JUDICIAL AND LEGISLATIVE UPDATES

CIVIL PRACTICE AND PROCEDURE

Christopher S. Dadak *
R. Sloane Austin **

TABLE OF CONTENTS

I. DECISIONS OF THE SUPREME COURT OF VIRGINIA 9
A. *Retroactive Application of the Statute of Limitations*.....9
B. *Sovereign Immunity & Retroactive Application* 13
II. DECISIONS OF THE COURT OF APPEALS OF VIRGINIA 17
A. *Concurrent Jurisdiction on Appeal* 17
B. *Abuse of Discretion & Summary Judgment*.....30
C. *Nonsuits, Legal Nullities, & the Tolling of the Statute of Limitations* 32
D. *Res Judicata & Joinder* 35
E. *The Statute of Limitations, Misnomer & Protective Preconditions* 37
III. NEW LEGISLATION.....39
A. *Expansion of Equity Capacity & Unauthorized Use of Voice and Likeness* 39

* Principal, Guynn Waddell, P.C., Salem, Virginia. J.D., 2012, University of Richmond School of Law; B.A., 2008, Washington and Lee University.

** J.D. Candidate at the University of Richmond School of Law; B.B.A., 2024, Baylor University.

B. *Jury Service: To Serve or Not to Serve?* 40
C. *Determining Whether Failure to Appear Was Willful* 41
D. *Punitive Damages for Hit and Run Drivers* 42
E. *Debt Collection Signature Defects* 42
F. *No Appeals Bonds for Indigent Defendants in Evictions* 43
IV. RULES OF THE SUPREME COURT OF VIRGINIA 43
A. *Automatic Substitution of Public Officers* 43
B. *Subpoenas for Privileged Records* 44
C. *Substitution of Party on Appeal* 44
D. *Faster Decisions from the Court of Appeals* 45
E. *Responsive Pleadings* 45
F. *Amicus Curiae Briefs* 46
G. *Mediations During Appeals* 46

Procedural issues rarely capture public attention. However, procedure took center stage in the Commonwealth with the recent Virginia redistricting litigation and underscored the pitfalls and consequences of procedural errors.[1]

This article discusses decisions from the Supreme Court of Virginia and the Court of Appeals of Virginia reviewing procedural issues. The article further discusses revisions to civil procedure provisions of the Code of Virginia and the Rules of the Supreme Court of Virginia in the last year.[2] These sources are the primary drivers of change in Virginia civil procedure.

The article proceeds in the following order of discussion: opinions of the Supreme Court of Virginia and the Court of Appeals of Virginia, then new legislation enacted during the 2025 General Assembly Session, and finally revisions to the Rules of the Supreme Court of Virginia.[3]

I. DECISIONS OF THE SUPREME COURT OF VIRGINIA

A. *Retroactive Application of the Statute of Limitations*

The Supreme Court of Virginia dealt with an emotionally difficult case involving the statute of limitations, an inappropriate sexual relationship, and a mental health condition. In September 2021, Jane Doe ("Doe") filed a complaint against Joseph Robert Green, Jr. ("Green") alleging numerous things, including "that she continued to suffer mentally and psychologically for several years as a result of the [sexual] relationship with Green."[4] This was probably made worse by the fact that Green was acquitted of the charges of "carnal knowledge of a child between 13 and 15 years of age under Code [of Virginia] § 18.2-63" in 2009.[5] However, Green argued in a plea in bar that "the statute of limitations on her claims began to run in December 2008, when Doe turned 18, and expired two years later in December 2010."[6]

1. *See* Scott v. McDougle, __ Va. __, __, 930 S.E.2d 332 (2026).
2. Due to the publishing schedule, the relevant "year" is approximately June 2025 through June 2026.
3. The author thanks the law review editors and staff for their patience and diligence.
4. Doe v. Green, 304 Va. 536, 539–40, 922 S.E.2d 756, 758 (2025).
5. *Id.* at 540, 922 S.E.2d at 758.
6. *Id.* at 540–41, 922 S.E.2d at 758.

