

2023 EDITION

Appellate Practice — Virginia and Federal Courts

Editors: Hon. Frank K. Friedman
L. Steven Emmert



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Appellate Practice: Virginia and Federal Courts

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VIRGINIA LAWYERS PRACTICE HANDBOOK

APPELLATE PRACTICE
VIRGINIA AND FEDERAL COURTS

Seventh Edition

Editors:

Hon. Frank K. Friedman
Court of Appeals of Virginia

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CHAPTER 1

THE VIRGINIA JUDICIAL SYSTEM: ORGANIZATION AND STRUCTURE

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CHAPTER 1

THE VIRGINIA JUDICIAL SYSTEM: ORGANIZATION AND STRUCTURE

1.1 INTRODUCTION

The judicial power of the Commonwealth of Virginia is vested in the Supreme Court of Virginia and those other courts that the General Assembly may establish by statute.¹ The Chief Justice of the Supreme Court serves as the administrative head of the judicial system.²

The “other courts” established by the General Assembly are the Court of Appeals of Virginia³ and circuit courts,⁴ which are courts of record,⁵ and district courts, which are courts not of record.⁶ Judges of the district courts are classified as either general district court judges or juvenile and domestic relations district court judges, each having separate areas of limited jurisdiction.⁷

1.2 SUPREME COURT OF VIRGINIA⁸

1.201 In General. The Supreme Court of Virginia consists of seven justices,⁹ who are elected by a majority vote of both houses of the General

¹ Va. Const. art. VI, § 1.

² Va. Const. art. VI, § 4.

³ Va. Code tit. 17.1, ch. 4.

⁴ Va. Code tit. 17.1, ch. 5.

⁵ Va. Const. art. VI, § 1.

⁶ Va. Const. art. VI, § 8; Va. Code tit. 16.1, ch. 4.1; Va. Code tit. 16.1, ch. 11.

⁷ Va. Code tit. 16.1, ch. 4.1; Va. Code tit. 16.1, ch. 11.

⁸ The original name of Virginia’s highest court was the Court of Appeals of Virginia. In 1830, its name became the Supreme Court of Appeals of Virginia. Virginia’s current constitution changed its name to the Supreme Court of Virginia in 1971. Va. Const. art. VI, § 1. See W. Hamilton Bryson, *Judicial Independence in Virginia*, 38 U. Rich. L. Rev. 705, 707 n.9 (2004) (discussing history of Supreme Court of Virginia’s names).

⁹ Va. Const. art. VI, § 2. The Constitution provides that the General Assembly may increase the number of justices up to eleven but may not decrease the number below seven justices. *Id.*

Assembly to serve terms of 12 years and who are eligible for re-election.¹⁰ The Chief Justice is elected by a majority vote of the justices and serves a term of four years.¹¹ The Supreme Court sits in Richmond and has one term per year,¹² beginning in September. Sessions commence at such times as the court directs.¹³ The court may sit en banc or in divisions as prescribed by the Rules of Court,¹⁴ and the concurrence of at least three judges is required for a decision to become the judgment of the court.¹⁵ If one justice of a division dissents from a decision of the division or certifies a conflict between the decision of the division and a prior decision of the court, the case will be reheard by the court sitting en banc.¹⁶ However, a decision declaring a law invalid under either the Constitution of Virginia or the Constitution of the United States requires a concurrence of at least a majority of justices of the court.¹⁷

1.202 Original Jurisdiction. The original jurisdiction of the Supreme Court of Virginia is set out in the state constitution and consists of the following proceedings:¹⁸

1. Habeas corpus;¹⁹
2. Mandamus;²⁰
3. Prohibition;²¹

¹⁰ Va. Const. art. VI, § 7. Interim appointments are made by the Governor to fill existing vacancies on the court that occur while the General Assembly is not in session. Such appointments last until 30 days after the next session of the General Assembly begins. *Id.* Vacancies that occur while the General Assembly is in session, or that will occur on a date certain between sessions, may be filled by the General Assembly by electing a successor at the session preceding the vacancy. Va. Code § 17.1-303.

¹¹ Va. Code § 17.1-300.

¹² Va. Code § 17.1-304(A).

¹³ *Id.* Special sessions may also be called by the Supreme Court or on request of the Governor. Va. Code §§ 17.1-305, 17.1-306.

