nuisance exists as described in § 18.2-258, a temporary injunction may be granted as soon as the bill is presented to the court provided reasonable notice has been given.

§ 18.2-265.10. Exemption from participation in electronic system; req't to maintain log

Any pharmacy or retail distributor that has been granted an exemption from participation in the system pursuant to subsection B of § 18.2-265.8 shall forward to the Department every seven days by fax or electronic means a legible copy of the log required by § 18.2-265.7.

§ 18.2-268.6. Transmission of blood samples

The blood sample withdrawn pursuant to § 18.2-268.5 shall be placed in vials provided or approved by the Department of Forensic Science. The vials shall be sealed by the person taking the sample or at his direction. * * * * The arresting or accompanying officer shall take possession of the container as soon as the vials are placed in the container and sealed, and shall promptly transport or mail the container to the Department.

§ 18.2-271. Forfeiture of driver's license for driving while intoxicated

* * * * C. * * * The court trying such case shall order the surrender of the person's driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked indefinitely and that the penalty for violating that revocation is as set out in § 46.2-391.

§ 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person convicted under law of another state

F. * * * Revocation proceedings shall be commenced by notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall be made by first-class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than 10 days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent forthwith to the Commissioner of the Department of Motor Vehicles.

§ 18.2-308.04. Processing of the application and issuance of a concealed handgun permit

C. The court shall issue the permit via United States mail and notify the State Police of the issuance of the permit within 45 days of receipt of the completed application unless it is determined that the applicant is disqualified. * * * *

§ 18.2-308.05. Issuance of a de facto permit

If the court has not issued the permit or determined that the applicant is disqualified within 45 days of the date of receipt noted on the application, the clerk shall certify on the application that the 45-day period has expired, and mail or send via electronic mail a copy of the certified application to the applicant within five business days of the expiration of the 45-day period. The certified application shall serve as a de facto permit,* * *

§ 18.2-308.08. Denial of a concealed handgun permit; appeal

* * * . Any order denying issuance of a concealed handgun permit shall state the basis for the denial of the permit, including, if applicable, any reason under § 18.2-308.09 that is the basis of the denial, and the clerk shall provide notice, in writing, upon denial of the application, of the applicant's right to an ore tenus hearing and the requirements for perfecting an appeal of such order.

§ 18.2-308.010. Renewal of concealed handgun permit

A. 1. * * * Persons who previously have been issued a concealed handgun permit pursuant to this article shall not be required to appear in person to apply for a new five-year permit pursuant to this section, and the application for the new permit may be submitted via the United States mail.

The circuit court that receives the application shall promptly notify an applicant if the application is incomplete or if the fee submitted for the permit pursuant to § 18.2-308.03 is incorrect.

§ 18.2-340.20. Denial, suspension or revocation of permit; hearings and appeals

B. Except as provided in §§ 18.2-340.25, 18.2-340.30 and 18.2-340.36, no permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for the hearing.

§ 18.2-340.36. Suspension of permit

A. When any officer charged with the enforcement of the charitable gaming laws of the Commonwealth has reasonable cause to believe that the conduct of charitable gaming is being conducted by an organization in violation of this article * * * If the judge, magistrate, or person to whom such application is presented is satisfied that probable cause exists to suspend the permit, he shall suspend the permit. Immediately upon such suspension, the officer shall notify the organization in writing of such suspension.

B. Written notice specifying the particular basis for the immediate suspension shall be provided by the officer to the organization within one business day of the suspension and a hearing held thereon by the Department or its designated hearing officer within 10 days of the suspension unless the organization consents to a later date. * * *

§ 18.2-384. Proceeding against book alleged to be obscene

(3) * * * If the court * * * find probable cause to believe the book obscene, the judge thereof shall issue an order to show cause why the book should not be adjudicated obscene.

(4) The order to show cause shall be: * * * *

(c) If their names and addresses are known, served by registered mail upon the author, publisher, and all other persons interested in the sale or commercial distribution of the book; and

(d) Returnable twenty-one days after its service by registered mail or the commencement of its publication, whichever is later.

(5) When an order to show cause is issued pursuant to this article, and upon four days' notice to be given to the persons and in the manner prescribed by the court, the court may issue a temporary restraining order against the sale or distribution of the book alleged to be obscene.

§ 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima facie evidence

G. If the attorney for the Commonwealth intends to offer the affidavit into evidence in lieu of testimony at a trial or hearing, other than a preliminary hearing, he shall:

1. Provide by mail, delivery, or otherwise, a copy of the affidavit to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, no later than 28 days prior to the hearing or trial; * * * *

* * * *

J. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness of the receipt of notice required by subsection G shall be made before hearing or trial upon his receipt of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with the time requirements of this section shall constitute prima facie evidence that the notice was timely received by the accused. If the court finds upon the accused's

objection made pursuant to this subsection, that he did not receive timely notice pursuant to subsection G, the accused's objection shall not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be ordered if requested by either party. Any continuance ordered pursuant to this subsection shall be subject to the time limitations set forth in subsection I.

§ 18.2-502. Medical referral for profit

(b) Whenever there is a violation of this section, in addition to the criminal sanctions, an application may be made by the Attorney General to the circuit court of the city or county in which the offense occurred, to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation.

§ 18.2-510. Burial or cremation of animals or fowls which have died

When the owner of any animal or grown fowl which has died knows of such death, such owner shall forthwith have its body cremated or buried or request such service from an officer or other person designated for the purpose. If the owner fails to do so, any judge of a general district court, after notice to the owner if he can be ascertained, shall cause any such dead animal or fowl to be cremated or buried * * *

TITLE 19.2

Omiting "notice of appeal," "without notice," references to "services rendered," "delivery of the person" and the like, the Title 19.2 entries relevant to our study appear to fall into these categories:

§ 19.2-9.1. Written notice required for complaining witness who is requested to take polygraph test

A. For offenses not specified in subsection B, if a complaining witness is requested to submit to a polygraph examination during the course of a criminal investigation, such witness shall be informed in writing prior to the examination that (i) the examination is voluntary, (ii) the results thereof are inadmissible as evidence and (iii) the agreement of the complaining witness to submit thereto shall not be the sole condition for initiating or continuing the criminal investigation.

§ 19.2-11.01. Crime victim and witness rights

A. * * * * As soon as practicable after identifying a victim of a crime, the investigating law-enforcement agency shall provide the victim with a standardized form listing the specific rights afforded to crime victims. * * *

1. Victim and witness protection and law-enforcement contacts.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities. * * * *

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title and on other available assistance and services. * * * *

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of this title, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

c. Victims shall receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case.

d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent (i) in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§ 53.1-133.02 and 53.1-160 or (ii) when an accused is released on bail, if they have provided their names, current addresses and telephone numbers in writing. Such notification may be provided through the Virginia Statewide VINE (Victim Information and Notification Everyday) System or other similar electronic or automated system.

e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims. Victims shall also be advised that any such information given shall be confidential as provided by § 19.2-11.2.

§ 19.2-13. Special conservators of the peace; authority; jurisdiction; registration; bond; liability of employers; penalty; report

E.* * * Effective July 1, 2004, the clerk of the appointing circuit court shall transmit a copy of the order of appointment that shall specify the following information: the person's complete name, address, date of birth, social security number, gender, race, height, weight, color of hair, color of eyes, firearm authority or limitation as set forth in subsection F, date of the order, and other information as may be required by the Department of State Police.

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§ 19.2-45. Powers enumerated * * * * [magistrates]

A copy of all felony warrants issued at the request of a citizen shall be promptly delivered to the attorney for the Commonwealth for the county or city in which the warrant is returnable. Upon the request of the attorney for the Commonwealth, a copy of any misdemeanor warrant issued at the request of a citizen shall be delivered to the attorney for the Commonwealth for such county or city. All attachments, warrants and subpoenas shall be returnable before a district court or any court of limited jurisdiction continued in operation pursuant to § 16.1-70.1; * * * *

§ 19.2-56. To whom search warrant directed; what it shall command; warrant to show date and time of issuance; copy of affidavit to be part of warrant and served therewith; warrants not executed within 15 days * * * *

Any search warrant for records or other information pertaining to a subscriber to, or customer of, an electronic communication service or remote computing service, whether a domestic corporation or foreign corporation, that is transacting or has transacted any business in the Commonwealth, to be executed upon such service provider may be executed within or without the Commonwealth by hand, United States mail, commercial delivery service, facsimile, or other electronic means upon the service provider. * * * *

For the purposes of this section: * * * *

"Properly served" means delivery of a search warrant or subpoena by hand, by United States mail, by commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its general manager in the Commonwealth, to any natural person designated by it as agent for the service of process, or if such corporation has designated a corporate agent, to any person named in the latest annual report filed pursuant to § 13.1-775.

§ 19.2-57. Execution and return of warrant; list of property seized

The warrant shall be executed by the search of the place described in the warrant and, if property described in the warrant is found there, by the seizure of the property. * * * The officer, or his designee or agent, may file the warrant, inventory, and accompanying affidavit by delivering them in person, or by mailing them certified mail, return receipt requested, or delivering them by electronically transmitted facsimile process.

§ 19.2-68. Application for and issuance of order authorizing interception; contents of order; recording and retention of intercepted communications, applications and orders; notice to parties; introduction in evidence of information obtained * * * *

F.4 4. Within a reasonable time but not later than 90 days after the filing of an application for an order of authorization which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include * * * *

(c) The fact that during the period wire, electronic or oral communications were or were not intercepted; and

(d) The fact that unless he files a motion with the court within 60 days after the service of notice upon him, the recordation or resume may be destroyed in accordance with subdivision 1 of this subsection.

§ 19.2-76. Execution and return of warrant, capias or summons; arrest outside county or city where charge is to be tried

* * * A warrant or capias shall be executed by the arrest of the accused, and a summons shall be executed by delivering a copy to the accused personally.

If the accused is a corporation, partnership, unincorporated association or legal entity other than an individual, a summons may be executed by service on the entity in the same manner as provided in Title 8.01 for service of process on that entity in a civil proceeding. However, if the summons is served on the entity by delivery to a registered agent or to any other agent who is not an officer, director, managing agent or employee of the entity, such agent shall not be personally subject to penalty for failure to appear as provided in § 19.2-128, nor shall the agent be subject to punishment for contempt for failure to appear under his summons as provided in § 19.2-129.

§ 19.2-76.2. Mailing of summons in certain cases

Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of a county, city or town parking ordinance is served in any county, city or town it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. In addition, whenever a summons for a violation of a county, city or town trash ordinance punishable as a misdemeanor under § 15.2-901 is served in any county, city or town, it may be executed by mailing a copy by first-class mail to the person who occupies the subject premises. If the person fail to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3 of this Code.

No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his failure to appear on the return date of the summons.

19.2-98. Same; for prisoners being taken through Commonwealth [Uniform Extradition Act]

The officer or agent of a demanding state * * * who is passing through this Commonwealth with such prisoner for the purpose of returning immediately such prisoner to the demanding state may,

when necessary, confine the prisoner in the jail of any county or city through which he may pass * * * provided, however, that such officer or agent shall deliver to the jailer the warrant or legal order authorizing custody of the prisoner. * * *

§ 19.2-114. Written waiver of extradition proceedings * * * *

If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the Governor and filed therein. The judge shall direct the officer having the person in custody to promptly deliver him to the duly accredited agent of the demanding state, and shall deliver or cause to be delivered to such agent a copy of the consent.