In June 2005, Doe, who was fourteen years old, and Green, who was thirty-three years old, engaged in a secret sexual relationship.[7] In Doe's complaint, "[s]he asserted that she was 'constantly worried about getting in trouble, her lack of control over the relationship, and her parents' reaction, if the [sexual relationship] was discovered.'"[8] The relationship eventually ended in September of 2006 when Doe ran away.[9] However, "Doe eventually sought treatment with a licensed clinical psychologist who, in 2021, diagnosed her with Post-Traumatic Stress Disorder ("PTSD") as a result of her sexual relationship with Green."[10]

This diagnosis of PTSD is what prompted Doe to file her complaint against Green. However, Green stipulated that "the statute of limitations for Doe's claim was governed by the version of Code [of Virginia] § 8.01-249(6) that was in effect in 2005 (the "2005 Accrual Statute"), when the sexual relationship occurred."[11] According to Green, "the 2021 Accrual Statute did not apply retroactively to reach causes of action that arose before it was enacted."[12]

The 2005 Accrual Statute sets out the statute of limitations for personal injury claims, and it differs from the 2021 Accrual Statute by not tolling "the statute of limitations for injuries resulting from sexual abuse when the victim knew of the 'fact of injury or its casual connection to the sexual abuse' before reaching the age of majority."[13] However, both the 2005 and 2021 Accrual Statutes require a finding of sexual abuse as defined by the Code of Virginia section 18.2-67.10.[14]

Doe relied on the 2021 Accrual Statute and a 1995 amendment to Article IV, section fourteen of the Constitution of Virginia to argue that her complaint was timely.[15] However, "[t]he circuit court granted Green's plea in bar and dismissed Doe's complaint with prejudice," applying the 2005 Accrual Statute due to lack of legislative intent in regards to making the 2021 Accrual Statute

7. *Id.* at 539–40, 922 S.E.2d at 758.
8. *Id.* at 540, 922 S.E.2d at 758.
9. *Id.*
10. *Id.*
11. *Id.* at 540–41, 922 S.E.2d at 758–59.
12. *Id.* at 541, 922 S.E.2d at 759.
13. *Id.* (quoting 2005 Va. Acts ch. 213 (codified as amended at VA. CODE. ANN. § 8.01-249 (Cum. Supp. 2026))).
14. 2005 Va. Acts ch. 213; 2021 Va. Acts ch. 195 (codified as amended at VA. CODE. ANN. § 8.01-249 (Cum. Supp. 2026)).
15. *Green*, 304 Va. at 541–42, 922 S.E.2d at 759.

retroactive.[16] According to the circuit court, the two-year statute of limitations had run out because it had begun when Doe turned eighteen, ending when she turned twenty in December of 2010.[17] Doe then appealed to the Court of Appeals of Virginia and argued for the first time in her reply brief "that Code [of Virginia] § 8.01-1 operates to automatically provide for the retroactive application of new procedural statutes, including accrual statutes," so the 2021 Accrual Statute should apply.[18] This means the statute of limitations would have started when Doe was diagnosed with PTSD, not when she turned eighteen.[19] However, the court of appeals affirmed the circuit court's decision, finding that "the 2021 Accrual Statute contained 'language showing a legislative intent to be applied prospectively,'" not retroactively.[20] The court further found "that the statute of limitations began to run when Doe turned 18" due to Doe's complaint alleging "several symptoms of psychological injuries that had manifested before she turned 18."[21] Notably, the court did not acknowledge Doe's new argument under section 8.01-1.[22]

Doe appealed to the Supreme Court of Virginia on the basis that the court of appeals failed on two accounts.[23] According to Doe, the court of appeals erred in its ruling regarding retroactive application of the 2021 Accrual Statute as well as the injury and causal connection.[24] However, the court did not agree.[25]

First, the court analyzed whether the court of appeals "failed to consider the General Assembly's intention to apply the 2021 Accrual Statute retroactively."[26] Unlike the court of appeals, the court did analyze Doe's new argument; however, "this Court held that an appellant's failure to raise a specific argument in her opening brief results in waiver of that argument."[27] Despite Doe's attempts to