¹⁴ Va. Code § 17.1-308. At least four justices must be present on an en banc panel. Rule 5:3.

¹⁵ Va. Code § 17.1-308.

¹⁶ *Id.*; Rule 5:3.

¹⁷ Va. Code § 17.1-308.

¹⁸ Va. Const. art. VI, § 1.

¹⁹ *Id.*; Va. Code § 17.1-310.

²⁰ Va. Const. art. VI, § 1; Va. Code § 17.1-309.

²¹ *Id.*

4. Felons' claims of actual innocence as are permitted by statute;²²
5. Matters of judicial censure, retirement, and removal;²³ and
6. Questions of state law certified by a federal court or the highest appellate court of another state.²⁴

1.203 Appellate Jurisdiction.

A. In General. In 2021, the General Assembly passed landmark legislation establishing appeals of right to the Court of Appeals of Virginia in most civil and criminal cases.²⁵ This legislation brought Virginia's appellate system into alignment with the other 49 states and the federal judiciary by codifying a two-tiered appellate system with appeals of right to an intermediate appellate court followed by an optional appeal by petition to the court of last resort.

With the expansion of the Court of Appeals' jurisdiction, the appellate jurisdiction of the Supreme Court of Virginia now primarily consists of hearing discretionary appeals from the Court of Appeals of Virginia. The Supreme Court also has limited direct appellate jurisdiction in a narrow class of interlocutory and final decisions. All appeals to the Supreme Court are discretionary (through the petition for appeal)²⁶ except for State Corporation Commission appeals²⁷ and Virginia State Bar disciplinary cases,²⁸ which are of right.

B. Direct Appeal. The Supreme Court has jurisdiction over an appeal directly from:

²² Va. Const. art. VI, § 1; Va. Code § 19.2-327.2 (establishing jurisdiction to consider petitions for a writ of actual innocence based on biological evidence).

²³ *Id.* These powers are exercised in conjunction with the Judicial Inquiry and Review Commission, which serves as an investigative body. Va. Code § 17.1-906; *see* Va. Const. art. VI, §§ 1, 10. Complaints of the Judicial Inquiry and Review Commission must be filed directly with the Supreme Court, making such cases akin to the other categories of the Supreme Court's original jurisdiction. Va. Code § 17.1-406(B).

²⁴ *See* Va. Const. art. VI, § 1; Rule 5:40.

²⁵ 2021 Va. Acts ch. 489.

²⁶ Va. Code §§ 8.01-670, 17.1-411.

²⁷ Va. Const. art. IX, § 4; Va. Code §§ 12.1-39, 17.1-406.

²⁸ Va. Code §§ 17.1-406(B), 54.1-3935(D), 54.1-3937(E).

1. A final decision in a habeas corpus proceeding before a circuit court;²⁹
2. A final decision in proceedings before the State Corporation Commission;³⁰
3. A final decision in cases before a three-judge panel to revoke a license to practice law in Virginia or to revoke the certificate of registration of professional law corporations or professional limited liability companies;³¹
4. A circuit court's order that grants a preliminary injunction, refuses such an injunction, or having granted such an injunction, then dissolves or refuses to enlarge it;³² and
5. A circuit court's pretrial order granting or denying a plea of sovereign, absolute, or qualified immunity that, if granted, would immunize the movant from compulsory participation in the proceeding.³³

C. Appeals from the Court of Appeals. The Supreme Court also has appellate jurisdiction to review, as a matter of the court's discretion, nearly all decisions of the Court of Appeals.³⁴ The General Assembly has provided that the Court of Appeals' decision is final and without a subsequent appeal to the

²⁹ Va. Code § 17.1-406. This may seem redundant, given that petitions for habeas corpus are part of the original jurisdiction of the Supreme Court. However, this provision was added by the General Assembly in 1985 specifically to terminate the jurisdiction of the Court of Appeals to hear appeals from a circuit court order involving petition for a writ of habeas corpus. *White v. Garraghty*, 2 Va. App. 117, 122, 341 S.E.2d 402, 405 (1986). The 2021 legislation expanding the Court of Appeals' jurisdiction did not amend section 17.1-404, which provides that the Court of Appeals has "original jurisdiction to issue writs of . . . habeas corpus" in "such cases over which [it] would have appellate jurisdiction." As a result, *White* appears to remain good law. Thus, "[a]bsent exceptional circumstances," the Court of Appeals will not "consider an original petition for a writ of habeas corpus when an adequate remedy may be had in the circuit courts under Code § 8.01-654," and appeals from a circuit court's decision in a habeas corpus case lie only to the Supreme Court. *White*, 2 Va. App. at 123-24, 341 S.E.2d at 406.