§ 19.2-130. Bail in subsequent proceeding arising out of initial arrest

* * * The court may, after notice to the parties, initiate a proceeding to alter the terms and conditions of bail on its own motion.

§ 19.2-134. When bail piece to be delivered to accused; form of bail piece

In all cases in which recognizances, at the suit of the Commonwealth, may have been, or shall hereafter be entered into, it shall be the duty of the clerk of the court in which, or in the clerk's office of which, any recognizance is filed, to deliver to the accused and his sureties upon request, a bail piece * * * *

§ 19.2-142. Where recognizance taken out of court to be sent

A person taking a recognizance out of court shall forthwith transmit it to the clerk of the court for appearance before which it is taken; or, if it be not for appearance before a court, to the clerk of the circuit court of the county or city in which it is taken; and it shall remain filed in the clerk's office.

§ 19.2-143. Where default recorded; process on recognizance; forfeiture on recognizance; when copy may be used; cash bond * * * *

The process on any such forfeited recognizance shall be issued from the court before which the appearance was to be, and wherein such forfeiture was recorded or entered. Any such process issued by a judge shall be made returnable before, and tried by, such judge, who shall promptly transmit to the clerk of the circuit court of his county or city wherein deeds are recorded an abstract of such judgment as he may render thereon, which shall be forthwith docketed by the clerk of such court. * * * *

§ 19.2-149. How surety on a bond in recognizance may surrender principal and be discharged from liability

* * * such capias may be executed by such bail bondsman or his licensed bail enforcement agent, or by any sheriff, sergeant or police officer, and the person executing such capias shall deliver such principal and such capias to the sheriff or jailer of the county or the sheriff, sergeant or jailer of the city in which the appearance of such principal is required, and thereupon the surety or the property bail bondsman shall be discharged from liability for any act of the principal subsequent thereto. Such sheriff, sergeant or jailer shall thereafter deliver such capias to the clerk of such court, with his endorsement thereon acknowledging delivery of such principal to his custody.

§ 19.2-159. Determination of indigency; guidelines; statement of indigence; appointment of counsel * * * *

D. * * * The court shall provide notice to the [Indigent Defense] Commission of the appointment of the attorney.

§ 19.2-163.01. Virginia Indigent Defense Commission established; powers and duties

A. The Virginia Indigent Defense Commission * * * shall * * * establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients, and guidelines for the removal of an attorney from the official list of those qualified to receive court appointments and to notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.

§ 19.2-168. Notice to Commonwealth of intention to present evidence of insanity; continuance if notice not given

In any case in which a person charged with a crime intends (i) to put in issue his sanity at the time of the crime charged and (ii) to present testimony of an expert to support his claim on this issue at his trial, he, or his counsel, shall give notice in writing to the attorney for the Commonwealth, at least 60 days prior to his trial, of his intention to present such evidence. However, if the period between indictment and trial is less than 120 days, the person or his counsel shall give such notice no later than 60 days following indictment. * * *

§ 19.2-168.1. Evaluation on motion of the Commonwealth after notice

A. If the attorney for the defendant gives notice pursuant to § 19.2-168, and the Commonwealth thereafter seeks an evaluation of the defendant's sanity at the time of the offense, the court shall appoint one or more qualified mental health experts to perform such an evaluation. * * * *

§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; capital murder charge; sexually violent offense charge

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of § 19.2-169.2, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. * * * *

B. At the end of six months from the date of the defendant's initial admission under subsection A of § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient facility director or his designee, the director or his designee shall so notify the court and make recommendations concerning disposition of the defendant as described in subsection A.

E. If the court orders an unrestorably incompetent defendant to be screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of Behavioral Health and Developmental Services to provide the Director of the Department of Corrections with any information relevant to the review, * * * If the court receives notice that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or certified pursuant to § 37.2-806.

§ 19.2-182.3. Commitment; civil proceedings

Upon receipt of the evaluation report and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing on an expedited basis * * * The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding.

§ 19.2-182.6. Petition for release; conditional release hearing; notice; disposition

A. * * * The party petitioning for release shall transmit a copy of the petition to the attorney for the Commonwealth for the committing jurisdiction. * * * *

§ 19.2-182.8. Revocation of conditional release * * * *

At any hearing pursuant to this section, the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing shall be scheduled on an expedited basis and shall be given priority over other civil matters before the court. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

§ 19.2-182.9. Emergency custody of conditionally released acquittee * * * *

At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. * * * *

§ 19.2-182.11. Modification or removal of conditions; notice; objections; review

B. As it deems appropriate based on the community services board's or behavioral health authority's report and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order, and their right to object to it within ten days of its issuance, to the acquittee, the supervising community services board or behavioral health authority and the attorney for the Commonwealth for the committing jurisdiction and for the jurisdiction where the acquittee is residing on conditional release. * * * *

§ 19.2-182.16. Copies of orders to Commissioner

Copies of all orders and notices issued pursuant to this chapter shall be sent to the Commissioner of the Department of Behavioral Health and Developmental Services.

§ 19.2-187. Admission into evidence of certain certificates of analysis

In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.), a certificate of analysis of a person performing an analysis or examination, duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided * * *

In a hearing or trial in which the provisions of subsection A of § 19.2-187.1 do not apply, a copy of such certificate shall be mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused at no charge at least seven days prior to the hearing or trial upon request made by such counsel to the clerk with notice of the request to the attorney for the Commonwealth. * * * *

The certificate of analysis of any examination conducted by the Department of Forensic Science relating to a controlled substance, marijuana, or synthetic cannabinoids as defined in § 18.2-248.1:1 shall be mailed or forwarded by personnel of the Department of Forensic Science to the attorney for the Commonwealth of the jurisdiction where such offense may be heard. The attorney for the Commonwealth shall acknowledge receipt of the certificate on forms provided by the laboratory.

§ 19.2-187.1. Procedures for notifying accused of certificate of analysis; waiver; continuances

A. In any trial and in any hearing other than a preliminary hearing, in which the attorney for the Commonwealth intends to offer a certificate of analysis into evidence in lieu of testimony pursuant to § 19.2-187, the attorney for the Commonwealth shall:

1. Provide by mail, delivery, or otherwise, a copy of the certificate to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, no later than 28 days prior to the hearing or trial;

2. Provide simultaneously with the copy of the certificate so provided under subdivision 1 a notice to the accused of his right to object to having the certificate admitted without the person who performed the analysis or examination being present and testifying; * * * *

B1. When the attorney for the Commonwealth gives notice to the accused of intent to present testimony by two-way video conferencing, the accused may object in writing to the admission of such testimony and may file an objection as provided in subsection B. The provisions of subsection B shall apply to such objection mutatis mutandis.

D. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness of the receipt of notice required by subsection A shall be made before hearing or trial upon his receipt of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with the time requirements of this section shall constitute prima facie evidence that the notice was timely received by the accused. If the court finds upon the accused's objection made pursuant to this subsection, that he did not receive timely notice pursuant to subsection A, the accused's objection shall not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be ordered if requested by either party. Any continuance ordered pursuant to this subsection shall be subject to the time limitations set forth in subsection C. * * * *

§ 19.2-188.1. Testimony regarding identification of controlled substances * * * *

B. In any trial for a violation of § 18.2-250.1, any law-enforcement officer shall be permitted to testify as to the results of any marijuana field test approved as accurate and reliable by the Department of Forensic Science pursuant to regulations adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), regarding whether or not any plant material, the identity of which is at issue, is marijuana provided the defendant has been given written notice of his right to request a full chemical analysis. Such notice shall be on a form approved by the Supreme Court and shall be provided to the defendant prior to trial.

§ 19.2-233. How awarded, directed, returnable and executed

Sections 8.01-292 and 8.01-295 shall apply to process in criminal, as well as in civil cases; and the court may, in the same case against the same person, award at the same time, or different times, several writs of summons or capias directed to officers of different counties or cities. An officer having a capias under which the accused is let to bail shall give a certificate of the fact, which shall protect him against any other capias which may have been issued for the same offense. A summons shall be served by delivering a copy thereof to the party in person and the clerk issuing such summons shall deliver or transmit therewith as many copies thereof as there are persons named therein on whom it is to be served.

§ 19.2-235. Clerks to mail process to officers in other counties, etc

The clerk of every court shall forward, by mail, all process issued for the Commonwealth, directed to the officer of any county or city other than his own.

§ 19.2-238. Summons against corporation; proceedings; expense of publication

A summons against a corporation to answer an indictment, presentment or information may be served as provided in §§ 8.01-299 through 8.01-301; and if the defendant after being so served fail to appear, the court may proceed to trial and judgment, without further process, as if the defendant had appeared, plead not guilty and waived trial by jury. * * * *

§ 19.2-258.1. Trial of traffic infractions; measure of proof; failure to appear * * * *

When a person charged with a traffic infraction fails to enter a written or court appearance, he shall be deemed to have waived court hearing and the case may be heard in his absence, after which he shall be notified of the court's finding. * * *

§ 19.2-264.3:1. Expert assistance when defendant's mental condition relevant to capital sentencing * * * *

D. The report described in subsection C shall be sent solely to the attorney for the defendant and shall be protected by the attorney-client privilege. However, the Commonwealth shall be given the report and the results of any other evaluation of the defendant's mental condition conducted relative to the sentencing proceeding * * * *

E. In any case in which a defendant charged with capital murder intends, in the event of conviction, to present testimony of an expert witness to support a claim in mitigation relating to the defendant's history, character or mental condition, he or his attorney shall give notice in writing to the attorney for the Commonwealth, at least 60 days before trial, of his intention to present such testimony. * * *

§ 19.2-264.3:2. Notice to the defendant of intention to present evidence of unadjudicated criminal conduct

Upon motion of the defendant, in any case in which the offense for which the defendant is to be tried may be punishable by death, if the attorney for the Commonwealth intends to introduce during a sentencing proceeding held pursuant to § 19.2-264.4 evidence of defendant's unadjudicated criminal conduct, the attorney for the Commonwealth shall give notice in writing to the attorney for the defendant of such intention. The notice shall include a description of the alleged unadjudicated criminal conduct and, to the extent such information is available, the time and place such conduct will be alleged to have occurred.

The court shall specify the time by which such notice shall be given.

§ 19.2-264.3:4. Notice of expert testimony in capital case

Whenever the defendant, the defendant's attorney, or the attorney for the Commonwealth in a capital case intends to introduce expert opinion testimony at trial, the defendant, defendant's attorney, or attorney for the Commonwealth shall notify the opposing party in writing of such party's intention to present such testimony at least 60 days before the trial. The written notice shall include copies of any written reports of the witness, a summary of the proposed expert testimony that describes the witness's opinions and the basis and reasons for those opinions, and the witness's qualifications and contact information.