16. *Id.* at 542, 922 S.E.2d at 759.
17. *Id.*
18. *Id.* at 542–43, 922 S.E.2d at 760.
19. *See id.* at 543, 922 S.E.2d at 760.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 544, 922 S.E.2d at 760.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.* at 545, 922 S.E.2d at 761 (citing Palmer v. Atl. Coast Pipeline, LLC, 293 Va. 573, 580, 801 S.E.2d 414 (2017)).

consider her reliance on section 8.01-1 as "merely a new point of law" that supports her original argument, the court explained that the statute "actually provides an entirely new basis for the retroactive application of the 2021 Accrual Statute . . . ."[28] With the court waiving that argument due to Doe's failure to bring it up priorly, Doe relied further on her argument for automatic retroactivity.

Doe stated that "the 1995 amendment to Article IV, [section] 14 of the Constitution of Virginia established that accrual statutes pertaining to sexual abuse were automatically retroactive."[29] However, Doe misconstrued the plain language of the amendment because it "merely grants the General Assembly 'the power to provide for the retroactive application of a change in the accrual date,'" not automatic retroactivity.[30] The court has held previously that the language of the statutes must "explicitly and unequivocally" intend for retroactive application, and this statute has not done so.[31]

The court then went on to discuss how Doe's complaint had laid the foundation for the court to determine whether Doe "knew of her injury and its causal connection to the alleged sexual abuse by the time she reached the age of majority."[32] Notably, an "injury" in this context is defined as a "positive, physical or mental hurt," so the PTSD that Doe suffers from does constitute an injury here.[33] However, Doe's complaint alleged childhood psychological issues due to the sexual relationship with Green, so that also constituted an injury.[34] Doe argued that "it would be error to rely on the plain language of her complaint," and instead, the court should focus on when she was diagnosed with PTSD.[35] However, "[t]he issues in a case are made by the pleadings, and not by the testimony of witnesses or other evidence," so the court relied only on the plain language of Doe's complaint.[36] Ultimately, the court determined that

28. *Id.* at 545–46, 922 S.E.2d at 761.

29. *Id.* at 546, 922 S.E.2d at 762 (emphasis added).

30. *Id.* at 546–47, 922 S.E.2d at 762 (quoting City of Charlottesville v. Payne, 299 Va. 515, 528, 856 S.E.2d 203 (2021)).

31. *Id.*

32. *Id.* at 547, 922 S.E.2d at 762.

33. *Id.* at 548, 922 S.E.2d at 763.

34. *Id.* at 540, 543, 922 S.E.2d at 758, 760.

35. *Id.*

36. *Id.* at 549, 922 S.E.2d at 763 (quoting Potts v. Mathieson Alkali Works, 165 Va. 196, 207, 181 S.E. 521 (1935)).

Doe was aware as a minor that she suffered an injury as a result of her sexual relationship with Green.[37]

The Supreme Court of Virginia provided clear guidance that a party cannot apply a more beneficial statute of limitations to claims that occurred before the statute's enactment. This case seemed like an opportunity for the court to highlight the importance of the statute of limitations. In this case, Doe argued that the 1995 amendment to Article IV, section fourteen of the Constitution of Virginia required automatic retroactive application of accrual statutes pertaining to sexual abuse; but the court rejected this argument, explaining that constitutional amendments, like statutes, are presumed to operate prospectively absent a clear expression of contrary intent and that this amendment merely empowered the General Assembly to "provide for the retroactive application of a change in the accrual date."[38] The case is also a reminder of the importance of plain and explicit language. Doe brought this claim, and the "factual allegations contained in [her] complaint were entirely controlled by her," so the court can use that language to form its opinion, even if it negatively impacts Doe's arguments.[39]