³⁰ Va. Const. art. IX, § 4; Va. Code §§ 12.1-39, 17.1-406.

³¹ Va. Code §§ 54.1-3935(D), 54.1-3937(E).

³² Va. Code § 8.01-626.

³³ Va. Code § 8.01-670.2(A); *see also* Va. Code § 8.01-626.

³⁴ Va. Code §§ 8.01-670, 17.1-411.

Supreme Court³⁵ if the Court of Appeals either dismisses or decides (i) a pretrial appeal by the Commonwealth in a felony case, including any cross-appeal by the defendant,³⁶ (ii) an appeal involving involuntary treatment of prisoners,³⁷ and (iii) an appeal involving denial of a concealed handgun permit.³⁸ Notably, as part of the legislation expanding the Court of Appeals' jurisdiction, the General Assembly abolished the former limitation on appeals from the Court of Appeals to the Supreme Court in cases involving state administrative agencies, workers' compensation, domestic relations, adoption, and traffic and misdemeanor cases without incarceration.³⁹

D. Certification from the Court of Appeals. In addition to those cases in which a final decision of the Court of Appeals may be appealed to the Supreme Court, the Supreme Court—either on motion of the Court of Appeals or on its own motion—may certify a case pending before the Court of Appeals for immediate transfer of appellate jurisdiction to the Supreme Court.⁴⁰

1.3 COURT OF APPEALS OF VIRGINIA

1.301 In General. In 1985, the General Assembly created an intermediate appellate court known as the Court of Appeals of Virginia.⁴¹ The Court of Appeals began with only ten judges—an eleventh was added in 2000⁴²—and had sharply limited jurisdiction, hearing only appeals from the Workers' Compensation Commission and from circuit courts in criminal, domestic relations, and state administrative agency cases.⁴³

³⁵ Va. Code § 17.1-410(A).

³⁶ Va. Code §§ 19.2-398, 19.2-401, 19.2-408.

³⁷ Va. Code §§ 53.1-40.1, 53.1-133.04.

³⁸ Va. Code § 18.2-308.08.

³⁹ Va. Code § 17.1-410(B) (formerly limiting the Supreme Court's jurisdiction in such cases to those involving a substantial constitutional question as a determinative issue or a matter of significant precedential value).

⁴⁰ Va. Code § 17.1-409. Criteria for such certification are: (i) that the case is of such public importance as to justify transfer and require prompt decision by the Supreme Court or (ii) that the overcrowded docket of the Court of Appeals warrants transfer. *Id.*

⁴¹ 1983 Va. Acts ch. 413.

⁴² 2000 Va. Acts ch. 8.

⁴³ Va. Code § 17.1-405. See paragraph 1.304 below for further discussion of jurisdiction.

In 2021, the General Assembly dramatically expanded the court’s jurisdiction to hear appeals of right in nearly all cases.⁴⁴ The legislation also expanded the court’s size to accommodate the increased case load. The court now consists of seventeen judges, who are elected by a majority vote of the General Assembly to serve eight-year terms.⁴⁵ The General Assembly is required to “consider regional diversity in making its elections.”⁴⁶ The Chief Judge is elected by a majority vote of the judges of the Court of Appeals to serve a term of four years.⁴⁷ The Chief Judge may appoint a retired Supreme Court justice, a retired judge of the Court of Appeals, or a retired judge of a circuit court of Virginia to fulfill the duties of an absent or disabled judge of the Court of Appeals or to assist the Court of Appeals in reviewing petitions for appeal to reduce congestion or backlog in the court’s docket.⁴⁸ The court sits at various geographic locations across Virginia, as designated by the Chief Judge in consultation with the other judges, to provide convenient access to citizens throughout the Commonwealth.⁴⁹ Judges sit in panels of three, with rotating membership and cases assigned upon designation by the Chief Judge.⁵⁰

1.302 En Banc Hearings. The Court of Appeals shall sit en banc:

- (i) when there is a dissent in the panel to which the case was originally assigned and an aggrieved party requests an en banc hearing and at least six judges of the court vote in favor of such a hearing or
- (ii) when any judge of any panel shall certify that in his opinion a decision of such panel of the court is in conflict with a prior decision of the court or of any panel thereof and five other judges of the court concur in that view.⁵¹

In addition, “the court may sit en banc upon its own motion at any time or *upon the petition of any party*, in any case in which a majority of the court determines

⁴⁴ 2021 Va. Acts ch. 489.