§ 19.2-265.01. Victims, certain family members and support persons not to be excluded * * *

The attorney for the Commonwealth shall give prior notice when practicable of such trial and attendant proceedings and changes in the scheduling thereof to any known victim and to any known adult chosen in accordance with this section by a minor victim, at the address or telephone number, or both, provided in writing by such person.

§ 19.2-270.4. When donation, destruction, or return of exhibits received in evidence authorized * * * *

B. Except as provided in § 19.2-270.4:1, a circuit court for good cause shown, on notice to the attorney for the Commonwealth and any attorney for a defendant in the case, may order the return of any or all exhibits to the owners thereof, notwithstanding the pendency of any appeal or petition for a writ of habeas corpus. * * * *

§ 19.2-270.4:1. Storage, preservation and retention of human biological evidence in felony cases * * * *

Upon the entry of an order under this subsection, the court may upon motion or upon good cause shown, with notice to the convicted person, his attorney of record and the attorney for the Commonwealth, modify the original storage order, as it relates to time of storage of the evidence or samples, for a period of time greater than or less than that specified in the original order. * * * *

§ 19.2-270.5. DNA profile admissible in criminal proceeding

In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable scientific technique and the evidence of a DNA profile comparison may be admitted to prove or disprove the identity of any person. * * *

At least twenty-one days prior to commencement of the proceeding in which the results of a DNA analysis will be offered as evidence, the party intending to offer the evidence shall notify the opposing party, in writing, of the intent to offer the analysis and shall provide or make available copies of the profiles and the report or statement to be introduced. * * *

§ 19.2-278. Reimbursement for daily mileage to such witnesses; issuance of warrant necessary to make tender

If the witness is summoned to attend and testify in this Commonwealth he shall receive such reimbursement for his daily mileage as prescribed in § 2.2-2823* * *

The * * * clerk, upon application of the attorney for the Commonwealth of the county or city involved, or of the accused, if certificate for the attendance of witness has been issued by such judge on his behalf as authorized by § 19.2-330, shall issue such warrant or warrants and deliver them to the said attorney for the Commonwealth, who shall, forthwith, cause such tender to be made. Upon issuance of any such warrant or warrants said clerk shall deliver a certified copy of the court's order to the Supreme Court, and the said warrant or warrants shall be paid out of the state treasury upon presentation.

§ 19.2-299. Investigations and reports by probation officers in certain cases

* * * The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing * * * *

"Reasonable Notice" in the sense of fair warning in advance rather than specific notice events

§ 19.2-304. Increasing or decreasing probation period and modification of conditions

The court may subsequently increase or decrease the probation period and may revoke or modify any condition of probation, but only upon a hearing after reasonable notice to both the defendant and the attorney for the Commonwealth.

§ 19.2-310. Transfer of prisoners to custody of Director of Department of Corrections

Every person sentenced by a court to the Department of Corrections upon conviction of a felony shall be conveyed to an appropriate receiving unit operated by the Department in the manner hereinafter provided. The clerk of the court in which the person is sentenced shall forthwith transmit to the Central Criminal Records Exchange the report of dispositions required by § 19.2-390. The clerk of the court within 30 days from the date of the judgment shall forthwith transmit to the Director of the Department a certified copy or copies of the order of trial and a certified copy of the complete final order, and if he fails to do so shall forfeit $ 50. The clerk of the court may transmit or make available a copy or copies of such orders electronically.

§ 19.2-310.01. Transmission of sentencing documents

Within thirty days of the receipt of a request from the Department of Corrections for certified copies of sentencing documents for any misdemeanor conviction, the clerk of the court receiving such request shall transmit the requested documents to the Director of the Department. * * * *

§ 19.2-327.11. Contents and form of the petition based on previously unknown or unavailable evidence of actual innocence

C. In cases brought by counsel for the petitioner, the Court of Appeals shall not accept the petition unless it is accompanied by a duly executed return of service in the form of a verification that a copy of the petition and all attachments have been served on the attorney for the Commonwealth of the jurisdiction where the conviction or adjudication of delinquency occurred and the Attorney General, or an acceptance of service signed by these officials, or any combination thereof. In cases brought by petitioners pro se, the Court of Appeals shall not accept the petition unless it is accompanied by a certificate that a copy of the petition and all attachments have been sent, by certified mail, to the attorney for the Commonwealth of the jurisdiction where the conviction or adjudication of delinquency occurred and the Attorney General. If the Court of Appeals does not summarily dismiss the petition, it shall so notify in writing the Attorney General, the attorney for the Commonwealth, and the petitioner.

§ 19.2-364. Petition for relief; in what court filed; notice to attorney for Commonwealth

Such person or his personal representative, as the case may be, shall file a petition in the clerk's office of the circuit court of the county or city wherein such fine or penalty was imposed, or such liability established, at least fifteen days before the term of the court at which the same is to be heard, and shall set forth the grounds upon which relief is asked. Ten days' notice thereof in writing shall be given to the attorney for the Commonwealth of the county or city.

§ 19.2-368.5. Filing of claims; deferral of proceedings; restitution [crime victim compensation]

C. Claims shall be filed in the office of the Commission in person, by mail, or by electronic means in accordance with standards approved by the Commission. * * *

D. Upon filing of a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred. If, within 10 days after such notification, the attorney for the Commonwealth so notified advises the Commission that a criminal prosecution is pending upon the same alleged crime, the Commission shall defer all proceedings under this chapter until such time as such criminal prosecution has been

concluded in the circuit court unless notification is received from the attorney for the Commonwealth that no objection is made to a continuation of the investigation and determination of the claim.

D. * * * When such criminal prosecution has been concluded in the circuit court the attorney for the Commonwealth shall promptly so notify the Commission. Nothing in this section shall be construed to mean that the Commission is to defer proceedings upon the filing of an appeal, nor shall this section be construed to limit the authority of the Commission to grant emergency awards as hereinafter provided. Upon awarding a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred. * * * *

§ 19.2-368.5:1. Failure to perfect claim; denial

Notwithstanding the provisions of § 19.2-368.5, if, following the initial filing of a claim, a claimant fails to take such further steps to support or perfect the claim as may be required by the Commission within 180 days after written notice of such requirement is sent by the Commission to the claimant, the claimant shall be deemed in default. If the claimant is in default, the Commission shall notify the claimant that the claim is denied and the claimant shall be forever barred from reasserting it; however, the Commission may reopen the proceeding upon a showing by claimant that the failure to do the acts required by the Commission was beyond the control of the claimant.

§ 19.2-368.5:2. Effect of filing a claim; stay of debt collection activities by health care providers

A. Whenever a person files a claim under this chapter, all health care providers, as defined in § 8.01-581.1 that have been given notice of a pending claim, shall refrain from all debt collection activities relating to medical treatment received by the person in connection with such claim until an award is made on the claim or until a claim is determined to be noncompensable pursuant to § 19.2-368.11:1. The statute of limitations for collection of such debt shall be tolled during the period in which the applicable health care provider is required to refrain from debt collection activities hereunder.

§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; lien in favor of the Commonwealth; disposition of funds collected

* * * * Whenever any person receives an award from the Criminal Injuries Compensation Fund, the * * * Fund's lien shall become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to § 8.01-66.6.

§ 19.2-386.2:1. Notice to Commissioner of Department of Motor Vehicles; duties of Commissioner

If the property seized is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the attorney for the Commonwealth shall forthwith notify the Commissioner of the Department of Motor Vehicles, by certified mail, of such seizure and the motor number of the vehicle so seized, and the Commissioner shall promptly certify to such attorney for the Commonwealth the name and address of the person in whose name such vehicle is registered, together with the name and address of any person holding a lien thereon, and the amount thereof. The Commissioner shall also forthwith notify such registered owner and lienor, in writing, of the reported seizure and the county or city wherein such seizure was made.

§ 19.2-386.4. Records and handling of seized property

Any agency seizing property under § 19.2-386.2, Chapter 22.2 (§ 19.2-386.15 et seq.), or other provision under the Code, pending forfeiture and final disposition, may do any of the following:

1. Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture in any appropriate public record relating to property;

§ 19.2-386.24. Destruction of seized controlled substances, marijuana, or synthetic cannabinoids prior to trial

* * * * Before any destruction is carried out under this section, the law-enforcement agency shall cause the material seized to be photographed with identification case numbers or other means of identification and shall prepare a report identifying the seized material. It shall also notify the accused, or other interested party, if known, or his attorney, at least five days in advance that the photography will take place and that they may be present. Prior to any destruction under this section, the law-enforcement agency shall also notify the accused or other interested party, if known, and his attorney at least seven days prior to the destruction of the time and place the destruction will occur. Any notice required under the provisions of this section shall be by first-class mail to the last known address of the person required to be notified.* * *

§ 19.2-386.29. Forfeiture of certain weapons used in commission of criminal offense

* * * [U]pon petition to the court and notice to the attorney for the Commonwealth, the court, upon good cause shown, shall return any such weapon to its lawful owner after conclusion of all relevant proceedings if such owner (i) did not know and had no reason to know of the conduct giving rise to the forfeiture and (ii) is not otherwise prohibited by law from possessing the weapon.* * *

§ 19.2-386.34. Forfeiture of vehicle used in a felony violation of § 182-266

* * *Any seizure shall be stayed until conviction and the exhaustion of all appeals at which time, if the information has been filed, the Commonwealth shall give notice of seizure to all appropriate parties pursuant to § 19.2-386.3.

§ 19.2-396. Conduct of inspection, testing or collection of samples for testing; special procedure for dwelling

An inspection, testing or collection of samples for testing pursuant to such warrant may not be made in the absence of the owner, custodian or possessor of the particular place, things or persons unless specifically authorized by the issuing judge * * * In the case of entry into a dwelling, prior consent must be sought and refused and notice that a warrant has been issued must be given at least twenty-four hours before the warrant is executed, unless the issuing judge finds that failure to seek consent is justified and that there is a reasonable suspicion of an immediate threat to public health or safety.

§ 19.2-405. Pretrial appeals; record on appeal; transcript; written statement; time for filing

This section applies only to pretrial appeals. * * * *

The clerk of the trial court shall forthwith transmit the record to the clerk of the Court of Appeals.

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September 20, 2013

Via E-mail: jwalk@hf-law.com

John R. Walk, Esquire
Hirschler Fleischer
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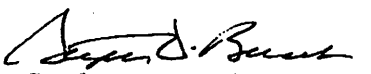
Richmond, VA 23223

RE: Boyd Graves Conference
Statutory Notice Study Committee Report

Dear John:

I enclose our Committee's report. I am providing a copy to Stuart Raphael, the conference secretary, for inclusion in the meeting booklet. By copy of this letter to our Committee members, I again extend my appreciation for all of their efforts.

Sincerely yours,



Stephen D. Busch

SDB/tjp
Enclosure
Cc: Stuart A. Raphael, Esquire (via e-mail: sraphael@hunton.com)
Committee Members:
Professor W. Hamilton Bryson (via e-mail)
Frank K. Friedman, Esquire (via e-mail)
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George A. Somerville, Esquire (via e-mail)

REPORT TO BOYD-GRAVES CONFERENCE
STATUTORY NOTICE STUDY COMMITTEE
SEPTEMBER 20, 2013

The following is the report of the Statutory Notice Study Committee (the committee) of the Boyd Graves Conference appointed in April 2013, to examine whether current statutory methods of service should be expanded to allow lawsuits and other legal notices to be served via U.S. Mail, commercial delivery or electronic mail.