B. *Sovereign Immunity & Retroactive Application*

This case mixes interesting issues of sovereign immunity and the timing of statutory application. Back in 2021, the General Assembly "grant[ed] employees, individually or collectively, the right to seek compensation for an employer's failure to pay overtime."[40] At that time, "the Act's definition of 'person' included 'the Commonwealth, any of its constitutional officers, agencies, institutions, or political subdivisions, or any public body' [and] 'specifically provided that the definition of 'person' in the Act constitute[d] a waiver of sovereign immunity by the Commonwealth.'"[41] "A little over one year after the original Act was passed, the General Assembly amended and reenacted the Act" with "extensive"

37. *Id.*

38. *Id.* at 546–47, 922 S.E.2d at 762.

39. *Id.* at 549, 922 S.E.2d at 763.

40. Commonwealth v. Mattocks, __ Va. __, __,925 S.E.2d 710, 711 (2026) (citing 2021 Va. Acts ch. 445 (codified as amended at VA. CODE ANN. §§ 40.1-29, 40.1-29.1 (Cum. Supp. 2026))).

41. *Id.* (citing 2021 Va. Acts ch. 445).

changes.[42] "Among many other changes, the General Assembly deleted the language waiving sovereign immunity."[43] The original language went into effect on July 1, 2021, whereas the modified language was codified on July 1, 2022.[44]

In August 2024, Department of Corrections' ("DOC") employees filed suit against the Commonwealth and the DOC "for alleged unpaid overtime."[45] The suit sought "overtime pay for a period that occurred between July 1, 2021, and June 30, 2022, i.e., before the complete revision of the original Act."[46] The Commonwealth responded with a plea in bar of sovereign immunity.[47] The circuit court disagreed and denied the plea in bar on the basis "that the amended version of the statute did not apply because the action was based on events that took place during the time sovereign immunity was waived."[48] The Commonwealth filed an interlocutory appeal pursuant to the Code of Virginia sections 8.01-626 and 8.01-670.2.[49]

The Commonwealth argued that sovereign immunity barred the employees' action. Specifically, the Commonwealth argued that since "sovereign immunity is an aspect of a court's subject matter jurisdiction" then "that jurisdiction is determined at the time a suit is filed."[50] It was undisputed that at the time of filing, the statutory language did not waive sovereign immunity.[51] Plaintiffs meanwhile argued that the Commonwealth's position was in essence a retroactive application of the 2022 statutory revision "to past conduct that occurred while the earlier Act's waiver was in effect."[52]

The court began its analysis by discussing the interplay between sovereign immunity and subject matter jurisdiction. "Virginia, like all other jurisdictions, has always benefitted from the doctrine of sovereign immunity."[53] The court further noted that it has

42. *Id.* (citing 2021 Va. Acts ch. 445).
43. *Id.* (citing 2022 Va. Acts ch. 461).
44. *Id.*
45. *Id.* at 712.
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.* (citing 2022 Va. Acts ch. 461 (codified as amended at VA. CODE ANN. § 40-1.29 (Cum. Supp. 2026))).
52. *Id.*
53. *Id.* (quoting KENT SINCLAIR, 1 VIRGINIA CIVIL PROCEDURE § 2.29 (2026)).

"described sovereign immunity in terms of a court's subject matter jurisdiction."[54] The court took "advantage of this opportunity to clarify the scope of sovereign immunity as a component of subject matter jurisdiction."[55]

"Subject matter jurisdiction defines a court's 'power to adjudicate a case.'"[56] That power has typically included "a tribunal's power to adjudicate a class of cases or controversies."[57] The court provided examples of "general district courts hav[ing] subject matter jurisdiction to hear certain disputes when the amount at issue does not exceed $50,000" and the court of appeals having "exclusive jurisdiction to hear appeals from decisions of the State Corporation Commission."[58]