⁴⁵ Va. Code § 17.1-400. Provisions for filling interim vacancies are the same as those for a vacancy on the Supreme Court. *See* Va. Code § 17.1-400(A).

⁴⁶ Va. Code § 17.1-400(A).

⁴⁷ Va. Code § 17.1-400(B).

⁴⁸ Va. Code § 17.1-400(C).

⁴⁹ Va. Code § 17.1-402.

⁵⁰ *Id.*

⁵¹ Va. Code § 17.1-402(D).

it is appropriate to do so.”⁵² This language, which was inserted as part of the 2021 amendments, expands the availability of en banc rehearing compared to prior practice. Previously, a party could petition for rehearing en banc only if there was a dissent in the panel decision. Now, a party can petition for rehearing en banc even without a dissent, and if nine of the seventeen judges agree, the rehearing will be awarded.⁵³

An en banc hearing requires the presence of at least thirteen judges, and a concurrence of a majority of the judges sitting is required to reverse a decision by a panel of the court.⁵⁴

1.303 Original Jurisdiction. The original jurisdiction of the Court of Appeals is limited by section 17.1-404 to those cases “over which it would have appellate jurisdiction”⁵⁵ to issue writs of mandamus, prohibition, or habeas corpus.⁵⁶ The court also has the authority to punish for contempt⁵⁷ and original jurisdiction to hear petitions for writs of actual innocence based on nonbiological evidence.⁵⁸

1.304 Appellate Jurisdiction.

A. In General. The 2021 amendments expand the Court of Appeals’ formerly narrow areas of jurisdiction, some of which were of right and others discretionary, with broad jurisdiction to hear appeals of nearly all final decisions of circuit courts and the Workers’ Compensation Commission as a matter of right.⁵⁹ The court also hears interlocutory appeals by petition.

B. Appeals of Right. Any aggrieved party may appeal to the Court of Appeals as a matter of right in the following cases:⁶⁰

⁵² *Id.* (Emphasis added.)

⁵³ *Id.*

⁵⁴ Va. Code § 17.1-402(E).

⁵⁵ See *infra* ¶ 1.304 (discussing the Court of Appeals’ appellate jurisdiction); *White v. Garraghty*, 2 Va. App. 117, 341 S.E.2d 402 (1986) (holding that the Court of Appeals possesses discretionary original jurisdiction to issue writs of habeas corpus in proper cases); see also *supra* note 29.

⁵⁶ The Court of Appeals’ original jurisdiction to issue writs of habeas corpus does not extend to cases of conviction of one held under criminal process. *Bullock v. Director of Dep’t of Corr.*, 1 Va. App. 70, 334 S.E.2d 150, cert. denied, 474 U.S. 1023 (1985).

⁵⁷ Va. Code § 17.1-404.

⁵⁸ Va. Code § 19.2-327.10.

⁵⁹ Va. Code §§ 17.1-405, 17.1-407.

⁶⁰ Va. Code §§ 17.1-405, 17.1-407(B).

1. “Any final decision of a circuit court on appeal from (i) a decision of an administrative agency, or (ii) a grievance hearing decision issued pursuant to § 2.2-3005”;⁶¹
2. “Any final decision of the Virginia Workers’ Compensation Commission”;⁶²
3. Any final judgment, order, or decree of a circuit court in a civil matter other than those for which appeal lies directly to the Supreme Court;⁶³
4. Any final judgment, order, or decree of a circuit court (i) involving an application for a concealed weapons permit, (ii) involving involuntary treatment of prisoners, or (iii) for declaratory or injunctive relief under the Act for religious freedom;⁶⁴ and
5. Any final conviction in a circuit court of a traffic infraction or crime.⁶⁵

C. Discretionary Appeals. An appeal is discretionary (a party must petition for appeal to the Court of Appeals) in the following situations:

⁶¹ Va. Code § 17.1-405(A)(1). This category of appeals is not limited to cases involving only those agencies defined in the Administrative Process Act as administrative agencies. *County of Roanoke v. Friendship Manor Apartment Vill. Corp.*, No. 0394-85, 1985 Va. App. LEXIS 101, 1985 WL 304641 (Va. Ct. App. Sept. 14, 1985) (unpublished). The term “administrative agency” used to define the appellate jurisdiction of the Court of Appeals does *not* include a local school board (*Schwartz v. Highland Cnty. Sch. Bd.*, 2 Va. App. 554, 346 S.E.2d 544 (1986)) or a board of zoning appeals (*Virginia Beach Beautification Comm’n v. Board of Zoning Appeals*, 231 Va. 415, 344 S.E.2d 899 (1986)). This distinction was once a matter of crucial importance because, before the 2021 amendments, appeals involving entities not within the statutory term “administrative agency” went to the Supreme Court by petition rather than to the Court of Appeals by right. These cases remain good law because the 2021 amendments did not change the language in section 17.1-405(A)(1), but they matter little because appeals of circuit court review of local agency decisions now also go to the Court of Appeals by right. Va. Code § 17.1-405(A)(3).

⁶² Va. Code § 17.1-405(A)(2).

⁶³ Va. Code §§ 17.1-405(A)(3), 17.1-406(B); *see supra* ¶ 1.203(B) (discussing direct appeals under the jurisdiction of the Supreme Court).

⁶⁴ Va. Code § 17.1-405(A)(6).

⁶⁵ Va. Code § 17.1-406(A).

1. Interlocutory decrees or orders by certified for appeal by a circuit court⁶⁶ or pursuant to the Multiple Claimant Litigation Act;⁶⁷
2. Interlocutory decrees or orders involving an equitable claim in which the decree or order (i) requires money to be paid or the possession or title of property to be changed or (ii) adjudicates the principles of a cause, unless such decree or order involves certain domestic relations matters;⁶⁸
3. Cases the Commonwealth or a county, city, or town previously brought by writ of error;⁶⁹ and
4. Commonwealth pretrial criminal appeals.⁷⁰

The Court of Appeals has no *appellate* jurisdiction over circuit court decisions on a petition for a writ of habeas corpus.⁷¹

D. Availability of Further Review in the Supreme Court. The Court of Appeals' decision is final and no further review is available in the Supreme Court in (i) a pretrial appeal by the Commonwealth in a felony case, including any cross-appeal by the defendant, (ii) an appeal involving involuntary treatment of prisoners, and (iii) an appeal involving denial of a concealed handgun permit.⁷² All other decisions of the Court of Appeals are appealable to the Supreme Court.⁷³

E. Cases Certified for Transfer by the Supreme Court. Notwithstanding the statutory grant of exclusive ("final") appellate jurisdiction to the Court of Appeals in certain cases mentioned above, the Supreme Court in its discretion or on motion of the Court of Appeals may certify any case that is

⁶⁶ Va. Code §§ 8.01-675.5(A), 17.1-405(A)(4).

⁶⁷ Va. Code §§ 8.01-267.8, 17.1-405(A)(4).

⁶⁸ Va. Code § 17.1-405(A)(5), (B).

⁶⁹ Va. Code §§ 17.1-406(A), 19.2-317.

⁷⁰ Va. Code §§ 17.1-406(A), 19.2-398.

⁷¹ Va. Code § 17.1-406(B); *see supra* note 29 (discussing habeas jurisdiction of the Supreme Court and Court of Appeals).

⁷² Va. Code § 17.1-410(A).

⁷³ Va. Code § 17.1-410(B).

properly before the Court of Appeals for transfer to the Supreme Court, thereby assuming jurisdiction over the case.⁷⁴

F. Appeals Filed in Inappropriate Appellate Court. The 2021 amendments did not change the existing curative statute for appeals filed in the wrong appellate court. That statute provides that

no appeal which was otherwise properly and timely filed shall be dismissed for want of jurisdiction solely because it was filed in either the Supreme Court or the Court of Appeals and the appellate court in which it was filed thereafter rules that it should have been filed in the other court.⁷⁵

Should that occur, the statute requires the ruling court to transfer the appeal to the appellate court with appropriate jurisdiction.⁷⁶

Although this statute remains unchanged, counsel should be wary of relying on its remedial provisions. Transfer to the appropriate court will occur only if the appeal was “otherwise properly and timely filed.”⁷⁷ With nearly all cases having appeal of right to the Court of Appeals with a subsequent appeal by petition to the Supreme Court,⁷⁸ the different filing deadlines and procedures applicable in each respective court may preclude this statute’s application in many appeals.