Committee Members

Stephen D. Busch, Chair
Professor W. Hamilton Bryson
Frank K. Friedman
Brian O. Dolan
M. Bryan Slaughter
George A. Somerville

Committee Assignment

The Committee was asked to study the following question:

1. Should the notice provisions of Titles 8.01, 11, 20, 25.1, 26, 43, 50, 55 and 64.1[1] be revised to allow for notice to be provided via United States mail, via commercial carrier, or via electronic mail and under what circumstances and/or conditions should such alternative means of notice be permitted?

For the reasons set forth below the committee does not believe that the notice provisions of the referenced titles of the Code of Virginia should be revised to allow for notice to be provided via United States mail, via commercial carrier, or via electronic mail.

Summary of Committee's work

The Committee experienced excellent participation by its membership in the study effort. The Committee met via telephone conference on May 31, June 21, and August 21, 2013. Nearly all of the committee members participated in each conference.

At the outset of the Committee's work, a decision was made to recruit a law student to research and draft a memorandum addressing issues relating to alternative means of service to those presently allowed under the law of the Commonwealth. Annie Cai, a second year student at Boston University School of Law and summer associate with McGuireWoods LLP, agreed to undertake this project. Her thoughtful and comprehensive memorandum analyzed the following issues:

1. What are the current notice provisions set forth in the specified titles (8.01 etc.)?

[1] Title 64.1 is now Title 64.2 - Wills, Trusts, and Fiduciaries.

2. What are the notice requirements set forth in the federal system? Have they been revised as technology has changed in recent years, and if so what reports were generated in connection with such changes that we may wish to consider?

3. What have various thought leaders in our profession written about the pros and cons of changing the traditional methods of notice that have been in place for many years?

A copy of Ms. Cai's research memorandum is attached as Annex 1 to this report.

1. **Current methods of providing notice.**

After digesting Ms. Cai's memorandum, the committee discussed the methods of providing notice that presently are allowed by statute. The committee is not aware of any statute that allows for the initial service of a lawsuit by U.S. Mail, commercial delivery, or electronic means. Ms. Cai reached this same conclusion through her research.

As a threshold issue, the committee also discussed whether there are existing problems with requiring notice as specified by the existing requirements. No problems are known to exist by requiring litigants and others who must give notice as required by statute to continue to do so as currently authorized by statute. The committee also does not believe that the existing requirements are onerous, confusing or unreliable. Based upon its evaluation of the pros and cons of the current provisions, the committee is not aware of any reason not to leave the current statutory notice provisions in place.

a. **The Need for Certainty.**

One factor that was particularly important to the committee in considering whether any change should be suggested is the need for certainty. Professor Kent Sinclair, a member of the conference, has written that every method of service must provide three functions: effective notice, assertion of the court's authority over the parties, and certainty. Kent Sinclair, *Service of Process: Amended Rule 4 and the Presumption of Jurisdiction*, 14 REV. LITIG. 159 (1994). This comment was made when an amendment to Rule 4 of the Federal Rules of Civil Procedure to allow for waiver of service was being considered.

The committee is deeply concerned that allowing notice to initiate a legal process to be provided via U.S. mail, use of a commercial delivery service or electronically would create uncertainty. As to the U.S. Mail, the committee noted that it is often less than reliable as a means of delivery. As to commercial delivery, the sense of the committee is that if service via U.S. Mail is not optimal, then similar concerns exist with regard to commercial delivery, though perhaps to a lesser degree.

Most of the discussion however centered on electronic delivery. Many persons who are entitled to notice by statute do not have computers or an email address. There is no national database of email addresses, even assuming that everyone in our country owned or had access to a computer and had an email address.

Other specific concerns included the fact that *sending* something electronically falls far short of having a reasonable assurance that the person actually would *receive* it. Email addresses are often wrong. Spam filters often reject emails that are important. Unlike the usual return of service form, the use of Outlook, as one example, can allow a separate electronic message to be sent back to the sender to advise that the electronic message was delivered to the address that was provided, but cannot confirm that it was received by the addressee. Complicating this further is the fact that email addresses change routinely for many people, and what is a good address today may not exist tomorrow.

b. "One-Size-Fits-All"

The committee also considered whether, if a change were to be proposed to the existing method of providing statutory notice, it would be feasible to have a singular approach across the nine titles of the Code of Virginia that had been identified.[2] As an initial matter, the committee concluded that the various titles of the Code of Virginia involve complicated and technical areas of the law that far outstrip the individual or collective experience of the committee members. For example, the committee's roster was not comprised of members experienced in condemnations, domestic relations, real estate, or wills and trusts, all of which are covered by titles of the Code of Virginia within the committee's assignment.

The committee then debated whether a "one-size-fits-all" approach to changing the statutory notices provisions within the various titles is realistically possible. In this respect the committee noted that forms of service that are permissible in some of the titles are impermissible in others. As one example, methods of substituted service allowed in Title 8.01 are not permitted in a domestic relations case. For this reason alone, the committee does not believe that it would be possible to propose a bill to allow for notice by U.S. mail, commercial delivery or electronic means across-the-board in the nine titles of the Code that were identified.

The committee then discussed what would be necessary in order to determine whether alternative forms of notice should be allowed in some of the designated titles of the Code of Virginia. We concluded that an exhaustive survey of each title would be necessary to identify all of the notice provisions. Thereafter, each notice provision so identified would need to be analyzed by subject matter experts who could appreciate how making any change would impact that area of the law and the rights of our citizens and others whose conduct is regulated or controlled by such laws. However, the committee again notes its general opposition to changing notice requirements in any way that would create uncertainty about whether the person entitled to such notice actually would become aware of the lawsuit, lien, or other legal notice, and especially whether any proposed change would make it less likely that notice would be received.

c. Title 8.01 Civil Remedies and Procedure.

Since all of the committee members are generally familiar with notice and service requirements within Title 8.01, and the Rules of the Supreme Court of Virginia, we concluded

[2] Title 8.01 (Civil Remedies and Procedure); Title 11 (Contracts), Title 20 (Domestic Relations), Title 25.1 (Eminent Domain), Title 26 (Fiduciaries Generally – repealed 10/1/2012 and moved to Title 64.2), Title 43 (Mechanics' and Certain Liens), Title 50 (Partnerships), and Title 64.2 (Wills, Trusts, and Fiduciaries)

our work by evaluating whether we should recommend amending any statutes or rules to allow for notice to be provided via United States mail, commercial carrier, or electronic mail.

We first discussed the interplay between Supreme Court Rule 1:12 (allowing service via commercial delivery or electronic mail *if the parties consent in writing*, after the initial service of process) and Rule 1:17 (requiring electronic service after initial *process in circuits that have electronic dockets*, unless otherwise agreed by the parties or ordered by the Court). It was noted that few courts have electronic dockets, such that Rule 1:17 has limited application at this time.

The committee also believes that the flexibility provided by Rule 1:12 permitting parties to agree to service via commercial delivery or electronic means after the initial service of process works well and there is no need to change this rule.

The committee then addressed the following specific questions:

(1) Should Title 8.01 be amended to allow for initial service of process via U.S. Mail, commercial delivery or electronic mail in addition to the methods of service presently permitted?

The Committee members reached unanimity that Title 8.01 should not be amended to allow for initial service of process via U.S. Mail, commercial delivery or electronic mail.

(2) Should Title 8.01 or Rule 1:12 be amended to allow for service via commercial delivery or electronic mail after the initial process is served according to law *regardless* of whether the party to be served consents to such service?

The Committee members reached unanimity that such a revision should not be made.

(3) Should the substituted service provisions of Title 8.01be amended to further require the plaintiff to send a copy of the process to the defendant electronically?

One member of the committee raised the possibility of amending the substituted service provisions within Title 8.01 to also require the plaintiff to send a copy of the process to the defendant electronically if the party seeking service knows the electronic mail address of the person who otherwise would receive the suit papers or notice of the claim other than by in person hand-delivery. This committee member observed that if the defendant is a resident of Virginia, then personal service is the gold standard, and posted service is acceptable if personal service is not possible. In certain circumstances service by publication is all that can be accomplished. Finally, it was submitted that as to non-residents of the Commonwealth in particular, an amendment to the current substituted service requirements may be a desirable reform in order to enhance the possibility that the person to be served may learn of the suit.

The majority of the committee was not supportive of this suggestion. Comments in opposition included: how would the plaintiff know whether the email address is current; what would be required if the defendant has multiple email addresses; email addresses

are challenging to locate in the first instance, let alone to validate; and, adding such a provision would create the opportunity for subsequent challenges to judgments based upon whether the plaintiff knew of the defendant's email address but did not send the process electronically.

Conclusion

The committee concluded that a "one-size-fits-all" statute should be not enacted to permit notice to be provided via United States mail, via commercial carrier, or via electronic mail. The committee is generally opposed to allowing for any of these forms of service to initiate a lawsuit or to provide for initial notice because of the uncertainty to the legal process that would be created thereby.

As to civil litigation, the committee specifically opposes any change to Title 8.01 that would allow for service or notice via United States Mail, commercial carrier, or electronic means. The committee believes that Rule 1:12 of the Rules of the Supreme Court of Virginia provides for adequate flexibility in terms of *post-service* delivery of pleadings, notices etc. when the parties have so agreed to such service in writing.

If there is strong support for changing the current notice requirements within one or more other titles of the Code of Virginia to allow for notice via United States mail, commercial carrier, or electronically, then any such changes should be considered carefully by legal subject matter experts. They could determine whether such proposed changes might create unintended consequences, and that it otherwise would be appropriate.

In conclusion, the committee is not supportive of changing the existing methods of statutory notice. With permission of the conference chair we would propose to canvass the conference attendees during the presentation of this report to determine whether our views are aligned with the conference as a whole.

It has been a pleasure to evaluate this interesting issue.

ANNEX 1

McGUIREWOODS

MEMORANDUM

TO: Stephen D. Busch

FROM: Annie Cai AC

DATE: June 12, 2013

RE: Boyd-Graves Conference Statutory Notice Provisions

This memorandum addresses preliminary research issues for the 2013 Boyd-Graves Conference study committee topic:

> *Should the notice provisions in Titles 8.01, 11, 20, 25.1, 26, 43, 50, 55, and 64.1 be revised to allow for notice to be provided via United States mail, via commercial carrier, or via electronic mail and under what circumstances and/or conditions should alternative means of notice be permitted?*

1. What are the current notice provisions set forth in the specified titles?

Title 1, Article 2: Rules of Construction and Definitions

Under Virginia Code § 1-206, the following rules of construction apply for statutes in the Virginia Code:

> "A. If any mail or notice is required to be sent by registered mail, it shall constitute compliance with this requirement if such mail or notice is sent by certified mail.
>
> B. Notwithstanding any provision of law to the contrary, whenever a state agency is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by such state agency may be sent by regular mail."