The court first noted the "similarities between sovereign immunity and a court's power to adjudicate a class of cases."[59] "Both can be raised for the first time on appeal," and "a court must dismiss a case when sovereign immunity applies or when a court lacks the power to adjudicate a class of cases."[60] The court then described the "significant" differences between the two.[61] Courts "have repeatedly characterized sovereign immunity as an affirmative defense" on which the proponent of immunity has the burden of proof on any factual disputes.[62] While sovereign immunity can be raised for the first time on appeal, a final judgment cannot "be set aside on the basis that sovereign immunity would have barred the suit, even though the issue was not raised at trial."[63] Meanwhile, "if a court lacked statutory or constitutional authority to adjudicate a particular type of case, the judgment can be subject to collateral attack."[64]

The court summarized sovereign immunity and "a court's authority to adjudicate a particular class of cases, [as] distinct, but

54. *Id.* (citing Afzall v. Commonwealth, 273 Va. 226, 230, 639 S.E.2d 279 (2009)).
55. *Id.*
56. *Id.* (citing Hannah v. Commonwealth, 303 Va. 106, 123, 899 S.E.2d 621 (2024) (quoting Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church, 296 Va. 42, 49, 817 S.E.2d 547 (2018))).
57. *Id.* (quoting Cilwa v. Commonwealth, 298 Va. 259, 266, 836 S.E.2d 378 (2019)).
58. *Id.*
59. *Id.* at 713.
60. *Id.* (citations omitted).
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.* (citing Bonanno v. Quinn, 299 Va. 722, 736–38, 858 S.E.2d 181 (2021)).

conceptually related, facets of subject matter jurisdiction."[65] Because "sovereign immunity is a part of a court's subject matter jurisdiction" then if the immunity applies, "the court does not have jurisdiction to hear the case."[66] "Subject matter jurisdiction 'is determined at the time the litigation is filed and, once established, remains until the termination of the litigation.'"[67] "At the time [this] action was filed," the statutory abrogation of sovereign immunity had been repealed, and "[i]n the absence of a legislative waiver of immunity, the circuit court was without jurisdiction to adjudicate [the plaintiff's] claim."[68]

The court noted that "[t]he circuit court believed this case turned on principles of retroactivity."[69] The court agreed that generally, courts "view with disfavor the retroactive application of a statute, and . . . look for a clear signal from the legislature that a statute is to be applied retroactively."[70] However, the court stated that "the question of subject matter jurisdiction, which is determined at the time the litigation is filed" is a distinct and different inquiry from "whether a new statute, or modifications to a statute, are to be applied retroactively."[71] In reversing the circuit court, the court held that this case was solely "a question of subject matter jurisdiction."[72]

The court also "emphasize[d] the central role the legislature plays in handling questions of sovereign immunity."[73] Only "[t]he General Assembly has the power to retain sovereign immunity, waive sovereign immunity, or repeal the waiver of sovereign immunity, as it deems appropriate."[74]

---

65. *Id.*
66. *Id.*
67. *Id.* (citing E.C. v. Va. Dep't of Juv. Just., 283 Va. 522, 527–28, 722 S.E.2d 827 (2012)).
68. *Id.* (quoting Seabolt v. County of Albemarle, 283 Va. 717, 722, 724 S.E.2d 715 (2012)).
69. *Id.*
70. *Id.* (citations omitted).
71. *Id.*
72. *Id.* at 713–14.
73. *Id.*
74. *Id.* at 714.

II. DECISIONS OF THE COURT OF APPEALS OF VIRGINIA

A. *Concurrent Jurisdiction on Appeal*

The Court of Appeals of Virginia clarified the jurisdiction of a circuit court during the pendency of an appeal and the danger of repeated refusals to follow a court order. The case involved "a longstanding dispute among three brothers—Stavros ("Steve"), Paul, and Tasos Galiotos—over the division of business assets held in trusts for which the brothers are both co-trustees and equal beneficiaries."[75] In an earlier proceeding, the chancellor's final order "(i) required a pro-rata distribution of each asset and (ii) rejected a proposal by Steve and Paul for a non-pro-rata distribution that the chancellor found unfair to Tasos."[76] Additionally, the chancellor "required security of $1 million and imposed conditions to protect the parties' interests and the trust assets that Steve and Paul continued to manage as majority co-trustees" to "stay execution of the judgment pending appeal."[77]