1.4 CIRCUIT COURTS

1.401 In General. The circuit court is the trial court of general jurisdiction in Virginia. Since a major reorganization of the trial court system by the General Assembly in 1973,⁷⁹ the Commonwealth now has thirty-one judicial circuits, each with a statutorily prescribed territorial jurisdiction.⁸⁰ Judges of the circuit courts are elected by a majority vote of each house of the General Assembly for terms of eight years and must reside within the circuit

⁷⁴ Va. Code § 17.1-409. See *supra* ¶ 1.203(D) (discussing certification for transfer from the Court of Appeals).

⁷⁵ Va. Code § 8.01-677.1.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See Chapter 2 of this book (Appeals to the Court of Appeals of Virginia and Supreme Court of Virginia).

⁷⁹ Act of Mar. 20, 1973, 1973 Va. Acts ch. 544.

⁸⁰ Va. Code § 17.1-506.

in which they sit.⁸¹ The chief judge of each circuit is selected by majority vote of the judges of that circuit for a term of two years and serves as the administrative head of the circuit.⁸² The Judicial Council determines when the circuit courts are open for business, with the circuit courts continuing to observe legal holidays.⁸³

1.402 Original Jurisdiction.

A. Civil. The circuit courts have exclusive original jurisdiction in all civil cases in which the amount in controversy exceeds \$25,000, except for personal injury and wrongful death cases. For those cases, the amount in controversy must exceed \$50,000 for the circuit courts to have exclusive original jurisdiction. The circuit courts share concurrent jurisdiction with the general district courts in personal injury and wrongful death cases involving claims between \$4,500 and \$50,000 and in all other civil actions with amounts in controversy between \$4,500 and \$25,000.⁸⁴ However, the circuit courts do not have jurisdiction over proceedings that have been assigned to other courts or tribunals, including certain juvenile and domestic relations matters,⁸⁵ workers' compensation cases,⁸⁶ and certain suits for unlawful entry and detainer.⁸⁷ The civil jurisdiction of the circuit courts includes proceedings by quo warranto and issuance of writs of mandamus, prohibition, and certiorari to the lower courts.⁸⁸

B. Criminal. The circuit courts have original jurisdiction of all indictments for felonies⁸⁹ and of presentments, informations, and indictments

⁸¹ Va. Const. art. VI, § 7. Interim vacancies are filled by appointment of the Governor, such appointments to expire 30 days after the beginning of the next session of the General Assembly. *Id.*

⁸² Va. Code § 17.1-501.

⁸³ Va. Code § 17.1-705.2; *see* Va. Code § 2.2-3300.

⁸⁴ Va. Code §§ 16.1-77, 17.1-513. The general district courts have exclusive jurisdiction of civil claims in an amount not exceeding \$4,500. Va. Code § 16.1-77(1). For transfer between a general district court and a circuit court based on a change in the amount of a pending claim, *see* Virginia Code sections 8.01-195.4, 16.1-77(1), and 17.1-513.

⁸⁵ Va. Code § 16.1-241. *See infra* ¶ 1.503 (discussing the jurisdiction of the juvenile and domestic relations district courts).

⁸⁶ Va. Code § 65.2-100 *et seq.* Exclusive jurisdiction here rests with the Virginia Workers' Compensation Commission. Va. Code § 65.2-700.

⁸⁷ *See* Va. Code § 8.01-124 *et seq.*

⁸⁸ Va. Code § 17.1-513.

⁸⁹ *Id.*

for misdemeanors⁹⁰ committed within their respective circuits. In felony cases, a preliminary hearing is first held in the district court of competent jurisdiction.⁹¹ The district court judge hears the evidence and determines whether probable cause exists to certify the charge to the grand jury.⁹²

1.403 Appellate Jurisdiction. In addition to its role as the trial court of general jurisdiction, the circuit court also has appellate jurisdiction of all cases, civil and criminal, in which an appeal may be taken from the judgment of a district court.⁹³ This includes any order entered or judgment rendered in a general district court that alters, amends, overturns, or vacates any prior final order.⁹⁴ Cases appealed to the circuit court from the district court are tried de novo in the circuit court.⁹⁵ The trial de novo in circuit court includes a right to jury determination in both civil⁹⁶ and criminal⁹⁷ appeals from the district court.