Title 8.01: Civil Remedies and Procedures[1]

Title 8.01 sets out general notice provisions in the Code of Virginia. Va. Code Ann. § 8.01-296 governs mode of service upon natural persons while § 8.01-299 and § 8.01-301 govern mode of service upon corporations and other business entities. Va. Code Ann. § 8.01-300 governs mode of service upon government and quasi-government entities.

Va. Code Ann. § 8.01-296 provides that if no other particular mode of service is prescribed by law, process may be served upon natural persons to give the court in personam jurisdiction of the party served. Nonresidents may be served personally when found within the

[1] Please see "Appendix A – Title 8.01 Notice Provisions" for compiled statutory notice provisions in Title 8.01.

state and in personam jurisdiction over nonresidents may be obtained under long-arm statutes. *See* Va. Code Ann. § 8.01-328.1 *et seq.* Alternative methods of service can be found in § 8.01-296.

(1) *Personal Service:* If the party is found, process may be served by delivery of a copy of the process to the party in person. *See* Va. Code Ann. § 8.01-296(1).

(2) *Substituted Service*: By substituted service in the following manner:

a. *Delivery to Family Member*: If the party to be served is not found at his usual place of abode, process may be served by delivering a copy of the process to any person found there who is a member of the party's family, if such person is (a) not a temporary sojourner or guest and (b) is sixteen years of age or older. *See* Va. Code Ann. § 8.01-296(2)(a). However, process delivered to a family member at some location other than the defendant's usual place of abode is void. *See Crockett v. Etter,* 105 Va. 679, 54 S.E. 864 (1906) (predecessor statute).

b. *Posting:* If service cannot be effected by delivery to a family member, it may be accomplished by posting a copy of the process at the front door or at such other door as appears to be the main entrance of the usual place of abode. *See* Va. Code Ann. § 8.01-296(2)(b). If service is obtained in this manner, no default judgment may be obtained unless at least ten days before such judgment a copy of the process has been mailed to the party and a certificate of such mailing has been filed in the clerk's office. *Id.*

c. *Publication:* In certain circumstances, if service cannot be obtained by personal service, or by service upon a family member, or by posting, then service may be made by order of publication, as set forth in Virginia Code §§ 8.01-316 through 8.01-320.125. The order of publication must be published once a week for four successive weeks in a newspaper prescribed by the court, or, if no newspaper is prescribed, as directed by the clerk. Service by publication does not give the court in personam jurisdiction of the party served, but only gives the court in rem or quasi in rem jurisdiction. *See, e.g., Cranford v. Hubbard*, 208 Va. 689 (1968). An order of publication may be entered in the following manner under § 8.01-316.

i. An affidavit stating one or more of the following grounds:

1. That the party served is (i) a foreign corporation, (ii) a foreign unincorporated association, order, or a foreign unincorporated common carrier, or (iii) a nonresident individual, other than a nonresident individual fiduciary who has appointed a statutory agent under § 26-59; or

2. That diligence has been used without effect to ascertain the location of the party to be served; or

3. That the last known residence of the party to be served was in the county or city in which service is sought and that a return has been

filed by the sheriff that the process has been in his hands for twenty-one days and that he has been unable to make service; or

ii. In any action, when a pleading (i) states that there are or may be persons, whose names are unknown, interested in the subject to be divided or disposed of; (ii) briefly describes the nature of such interest; and (iii) makes such persons defendants by the general description of "parties unknown"; or

iii. In any action, when (i) the number of defendants upon whom process has been served exceeds ten and (ii) it appears by a pleading, or exhibit filed, that such defendants represent like interests with the parties not served with process.

Va. Code Ann. § 8.01-299 and § 8.01-301 state that process is served on corporations and other business entities as follows:

(1) *Domestic Corporations:* Except as prescribed by § 8.01-300 (service on municipal and quasi-governmental corporations) and subject to § 8.01-286.1 (waiver provision), process is served on a private domestic corporation under Virginia Code § 8.01-299 by:

a. Personal service on any officer, director, or registered agent of the corporation; or

b. By substituted service on stock corporations in accordance with § 13.1-637 and on nonstock corporations in accordance with § 13.1-836.

i. Whenever a corporation fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the State Corporation Commission shall be an agent of the corporation upon whom service may be made in accordance with § 12.1-19.1.

1. Service on the clerk shall be made by leaving two copies of the process for each defendant, and the clerk or any of his staff shall mail the process to the defendant at the address supplied by the party seeking service and shall keep a record. *See* Va. Code Ann. § 12.1-19.1.

(2) *Foreign Corporations:* Subject to § 8.01-286.1 (waiver provision), process is served on foreign corporations under Virginia Code § 8.01-301 by:

a. Personal service on any officer or director, or on the registered agent of a foreign corporation authorized to do business in Virginia, and by personal service on any agent of a foreign corporation transacting business in Virginia without authorization, wherever any such officer, director, or agents are found within Virginia; or

b. By substituted service on a foreign corporation in accordance with §§ 13.1-766 and 13.1-928, or by service in accordance § Section 8.01-320 if such corporation is authorized to transact business or affairs within the Commonwealth;

c. By substituted service on a foreign corporation in accordance with § 8.01-329 where jurisdiction is authorized under § 8.01-328.1, *regardless* of whether such foreign corporation is authorized to transact business within the Commonwealth

d. Order of publication in accordance with §§ 8.01-316 and 8.01-317 where jurisdiction in rem or quasi in rem is authorized, regardless of whether the foreign corporation so served is authorized to transact business within the Commonwealth.

e. *Note:* On March, 6, 2013, § 8.01-301 was amended with the following language added: "This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation."[2]

(3) *Partners and Partnerships:* Subject to § 8.01-286.1 (waiver provision), process is served on a partnership under Virginia Code § 8.01-304 by:

a. Service upon a general partner (deemed to be service upon partnership and each partner named as defendant in the action), as long as (1) the suit is a partnership matter and (2) the partner served is not a plaintiff in suit.

b. Service upon a limited party to enforce a limited partner's liability to the partnership. *See also* Title 50 discussion below.

Va. Code Ann. § 8.01-300 states that process is served on municipal and county governments and quasi-government bodies or agencies as follows:

(1) *Cities and Towns:* By leaving a copy of the process with the person in charge of the office or the city or town attorney, if any, otherwise on the mayor, manager, or trustee.

(2) *Counties:* By leaving a copy of the process with the person in charge of the office or the county attorney, if any, otherwise on the Commonwealth's attorney.

Acceptance of Notice

Under Va. Code Ann. § 8.01-327, service of process may be accepted by the person for whom it is intended by signing the proof of service and indicating the jurisdiction and state in which it was accepted. However, service of process in divorce or annulment actions may be accepted only as provided in § 20-99.1:1. *See* Title 20 discussion below.

[2] Please see "Appendix B – Title 8.01 Amendments" for recent changes to Sections 8.01-301, 8.01-310, 8.01-312, and 8.01-329 of the Code, relating to service of process on nonresidents.

Waiver of Process

In 2005, the General Assembly enacted Va. Code Ann. § 8.01-286.1, which allows a plaintiff to request from the defendant a waiver of service of process, and requires that the defendant respond to avoid any unnecessary costs of service. The notice and request must be in writing addressed directly to the defendant, if an individual, or else to an officer, director or registered agent authorized by appointment or law to receive service of process.

Any person subject to service as set forth in § 8.01-296, 8.01-299, §§ 8.01-301 through 8.01-306 or § 8.01-320, with the exception of the Secretary of the Commonwealth and the Clerk of the State Corporation Commission, who receives actual notice of an action in the manner provided in this section, has a duty to avoid any unnecessary costs of serving process.

The notice and request must be dispatched through first-class mail "or other reliable means" and must include a copy of complaint. The notice must recite the date on which the request is being sent, and then allow the defendant a reasonable time to return the waiver, which must be no more than 30 days from the date on which the request is sent, or 60 days from that date if the defendant's address is outside the Commonwealth.

A defendant that, before being served with process, timely returns a waiver so requested is not required to serve a grounds of defense or other responsive pleading to the motion for judgment or other initial pleading until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant's address was outside the Commonwealth. If a defendant fails to comply with a request for waiver made by a plaintiff, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown. *See* Va. Code Ann. § 8.01-286.1.

Federal Waiver vs. Virginia Waiver[3]

The Federal waiver, embodied in Rule 4(d) of the Federal Rules of Civil Procedure, and the Virginia waiver statute are substantially similar to each other. The Federal rules also provide a defendant with 30-60 days to return a waiver and 60 or 90 days to respond depending on whether the defendant is in or out of the country. The Virginia waiver statute, however, exempts the Commissioner of the Department of Motor Vehicles, the Secretary of the Commonwealth, and the Clerk of the State Corporation Commission from the waiver provision. *See* Va. Code Ann. § 8.01-286.1(e). Both the Virginia statute and the Federal rule authorize the waiver to be dispatched by first-class mail or "other reliable means." *See* Fed. R. Civ. P. 4(d)

Service on the Commonwealth[4]

Virginia Code § 8.01-329 governs service of process on the Secretary of the Commonwealth. When service is to be made on the Secretary, the party or his agent or attorney seeking service shall file an affidavit with the court, stating either (i) that the person to be served is a nonresident or (ii) that, after exercising due diligence, the party seeking service has been

[3] Please see "Appendix J – Federal Waiver vs. Virginia Waiver."
[4] Please see "Appendix B – Title 8.01 Amendments" for recent changes to Sections 8.01-329 of the Code.

unable to locate the person to be served. In either case, such affidavit shall set forth the last known address of the person to be served. *See* Va. Code Ann. § 8.01-329 (b).

The March 6, 2013 amendment to this section added the following requirement: "It shall be the duty of the Secretary to . . . . Provide a receipt to a party seeking service who serves process on the Secretary by hand delivery or any other method that does not provide a return of service or other means showing the date on which service on the Secretary was accomplished. The party seeking service shall be responsible for filing such receipt in the office of the clerk of the court in which the action is pending."

Other Notices Provisions in § 8.01

Virginia Code § 8.01-288 provides that except for process commencing actions for divorce or annulment of marriage or other actions wherein service of process is specifically prescribed by statute, process which has reached the person to whom it is directed within the time prescribed by law, if any, shall be sufficient although not served or accepted as provided in this chapter.

Virginia Code § 8.01-289 forbids any civil processes to be served on Sundays except in "cases of persons escaping out of custody, or where it is otherwise expressly provided by law."

Please see "Appendix A – Title 8.01 Notice Provisions" for additional notice provisions in Title 8.01.

Rules of the Supreme Court of Virginia[5]

Virginia Code § 8.01-287 provides that "upon commencement of an action, process shall be served in the manner set forth in this chapter and by the Rules of the Supreme Court." The following Rules of the Supreme Court of Virginia discuss service of process and methods of service after the initial process.

Rule 1:5 provides that "service on one member or associate of such firm shall constitute service on the firm . . . . Service is not required to be made on foreign attorneys."

Rule 1:7 provides a different method of computation of time for service of a paper upon counsel when service is made by mail vs. facsimile, electronic mail, or commercial delivery service.

Rule 1:12 provides methods for service of papers after the initial service of process.