After their mother passed away in 2016, "the [three] brothers disagreed about how to distribute the trust assets, which consisted of various business interests, properties, and cash."[78] Steve and Paul wanted a non-pro-rata distribution that would "separate Tasos from the business that Steve and Paul wanted to keep for themselves."[79] Tasos meanwhile wanted "a pro-rata distribution of each asset."[80]

The case resulted in a three-day trial in which Tasos prevailed, and "the chancellor concluded that Steve and Paul's plan was unfair to Tasos and contrary to the intent of the settlors—their parents."[81] Ultimately, "another 17 months passed before the chancellor entered the final order on December 12, 2023."[82] In addition to determining the appeal bond, "the chancellor expressed concern about Steve and Paul's continuing to manage the business assets as majority trustees if the pro-rata distribution order were stayed

75. Galiotos v. Galiotos, 86 Va. App. 151, 164–65, 921 S.E.2d 257, 264 (2025).
76. *Id.* at 165, 921 S.E.2d at 264.
77. *Id.* at 165, 921 S.E.2d at 264.
78. *Id.* at 166, 921 S.E.2d at 264.
79. *Id.*
80. *Id.* at 166, 921 S.E.2d at 264–65.
81. *Id.*
82. *Id.*

pending appeal" and determined that he "would [also] impose conditions on a stay pending appeal."[83] The appeal bond was ultimately one million dollars which could be split if both Steve and Paul chose to appeal.[84]

Also, the chancellor did the following:

> [I]mposed six stay conditions, including that '[d]istributions from the properties or entities controlling the properties subject to appeal are to continue as historically established,' expenses greater than $10,000 required 'the consent of all trustees,' and '[a]ll trustees are to be informed of the location and balance of deposit accounts and notified within 10 business days of the receipt of monthly statements.'[85]

Steve and Paul ultimately filed separate appeals on January 11, 2024.[86] Steve posted security for the entire amount.[87]

> Less than three months later, Tasos moved to enforce the stay conditions, complaining that Steve and Paul were violating them by (among other things) withholding bank statements, failing to account for the closing of two bank accounts, approving more than $10,000 in expenses without his consent, and failing to pay distributions.[88]

In response, Steve stated that while he was fully compliant with the stay conditions, Paul was not.[89] Specifically, Steve complained that Paul had exclusive control of the bank statements and had refused Steve's repeated requests to comply with the order.[90] Paul, meanwhile, argued "that he was not bound by the stay conditions because he had not filed the posted security."[91]

In April 2024, the chancellor presided over the hearing on Tasos's motion.[92] While he stated that he had meant to bind both Steve and Paul with the conditions, he was convinced by Tasos's argument that, as drafted, the order's conditions did not apply to Paul.[93] The chancellor stated he was "unable to find Steve . . . in violation of the conditions, but [thought] a new order should be prepared indicating going forward what [they] talked about [at the

83. *Id.* at 166–67, 921 S.E.2d at 265
84. *Id.*
85. *Id.* at 167, 921 S.E.2d at 265 (alteration in original).
86. *Id.*
87. *Id.*
88. *Id.* at 167–68, 921 S.E.2d at 265.
89. *Id.* at 168, 921 S.E.2d at 265.
90. *Id.*
91. *Id.*
92. *Id.*
93. *Id.* at 168, 921 S.E.2d at 265–66.

hearing] and including both Steve, Tasos, and Paul [for] the requirement to keep each other [updated]."[94]

On May 25, 2024, the chancellor entered an order:

> [I]mposing six stay conditions on all three brothers, both individually and in their capacities as co-trustees[,] . . . direct[ing] Paul to provide Steve and Tasos with outstanding financial and K-1 statements[,] . . . [and] direct[ing] Paul to 'provide monthly bank/brokerage statements from January 1, 2024' for Aegean Associates reflecting the location of any funds removed or transferred from Aegean's bank accounts.[95]