Circuit courts also have jurisdiction to review—but not to rehear by trial de novo—decisions of administrative agencies,⁹⁸ the Virginia Employment Commission,⁹⁹ and boards of zoning appeals.¹⁰⁰

1.5 DISTRICT COURTS

1.501 In General. Pursuant to the authority vested in it by the Constitution of Virginia,¹⁰¹ the General Assembly in 1973 enacted a substantial reorganization of the then-existing courts of limited jurisdiction. The

⁹⁰ *Id.*; see also Va. Code § 19.2-239.

⁹¹ Va. Code §§ 16.1-127, 19.2-183 *et seq.*

⁹² *Id.*

⁹³ Va. Code § 17.1-513. This includes judgments from both the general district courts and the juvenile and domestic relations district courts. For the original jurisdiction of these courts, see paragraph 1.5 of this chapter.

⁹⁴ Va. Code § 16.1-106(A).

⁹⁵ Va. Code §§ 16.1-106, 16.1-113 (civil actions), 16.1-132, 16.1-136 (criminal cases).

⁹⁶ Va. Code § 16.1-113. A jury is available only if the amount in controversy exceeds 50 dollars. *Id.*

⁹⁷ Va. Code § 16.1-136. No jury is available in an appeal from a judgment forfeiting any recognizance or revoking any suspension of sentence. *Id.*

⁹⁸ Va. Code §§ 2.2-4024 to 2.2-4029.

⁹⁹ Va. Code § 60.2-625.

¹⁰⁰ Va. Code § 15.2-2314.

¹⁰¹ Va. Const. art. VI, § 8.

Commonwealth was divided into thirty-one territorial “districts,” each containing a district court with limited subject matter jurisdiction within its own geographic boundaries.¹⁰² The system of district courts—also known as “courts not of record”¹⁰³—in turn was divided into two categories of subject matter jurisdiction: general district courts and juvenile and domestic relations district courts.

The district courts have only original (trial) jurisdiction; they have no appellate jurisdiction. There is no right to jury trial in the district court.¹⁰⁴ Instead, all cases are heard by the district judge. All appeals are de novo to the circuit court.

1.502 General District Courts.

A. Civil Jurisdiction. The general district courts have jurisdiction over all claims that do not exceed a value of \$25,000 in controversy, and claims of personal injury or wrongful death that do not exceed \$50,000.¹⁰⁵ This jurisdiction is exclusive for claims of \$4,500 or less and is concurrent with the circuit courts for claims between \$4,500 and \$25,000—again, except for personal injury or wrongful death cases, in which jurisdiction is concurrent for claims between \$4,500 and \$50,000.¹⁰⁶ The civil jurisdiction of the general district court also includes attachment claims up to \$25,000,¹⁰⁷ partition of tangible personal property up to \$25,000 in value,¹⁰⁸ actions for unlawful entry and detainer,¹⁰⁹ and mental incompetency commitment proceedings.¹¹⁰ General district courts have concurrent jurisdiction with circuit courts to compel

¹⁰² Va. Code § 16.1-69.6.

¹⁰³ Va. Const. art. VI, § 8.

¹⁰⁴ The right to jury trial is afforded only in the trial court of record, the circuit court, under constitutional mandate in civil cases (Va. Const. art. I, § 11) and in criminal cases (Va. Const. art. I, § 8). The right to ultimate determination by a jury is protected by the statutorily prescribed appeal de novo to the circuit court. Va. Const. art. I, § 8.

¹⁰⁵ Va. Code § 16.1-77(1).

¹⁰⁶ *Id.* (as amended by 2021 Va. Acts ch. 199). Claims above \$4,500 may not be removed to circuit court. *See* 2007 Va. Acts ch. 869 (repealing Va. Code § 16.1-92).

¹⁰⁷ Va. Code § 16.1-77(2).

¹⁰⁸ Va. Code § 16.1-77.2.

¹⁰⁹ Section 16.1-77(3) of the Virginia Code provides that jurisdiction of actions of unlawful entry or detainer, and the maximum jurisdictional limits in section 16.1-77(1) shall not apply to any claim, counter-claim, or cross-claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person obligated on the lease or guarantee of such lease.