Rule 1:17 provides that unless otherwise agreed by all parties, or ordered by the court in an individual case for good cause shown, all documents required to be served – *after the initial service of process* shall be served by electronic transmission.

Rule 3:19 concerns when a defendant is in default and provides that except in suits for divorce or annulling a marriage, the court shall, on motion of the plaintiff, enter judgment

[5] Please see "Appendix K – Rules of Supreme Court of Virginia"

for the relief appearing to the court to be due. When service of process is effected by posting, no judgment by default shall be entered until the requirements of Code § 8.01-296(2)(b) have been satisfied.

Rule 8:14 concerns service of process of a motion to reduce support arrearages to judgment, providing that any motion to enter judgment shall be served in accordance with §§ 8.01-296, 8.01-327, 8.01-329, or by *(1) certified mail, return receipts requested, and (2) first class mail.*

Title 11: Contracts[6]

Virginia Code § 11-2.4 governs when notice of a possible filing of mechanics' lien is required.

Virginia Code § 11-1 provides that certain contracts are void as to creditors and purchasers unless in writing:

> "Every contract, not in writing, made in respect to real estate or goods and chattels in consideration of marriage, or made for the conveyance or sale of real estate, or a term therein of more than five years, and, except as otherwise provided in § 8.2-402 of the Uniform Commercial Code, every bill of sale or contract for the sale of goods and chattels when the possession is allowed to remain with the seller, shall be void, both at law and in equity, as to purchasers for value and *without notice* and creditors; provided, however, that if any such contract or bill of sale as is mentioned in this section creates a security interest as defined in the Uniform Commercial Code, its validity and enforceability shall be governed by the provisions of that Code." Va. Code Ann. § 11-1.

Title 20: Domestic Relations

Virginia Code § 20-99 provides that process or notice in actions for divorce or annulment may be served by any of the methods prescribed in Virginia Code § 8.01-296, by any person authorized to service process under § 8.01-320. However, unlike other types of actions, where actual receipt of the process is sufficient even if the technicalities have not been complied with, mere receipt is not sufficient in domestic cases. Divorce and annulment cases are excepted from the provisions of Va. Code Ann. § 8.01-288, which provides that actual receipt of process within the applicable time limits is sufficient to constitute service even if the process was not served as prescribed by law.

Va. Code Ann. § 20-99.1:1 provides for acceptance of process by the defendant by signing the proof of service, which has the same effect as service. In addition, a plaintiff or defendant may accept or waive service by execution of a notarized statement of intent to accept or waive process. The filing of these papers has the same effect as if the party had been served, and authorizes the court to enter a decree without further notice. The defendant may also accept or waive service by filing an answer in the suit, although this will not authorize the court to enter any order or decree without further notice.

[6] Please see "Appendix C – Title 11 Contracts" for applicable statutes.

Service by publication in divorce proceedings is governed by Virginia Code §§ 20-104, -105, -112. In any suit for annulment, divorce, or affirmance of marriage, an order of publication against a nonresident defendant needs to be accompanied by an affidavit that the defendant is not a resident of Virginia, or that diligence has already been used by plaintiff to ascertain where the defendant is.

Please see "Appendix D – Title 20 Domestic Relations" for additional notice provisions in this title.

Title 25.1: Eminent Domain

Virginia Code § 25.1-209 governs notice of filing of petitions in condemnation cases. Upon filing of a petition for condemnation, petitioner has to give owners 21 days' notice of the filing of such petition. The notice, along with a copy of the petition, must be served on owners. This service shall be made in the same manner upon any tenant entitled to participate in the proceeding. Virginia Code § 25.1-212 allows personal service of notice on nonresident owners.

Virginia Code § 25.1-210 allows service of notice by publication if upon filing of an affidavit, the petitioner believes the owner cannot be personally served because a diligent inquiry into the owner's place of residence within Virginia cannot be ascertained or results in knowledge that the owner is not in Virginia. The publication must be made in a newspaper once a week for not less than two successive weeks and the clerk shall mail a copy to any owner who cannot be personally served but whose place of residence is known.

Please see "Appendix E – Title 25.1 Eminent Domain" for additional notice provisions in this title.

Title 26: Fiduciaries Generally

The provisions of Title 26 have been repealed, effective October 1, 2012. These provisions have moved to Title 64.2, governing Wills, Trusts, and Fiduciaries and made effective on October 1, 2012.

Virginia Codes §§ 64.2-426 and § 64.2-427 govern notice provisions concerning testamentary additions to trusts by testators.

Virginia Code § 64.2-1420 provides that whenever any notice is served on the clerk of the circuit court, the clerk shall mail the notice by certified or registered mail to the person served, to his last known address as shown by the court papers. The clerk of the court may also use overnight delivery instead of certified or registered mail.

Virginia Code § 64.2-1426 provides that at the at the time of qualification or appointment of a nonresident fiduciary, each such nonresident shall file with the clerk of the circuit court of the jurisdiction his consent in writing that service of process in any action or proceeding against him may be by service upon the clerk of the court in which he is qualified or appointed, or upon such resident of the Commonwealth and at such address as the nonresident may appoint in the written instrument.

Please see "Appendix F – Title 64.2 Wills, Trusts, and Fiduciaries" for additional notice provisions in this title.

Title 43: Mechanics' and Certain Other Liens

Virginia Code § 43-4.01 provides that the duties of the mechanics' lien agent shall be to receive notices delivered to him pursuant to subsection B (governing persons entitled to claim a lien) and to provide any notice upon request to a settlement agent, as defined in § 55-525.8, involved in a transaction relating to the residential dwelling unit.

Virginia Code § 43-14.1 provides that any notice authorized or required by this chapter (Codes §§ 43-1 to 43-23.2), except the notice required by § 43-11 (governing how owners or general contractors can be personally liable to subcontractors, laborers, or material men), may be served by any sheriff or constable who shall make return of the time and manner of service; or any such notice may be served by certified or registered mail and a return receipt shall be prima facie evidence of receipt.

Please see "Appendix G – Title 43 Mechanics' and Certain Other Liens" for additional notice provisions in this title.

Title 50: Partnerships

Virginia Code § 50-73.7 governs service upon limited partnerships and provides that (a) a domestic or foreign limited partnership's registered agent is the agent for service of process, and that the registered agent may designate a natural person upon whom any process, notice, or demand may be served; and (b) whenever a domestic or foreign limited partnership fails to appoint a registered agent or whenever its registered agent cannot be found with reasonable diligence, then the clerk of the Commission shall be the agent of the limited partnership in accordance with § 12.1-19.1. The duties of the clerk of the Commission shall be to mail the process to the defendant at the address supplied by the party seeking service and to keep a record.

Please see "Appendix H – Title 50 Partnerships" for additional notice provisions in this title.

Title 55: Property and Conveyances

Virginia Code § 55-66.1:1 governs required notices of foreclosure or repossession and provides that notice must be given by mail for any action to foreclose or repossess the collateral to any assignor at least ten days before the enforcement or eviction.

Virginia Code § 55-248.6 provides that as used in Chapter 13.2 (Virginia Residential Landlord and Tenant Act, §§ 55-248.2 to 248.40), notice is defined as notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may either be a U.S. postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. If a rental agreement so provides, the landlord

and tenant may send notices in electronic form. In the case of the tenant, notice is served at the tenant's last known place of residence.

Please see "Appendix I – Title 55 Property and Conveyances" for additional notice provisions in this title.

Title 64.1: Wills and Decedents' Estates

Virginia Code § 64.1-122.2, which was repealed effective October 1, 2012, governed written notice of probate, qualification, and entitlement to copies of inventories, accounts, and reports to be provided to certain parties. This section has moved to § 64.2-508, providing that within thirty days after the qualification or admission of the will to probate, a personal representative or proponent of the will shall give notice by delivery or by first class mail to the persons entitled to notice at their last known address. *See also* Title 26: Fiduciaries Generally.

Please see "Appendix F – Title 64.2 Wills, Trusts, and Fiduciaries" for additional notice provisions in this title.

2. What are the notice requirements set forth in the federal system? Have they been revised as technology has changed in recent years, and if so, what reports were generated in connection with such changes that we may wish to consider?

(1) Provisions

Rule 4 of the Federal Rules of Civil Procedure governs service of process in Federal Courts. Rule 4 mirrors the Virginia rule of serving upon natural persons, providing that a summons may be served by any person who is at least 18 years old and not a party to the proceedings, or by a United States marshal or a person specially appointed by the court. *See* Fed. R. Civ. P. 4(c). Like Virginia, the Federal rules permit a defendant to waive service if the plaintiff provides a notice and request "sent by first-class mail or other reliable means." Fed. R. Civ. P. 4(d). The 1993 Amendment Comments explain that "other reliable means" permit the use of private messenger services or electronic communications because they "may be equally reliable and on occasion more convenient to the parties."

Serving an individual within the United States can be accomplished by any of the following: (a) delivering a copy of summons and complaint to the individual personally, (b) leaving a copy at individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there, or (c) delivering a copy to an agent authorized by appointment or by law to receive service of process. *See* Fed. R. Civ. P 4(e).

Serving a corporation, partnership, or association may be done by the following: (a) in a manner prescribed for serving an individual, or (b) by personally delivering a copy of summons and complaint to an officer, managing or general agent, or other agent authorized to receive service by process and by also mailing a copy to each defendant, or (c) at a place not within the United States, in any manner prescribed by Rule 4(f) except personal delivery under (f)(2)(c)(i). *See* Fed. R. Civ. P 4(h).

Serving a party in a foreign country can be accomplished by the following: (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, and (2) if there is no internationally agreed means, by a method prescribed by foreign country's law for service; or unless prohibited by the foreign country's law, by delivering a copy personally or using any form of mail that the clerk addresses and sends to individual with signed receipt, or (3) "*by any means not prohibited by international agreement*, as the court orders." See Fed. R. Civ. P. 4(f).

Notices by posting or publication are absent from Rule 4. However, Rule 4 explicitly permits service of process by certified or registered mail under certain circumstances. *See* Fed. R. Civ. P. 4(f)(2) (permitting service of process by mail for individuals in foreign countries); *see also* Fed. R. Civ. P. 4(d) (permitting service of process by mail in the form of waiver of service by the party being served).

For international parties, subsection (f)(3) was designed to be a "catch-all" provision to permit service of process by means not listed explicitly in the Federal Rules. Finally, the Federal Rules permit service of process by any means explicitly permitted by federal law. The Anticybersquatting Consumer Protection Act, 15 U.S.C. 1125(d) (2000) is an example of a federal law that has its own service provisions. As one of its forms of service of process, the Act permits e-mail to be used under certain circumstances as a way of informing the defendant of a claim against him. 15 U.S.C. 1125(d)(2)(A)(ii)(II).

(2) Advisory Comments

Rule 4 was amended in 1963, 1966, 1980, 1982, 1983, 1987, 1993, 2000, and 2007. In 1993, the "catch-all" provision under Rule 4(f)(3) was enacted. The Advisory Committee report explains the amendment:

> "Paragraph (3) authorizes the court to approve other methods of service not prohibited by international agreements. The Hague Convention, for example, authorizes special forms of service in cases of urgency if convention methods will not permit service within the time required by the circumstances. Other circumstances that might justify the use of additional methods include the failure of the foreign country's Central Authority to effect service within the six-month period provided by the Convention, or the refusal of the Central Authority to serve a complaint seeking punitive damages or to enforce the antitrust laws of the United States. In such cases, the court may direct a special method of service not explicitly authorized by international agreement if not prohibited by the agreement. Inasmuch as our Constitution requires that reasonable notice be given, an earnest effort should be made to devise a method of communication that is consistent with due process and minimizes offense to foreign law. A court may in some instances specially authorize use of ordinary mail. *Cf. Levin v. Ruby Trading Corp.*, 248 F. Supp. 537 (S.D.N.Y. 1965)."

While Rule 4 has yet to explicitly mention electronic methods of service, Rule 5, which governs the service of pleadings and other papers, has been amended several times to permit the service of pleadings and documents electronically, including by fax and email. *See, e.g.*, Fed R.

Civ. P. 5(b)(2)(D) (amended in 2001 to permit service of pleadings and other papers by electronic means where the person being served expressly consents in writing); Fed. R. Civ. P. 5(e) (permitting district courts to adopt rules allowing electronic filing). Some states have followed this electronic trend. *See, e.g.*, Ind. Trial R. P. 5(F) (defining "filing with the court" in a manner allowing the filing of documents by all forms of electronic transmission, including facsimile).

(3) Interpretation of Rule 4(f)(3) by Federal Courts

Rio Properties, Inc. v. Rio International Interlink, a 2002 Ninth Circuit Case, marks the first federal appellate court assessment of how service of process through electronic mail comports with procedural due process requirements. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d. 1007 (9th Cir. 2002). In *Rio*, a Law Vegas hotel and casino operator ("Rio") sued a Costa Rican internet business entity ("RII") asserting various statutory and common law trademark infringement claims. Rio first attempted process by conventional means in the United States, but was unable to effect service. Rio then hired a private investigator to determine RII's whereabouts in Costa Rica. The investigator learned that RII's preferred communication method was through its email address and that RII received "snail mail" at its IEC (international courier) address in Florida, which was not authorized to receive service. *Id.* at 1013. Rio filed an emergency motion to effectuate alternative service of process, which was unopposed by RII and then granted by the district court. Pursuant to Federal Rules 4(h) and 4(f)(3), the district court ordered service of process through mail to RII's attorney and to RII directly through email.

The Ninth Circuit affirmed, examining the text of Rule 4(f)(3) and concluding that service of process under this rule was neither a "last resort" nor "extraordinary relief" but rather "one means among several which enables service of process on an international defendant." *Id.* at 1014. The Court also noted limitations, specifically pointing to the difficulty in confirming receipt and complying with verification requirements for electronic mail. Ultimately, the Court left it to the discretion of the district court to balance the limitations of e-mail service against the benefits of any particular case.

Post-Rio courts have balanced a number of factors, including the defendant's elusiveness, familiarity or preference for electronic communication, and whether the defendant conducted business or communicated frequently by Internet or e-mail in deciding whether to approve service of process via e-mail. *Compare D'Acquisto v. Triffo*, No. 05-C-0810, 2006 WL 44057, at 2 (E.D. Wis. Jan. 6, 2006) (authorizing e-mail service of process); *Viz Commc'ns, Inc. v. Redsun*, No. C0104235JF, 2003 WL 23901766, at 6 (N.D. Cal. Mar. 28, 2003) (service by e-mail is constitutionally sufficient); *with Ehrenfeld v. Mahfouz*, No. 04 Civ. 9641(RCC), 2005 WL 696769, at 3 (S.D.N.Y. Mar. 23, 2005) (rejecting service via e-mail because plaintiff did not present evidence that defendant maintained the website, monitored an e-mail address, or would otherwise receive the message); *Pfizer, Inc. v. Domains By Proxy*, No. Civ.A.3:04 CV 741(SR.), 2004 WL 1576703, at 1-2 (D. Conn. July 13, 2004) (service by e-mail not likely to reach defendant and conventional service not impossible). *See* Andriana L. Shultz, *Superpoked and Served: Service of Process via Social Networking Sites,* 43 U. RICH. L. REV. 1497, 1514 (2009).

3. What have various leaders in our profession written about the pros and cons of changing the traditional methods of notice that have been in place for many years?

Several articles have been written about the pros and cons of changing notice provisions to provide alternative means of notice. A few are summarized below.

(1) Articles Pertaining to Service by Mail

Kent Sinclair, *Service of Process: Amended Rule 4 and the Presumption of Jurisdiction*, 14 REV. LITIG. 159 (1994).

Kent Sinclair is currently a Professor of Law and Director of the Advocacy and Lawyer Training program at University of Virginia School of Law. Professor Sinclair's article discusses how the service by mail construct was replaced by the "waiver of service" concept in the 1993 amendments. Sinclair comments that the 1993 Rule 4 amendment proceeds from the "premise that service of process is a pesky ministerial responsibility to be dispensed with as expediently as possible" and reflects a "deeper predisposition in favor of finding the existence of personal jurisdiction over the defendant." *Id.* at 162. Every method of service must provide three functions: effective notice, assertion of the court's authority over the parties, and certainty. Professor Sinclair concludes that the revised provisions of Rule 4 seem to perform these three functions adequately. Thus, "[o]n balance, it seems beneficial for plaintiffs to have the option of requesting waiver in situations in which they consider saving fifty dollars in service costs to be more important than conveying a threatening message to the defendant. But, when the plaintiff desires certainty or speed, or when the authority of the court needs to be signaled, even the Rule drafters remind plaintiffs that there is no substitute for personal service." *Id.* at 192.

Rachel Cantor, *Internet Service of Process: A Constitutionally Adequate Alternative?*, 66 U. CHI. L. REV. 943 (1999).

Rachel Cantor, a student at the University of Chicago Law School, wrote a comment that recorded the fifteen states that explicitly allowed service by certified or registered mail:

> "States that allow service of process by mail: Alabama, Ala R Civ P Rule 4.1 (Michie 1996) (certified mail); Indiana, Ind St Trial P Rule 4.1 (West 1996) (certified or registered mail or "other public means"); Kansas, Kan Stat Ann § 60-303 (1997) (certified mail is the default form of service); Kentucky, Ky R Civ P 4.01(1)(1) (Michie 1999) (certified or registered mail); Michigan, Mich Ct R 2.105 (1998) (certified or registered mail); Nebraska, Neb Rev Stat § 25-505.01(1)(c) (1985) (certified mail); North Carolina, NC R Civ P 4(j) (1997) (registered or certified mail); North Dakota, ND R Civ P 4 (1987) ("any form of mail" that requires a "signed receipt"); Ohio, Ohio R Civ P 4.1 (Baldwin 1995 & Supp 1998) (certified or express mail); Oklahoma, 12 Okla Stat Ann § 200 A2 (West 1998); Oregon, Or R Civ P 7D(2)(d) (1996) (first class and by certified, registered, or express mail); South Carolina, SC R Civ P 4(d)(8) (1997) (registered or certified mail); Tennessee, Tenn R Civ P 4.04(12) (1996) (registered or certified mail); Washington D.C., DC R Civ P 4(c)(3) (1998); West Virginia, W Va R Civ P 4(d)(1) (Michie 1995) (certified mail or first class mail)." *Id.* at 954, note 69.

At the time the article was written, at least thirteen states had waiver of service procedures. Virginia is notably missing from this list, as its waiver provision was not enacted until 2005.

> "At least thirteen states have waiver or quasi-waiver provisions: Arizona, Ariz Rev Stat R Civ P Rule 4.1 (1987 & Supp 1998); California, Cal Civ Pro Code § 415.30 (West 1997); Maine, Me R Civ P 4(c)(1) (1998); Minnesota, Minn R Civ P 4.05 (1996 & Supp 1998); Mississippi, Miss R Civ P 4(c)(3)(A) (1998); Missouri, Mo R Civ P 54.20 (Vernon 1976 & Supp 1998); Montana, Mont R Civ P 4D(1)(b)(i) (1998); New Jersey, NJ R Super Tax Surr Cts 4:4-4(c) (1992) (mail service of process effective only if party files answer to appear within sixty days); New Mexico, NM St Dist Ct R Civ P Rule 1-004(E) (Michie 1999) (mail service ineffective if not responded to within twenty days); New York, NY CPLR § 312-a (McKinney 1990 & Supp 1999); Rhode Island, RI R Civ P 4(d) (Michie 1998); South Dakota, SD Cod Laws § 15-6-4(i) (Michie 1997); Vermont, Vt R Civ P 4(l) (1988 & Supp 1997); Wyoming, Wyo R Civ P 4(o) (Michie 1998)." *Id.* at 954, note 70.

(2) Articles Pertaining to Service by E-Mail

Yvonne A. Tamayo, *Are You Being Served?: E-Mail and (Due) Service of Process,* 51 S.C. L. REV. 227 (2000).

Yvonne Tamayo is currently a Professor of Law at Willamette College of Law. At the time this article was written, e-mail and other forms of electronic communication was rapidly on the rise. Professor Tamayo argues that electronic services should be permitted in a particular range of civil cases, namely those in which defendants have established a connection to one e-mail address such that electronic service of process is reasonably calculated to apprise defendants of the actions against them. Professor Tamayo's analysis of notice by posting and publication is of particular interest, as Virginia currently permits such notices. Citing to *Mullane*, Professor Tamayo states that "the United States Supreme Court has recognized that service of process through posting or publication often provides less certainty that notice will reach the defendant than other methods of notification." *Id.* at 243. Service by publication is usually permitted only when personal service cannot be effected with due diligence and is more likely to be upheld if it is supplemented by another method of service. With this in mind, Professor Tamayo concludes that "e-mail presents an option that is potentially superior to mechanisms for service of process presently available" and that its advantage is "in its ability to hasten communication of notice by circumventing physical restrictions inherent in the traditional methods of its delivery." *Id.* at 252. However, she also acknowledges that successful service through e-mail "presupposes a reasonable expectation that the defendant may be found at his or her e-mail address, and must provide reasonable confirmation that the defendant received the notice." *Id.* at 252.

Matthew R. Schreck, *Preventing "You've Got Mail" ® from Meaning "You've Been Served": How Service of Process by E-Mail Does Not Meet Constitutional Procedural Due Process Requirements,* 38 J. MARSHALL L. REV. 1121 (2005).

Matthew Schreck is an attorney at Mulherin, Rehfeldt & Varchetto, P.C., in Wheaton, Illinois. As the title suggests, Schreck concludes that process by e-mail does not meet due process requirements: "Despite advantages to service of process by e-mail, there are several

problems with permitting service in this manner. First, there are technological problems with e-mail. The main technological problem is confirming that a defendant received notice of the claim against him. Second, the language of Rule 4 does not authorize service of process by e-mail. Third, and most importantly, service of process by e-mail conflicts with procedural due process requirements in most circumstances." *Id.* at 1135. Schreck notes that e-mail return receipt features, which allow a person to be notified of the delivery of a sent e-mail or to be notified of a read e-mail, are frequently limited to e-mails sent to and from the user's server. Additionally, some systems such as Microsoft Outlook do not require a user to open his e-mail before being able to view it. Shrek also discusses how the high incidence of spam may cause users to delete important emails. At the time the article was written, no state law expressly permitted initial service of process by e-mail under any circumstances.