¹¹⁰ Va. Code § 16.1-69.28.

matters to arbitration as long as the amount in controversy is within the general district courts' jurisdictional limits.¹¹¹ A party who disagrees with a general district court's grant of arbitration may appeal that decision to a circuit court.¹¹² General district courts do not have jurisdiction to try title to land.¹¹³

The General Assembly has also required every general district court to establish a small claims division that has concurrent jurisdiction with the general district court over civil cases with an amount in controversy of \$5,000 or less.¹¹⁴ Parties in small claims court may not be represented by an attorney,¹¹⁵ except that a defendant retains the right to remove the case to general district court and may be represented by counsel for that purpose.¹¹⁶ Trials in small claims court are informal, and the judge has discretion to admit all probative evidence even if not in accordance with formal rules of evidence in order to do substantial and expeditious justice between the parties.¹¹⁷ Appeals from small claims courts are to circuit courts as in other cases from general district courts.¹¹⁸

B. Criminal and Traffic Offenses. The general district court has original jurisdiction over adult misdemeanors and violations of the ordinances, laws, and bylaws of the counties, cities, or towns within its district, including traffic offenses.¹¹⁹ The general district court also conducts preliminary hearings in felony cases.¹²⁰

1.503 Juvenile and Domestic Relations District Courts. The juvenile and domestic relations district courts have exclusive original jurisdiction, with limited statutory exceptions, of civil and criminal matters affecting

¹¹¹ Va. Code § 16.1-77(8).

¹¹² *Id.*

¹¹³ *Addison v. Salyer*, 185 Va. 644, 40 S.E.2d 260 (1946).

¹¹⁴ Va. Code §§ 16.1-122.1, 16.1-122.2.

¹¹⁵ Va. Code § 16.1-122.4(A).

¹¹⁶ Va. Code § 16.1-122.4(B).

¹¹⁷ Va. Code § 16.1-122.5.

¹¹⁸ Va. Code § 16.1-122.7.

¹¹⁹ Va. Code §§ 16.1-123.1, 16.1-126. Except for obscenity ordinances. Va. Code § 16.1-123.1.

¹²⁰ Va. Code § 16.1-127.

juveniles¹²¹ and, to a lesser extent, family members. The statutory grant of jurisdiction is comprehensive and detailed.¹²² It includes matters involving:

1. Delinquent children;¹²³
2. Children in need of services;¹²⁴
3. Children in need of supervision;¹²⁵
4. Abused or neglected children;
5. Juveniles charged with traffic offenses;
6. Abused spouses;
7. Adults accused of spousal or child abuse or neglect;
8. Adults involved in disputes concerning the support, visitation, or custody of a child;¹²⁶
9. Abandonment of children;
10. Termination of parental rights or responsibilities;¹²⁷
11. Spousal support;

¹²¹ “Juvenile” is defined as a person who is (i) younger than 18 years of age or (ii) for purposes of the Fostering Futures program (section 63.2-917 *et seq.*), younger than 21 years of age and eligible under section 63.2-919. Va. Code § 16.1-228.

¹²² *See generally* Va. Code § 16.1-241.

¹²³ Defined as a juvenile or adult who has committed a delinquent act prior to the age of 18. Va. Code § 16.1-228.

¹²⁴ Defined as a child whose behavior, conduct, or condition creates a serious threat to the child’s well-being and physical safety or that of another person if the child is under 14. To meet the statutory criteria, the conduct must present a clear and substantial danger, the child or his or her family must be in need of services not presently being received, and court intervention must be essential to provide those services. Va. Code § 16.1-228.

¹²⁵ Defined to include children who are habitually and without justification absent or truant from school or who engage in repeated runaway behavior. Va. Code § 16.1-228.

¹²⁶ Such jurisdiction is concurrent with the circuit court. Va. Code §§ 16.1-241, 16.1-244.

¹²⁷ Va. Code §§ 16.1-241, 16.1-244.

12. Civil commitment of a mentally ill or intellectually disabled person;¹²⁸
13. Judicial consent for emergency medical or surgical treatment of a child; and
14. Adoption and foster care.

The juvenile and domestic relations district court is under a statutory duty to protect the confidentiality of juveniles coming before the court.¹²⁹



¹²⁸ Va. Code § 16.1-280. For an adult committee, such jurisdiction is concurrent with the general district court. Va. Code § 16.1-241(B).

¹²⁹ Va. Code § 16.1-299 *et seq.*