Schreck also argues: ". . . just because e-mail may be the only means of informing a defendant of an action does not necessarily mean that it satisfies due process requirements. Rather, e-mail may not be a 'reasonably calculated' means 'under all the circumstances' to inform the defendant of the 'action against him' affording him the 'opportunity to present his objections.'" *Id.* at 1145 (discussing and quoting due process requirements set forth in *Mullane v. Central Hanover Bank*, 399 U.S. 306 (1950)). Shreck proposes that any amendments to Rule 4 permitting service of process by alternate means needs to balance traditional methods of service with modern technology and must "continue to favor traditional means of service by limiting when and how alternative means . . . may be utilized."

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Status of Legislation Recommended by the Virginia Code Commission - 2014 Session	
Obsolete Laws - (§ 30-151)	
HB 24 - Habeeb - **Contracts; recording requirements.** Deletes a reference to a subsection of the Code that was repealed in 2000 by House Bill 1204, which updated Article 9 (Secured Transactions) of the Uniform Commercial Code. There is no corresponding subsection in Article 9A, which replaced Article 9. The bill is a recommendation of the Code Commission.	Chapter 267
HB 25 - Habeeb - **Obsolete provisions; regulation of public service companies.** Updates a citation to the federal Public Utility Holding Company Act. The bill also removes an obsolete reference to repealed sections of the Code of Virginia that pertained to express companies. The bill is a recommendation of the Virginia Code Commission.	Chapter 192
HB 436 - LeMunyon - **Public institutions of higher education; year-round instruction.** Repeals the section of the Code of Virginia that continues in effect a chapter of the Acts of Assembly that directs certain public institutions of higher education to be placed on a year-round basis of instruction as soon as their financial resources will warrant to expedite the training of teachers. The bill is a recommendation of the Code Commission.	Chapter 6
Recodification - (§ 30-152)	
HB 311 - LeMunyon - **Revision of Title 33.1.** Creates proposed Title 33.2 (Highways and Other Surface Transportation Systems) as a revision of existing Title 33.1 (Highways, Bridges and Ferries), as well as portions of Titles 15.2 (Counties, Cities and Towns), 56 (Public Service Companies), and 58.1 (Taxation). Proposed Title 33.2 consists of 32 chapters divided into four subtitles: Subtitle I (General Provisions and Transportation Entities); Subtitle II (Modes of Transportation: Highways, Bridges, Ferries, Rail, and Public Transportation); Subtitle III (Transportation Funding and Development); and Subtitle IV (Local and Regional Transportation). This bill organizes the laws in a more logical manner, removes obsolete and duplicative provisions, and improves the structure and clarity of statutes pertaining to highways, bridges, ferries, rail and public transportation, transportation funding, and local and regional transportation. This bill has a delayed effective date of October 1, 2014. This bill is a recommendation of the Virginia Code Commission.	Chapter 805 (effective 10/1/14)
SB 5 - Edwards - **Right to Farm Act; restoration of provisions.** Restores application of certain provisions of the Right to Farm Act to cities and towns that currently only apply to counties. The proposed amendments were enacted in 2007 (Chapter 444 of the Acts of Assembly of 2007) but were omitted a year later in the 2008 revision of Title 3.1, Agriculture, Horticulture and Food. This bill is a recommendation of the Code Commission.	Chapter 246
Administrative Law Advisory Committee - (§ 30-155)	
SB 358 - Edwards - **Administrative Process Act; date of adoption or readoption of a regulation for purposes of appeal.** Clarifies the date of adoption or readoption for purposes of an appeal under the Rules of Supreme Court of Virginia as the date of publication in the Register of Regulations.	Chapter 699

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EXPERIENCE

Office of the Attorney General, Richmond, VA
Senior Assistant Attorney General & Section Chief, January 2014-Present
Provide counsel to various state agencies, boards, and commissions in administrative and general law matters. Supervise attorneys of the Financial Law and Government Support Section. Review legislation. Participate in the drafting, editing, and review process of Attorney General Opinions.

Stoney Law, PLC, Richmond, VA
Principal Attorney, May 2013-January 2014
Provide representation and legal counsel to individual and corporate clients in a variety of areas, including administrative law, employment law, and unemployment compensation. Planned and implemented the first annual ABC Bench-Bar Conference.

Virginia Department of Alcoholic Beverage Control, Richmond, VA
Administrative Law Judge, January 2012-January 2014
Conduct initial hearings and issue decisions related to disciplinary charges brought against licensees, contested applications for licenses, and franchise disputes. Hear select cases appealed to the Board as a designee of the Chairman due to occasional recusal of Board members.

Virginia Employment Commission, Richmond, VA
Administrative Law Judge, September 2010-January 2012
Appeals Examiner, January 2010-September 2010
Decide appeals of contested claims for benefits at the appeals and Commission level. Write precedent Commission decisions. Conduct administrative law hearings for evidence and oral argument.

EDUCATION

University of Richmond School of Law, Richmond, Virginia
Juris Doctorate, May 2009
Honors: Virginia District Court Judges Scholarship Recipient
Activities: Richmond Journal of Global Law and Business, *Editor-in-Chief*

Virginia Polytechnic Institute and State University, Blacksburg, Virginia
Bachelor of Arts in Political Science, May 2006
Bachelor of Science in Psychology, May 2006
University Council, *Undergraduate Representative*
Activities: Virginia Tech Student Government Association, *Chief Justice*

ASSOCIATIONS AND ACTIVITIES

Virginia State Bar, *Active Member*
Virginia Bar Association, *Administrative Law Section Council Member*
Metro Richmond Women's Bar Association
Richmond Bar Association
Richmond Hokie Club

COMMONWEALTH OF VIRGINIA

SUSAN CLARKE SCHAAR
CLERK OF THE SENATE
POST OFFICE BOX 396
RICHMOND, VIRGINIA 23218

SENATE

March 13, 2014

The Honorable John S. Edwards, Chair
Virginia Code Commission
P.O. Box 1179
Roanoke, VA 24006

Dear Senator Edwards:

This is to inform you that, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia, the Senate Committee for Courts of Justice has referred the subject matter contained in HB 994 to the Virginia Code Commission for study. It is requested that the appropriate committee co-chairs and bill patron receive a written report, with a copy to this office, by November 1, 2014.

With kind regards, I am

Sincerely yours,

Susan Clarke Schaar

SCS:dhl

cc: Sen. Henry L. Marsh, III, Co-Chair, Senate Committee for Courts of Justice
Sen. A. Donald McEachin, Co-Chair, Senate Committee for Courts of Justice
Del. Barbara J. Comstock, Patron of HB 994
✓Jane D. Chaffin, Virginia Code Commission
Jescey D. French, Division of Legislative Services
Mary Kate Felch, Division of Legislative Services
Kristen J.D. Walsh, Division of Legislative Services

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2014 SESSION

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HB 994 Human trafficking offenses; Va. Code Commission to amend catchline to a code to reflect proper term.

Introduced by: Barbara J. Comstock | all patrons ... notes | add to my profiles

SUMMARY AS PASSED HOUSE: (all summaries)

Human trafficking offenses. Directs the Virginia Code Commission to add the term "human trafficking" to the catchline of § 18.2-47 ("Abduction and kidnapping defined; punishment") in order to emphasize that section's applicability to offenses involving human trafficking.

FULL TEXT

01/08/14 House: Prefiled and ordered printed; offered 01/08/14 14103411D pdf | impact statement

02/03/14 House: Committee substitute printed 14104578D-H1 pdf | impact statement

HISTORY

01/08/14 House: Prefiled and ordered printed; offered 01/08/14 14103411D

01/08/14 House: Referred to Committee for Courts of Justice

01/31/14 House: Assigned Courts sub: Criminal Law

01/31/14 House: Subcommittee recommends reporting with amendment(s) (10-Y 0-N)

02/03/14 House: Committee substitute printed 14104578D-H1

02/03/14 House: Reported from Courts of Justice with substitute (22-Y 0-N)

02/05/14 House: Read first time

02/06/14 House: Read second time

02/06/14 House: Committee substitute agreed to 14104578D-H1

02/06/14 House: Engrossed by House - committee substitute HB994H1

02/07/14 House: Read third time and passed House BLOCK VOTE (97-Y 0-N)

02/07/14 House: VOTE: BLOCK VOTE PASSAGE (97-Y 0-N)

02/10/14 Senate: Constitutional reading dispensed

02/10/14 Senate: Referred to Committee for Courts of Justice

02/17/14 Senate: Passed by indefinitely in Courts of Justice with letter (9-Y 6-N)

2014 VIRGINIA ADMINISTRATIVE CODE PRICING

PRINT PRODUCT - YEAR 2 PRICING (Effective May 1, 2014)		
	STATE	**PUBLIC**
Full Set	$386.62	$463.95
October Cumulative Supplementary Pamphlet (Set of 4)	$221.66	$259.80
Individual Supplementary Pamphlets	$55.42	$64.94
October Index A-I	0*	0*
October Index J-Z	0*	0*
Individual Recomp/Replacement Volumes	$37.12	$43.30
*No cost with subscription to full set during first 3 years of contract term. $28 for individual subscriptions.		

- Pursuant to the Virginia Administrative Code contract, West emailed notice of an increase of 3.1% in pricing of the print administrative code effective May 1, 2014.
- Relevant contract language from Section III F:

  Beginning May 1, 2014, and in May of each year following for the remainder of the term of the Contract, the annual price of printed sets and volumes may be increased by West by an amount no greater than the change in the Producer Price Index for Book Publishing - Industry Code 2731 ("PPI") for the previous year or 5.0%, whichever is less. West will provide notice of the price increase and the effective date on or before May 1 of each year.

  For an increase greater than 5% of the previous year's PPI, West must obtain approval of the Commission.

- Bureau of Labor Statistics data:

Databases, Tables & Calculators by Subject

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Data extracted on: April 29, 2014 (1:20:29 PM)

Producer Price Index Industry Data

Download: .xls

Series ID	Description	Jan 2004	Jan 2005	Jan 2006	Jan 2007	Jan 2008	Jan 2009	Jan 2010	Jan 2011	Jan 2012	Jan 2013
PCU5111305111303	Original Data Value	265.8	290.8	309.0	332.4	354.7	375.5	401.2	415.2	432.2	445.6
PCU5111305111303	12-Month Percent Change	6.8	9.4	6.3	7.6	6.7	5.9	6.8	3.5	4.1	3.1

REQUEST FROM WEST FOR APPROVAL TO INCREASE CD-ROM PRICING		
	STATE	**PUBLIC**
Base subscription	$252.60	$417.48
Quarterly updating	$82.44	$139.08
Semiannual updating	$123.72	$211.32

- Virginia Administrative Code contract does not address increases in CD-ROM pricing.
- West requests that the Code Commission consider approving a 3.1% increase in the CD-ROM pricing effective May 1, 2014, and proposes working on a contract amendment to address the issue later this summer.