"Paul did not seek review of the May 25 order by filing a motion under *Code [of Virginia] § 8.01-676.1(E)* in the then-pending appeals" but, rather, filed a separate notice of appeal.[96] In that appeal, Paul argued that the court lacked jurisdiction to enter that May order because more than twenty-one days had elapsed since the December 12, 2023, final order.[97]

Predictably, in the meantime, Paul did not comply with the court's order. So, in June 2024, "Tasos moved the chancellor to compel enforcement of the stay conditions against Paul, attaching exhibits to show that Paul continued to withhold the Aegean bank statements, failed to provide copies of new leases, failed to pay distributions, and refused to provide year-end financial statements for two companies."[98] Tasos also requested a show cause against Paul.[99] Paul did not dispute Tasos's factual allegations of noncompliance but again argued that the chancellor lacked jurisdiction to enter the order.[100]

The chancellor again presided over a hearing on August 21, 2024, where Paul's counsel stated that Paul "would have complied if there [were] a valid order."[101] The chancellor disagreed with Paul's argument. "The chancellor explained that he issued the May 25 order 'to cover all the brothers under the Court's equity powers to preserve an estate during any process of the appeal, absent direction from the appellate courts,'" and further noted "that Paul was 'not entitled to appeal a case and then harm the trust property,

94. *Id.* at 168, 921 S.E.2d at 266.
95. *Id.*
96. *Id.* at 168–69, 921 S.E.2d at 266.
97. *Id.* at 169, 921 S.E.2d at 266.
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.* (alteration in original).

hide the money.'"[102] "The chancellor found Paul in criminal contempt and said that he was going to sentence him to ten days in jail" and also "in civil contempt and announced that he would fine him $300 a day for every day he remained out of compliance with the stay conditions."[103]

Unsurprisingly, at that moment, "Paul's counsel changed course," noted that they understood the court's concerns, and "urged the court not to find Paul in criminal contempt."[104] Counsel further assured the court there were no logistical obstacles to Paul's compliance with the order.[105] "In a rare show of unity, Steve and Tasos also asked the chancellor to give Paul another chance and not to send him to jail."[106] "After conferring with his client, Paul's counsel assured the court 'that Paul [wa]s going to comply with all six of the requirements in terms of immediate hand-over of existing information within ten days,' with the K-1s to follow" and Paul followed by giving "his personal assurance as well."[107]

The chancellor entered the corresponding order on September 5, 2024, which in relevant part held that:

> Paul . . . is found to be in criminal contempt and is sentenced to ten . . . days incarceration, which criminal contempt sentence is stayed conditioned on his compliance with the terms of the May 25, 2024 Order . . . and Paul is found to be in civil contempt and ordered to pay $300.00 per day commencing 9/1/24 for each day that he is not in compliance . . . .[108]

The order also provided that Tasos's request for attorney's fees would be "decided . . . at a later date."[109]

In response, Paul moved to reconsider "arguing that summary criminal contempt was inappropriate because his actions had not occurred 'in the presence of the Court'" and also "that the chancellor [lacked] jurisdiction to issue the May 25 order."[110] Two days later, Tasos in turn "moved again to enforce the stay conditions against Paul" and in support "asserted that Paul had still not

102. *Id.* at 169–70, 921 S.E.2d at 266.
103. *Id.* at 170, 921 S.E.2d at 266.
104. *Id.*
105. *Id.* at 170, 921 S.E.2d at 266–67.
106. *Id.* at 170, 921 S.E.2d at 267.
107. *Id.*
108. *Id.*
109. *Id.* at 171, 921 S.E.2d at 267.
110. *Id.*

provided all the required records and had told Tasos 'do not contact me again.'"[111]

The chancellor presided over yet another hearing on October 4, 2024, where "Paul's counsel repeated that the court lacked jurisdiction to issue the May 25 order and that Paul's conduct had not occurred in the court's presence."[112] In turn, the chancellor noted, given "that Paul and his counsel had [previously] told the court . . . that Paul was going to comply, but . . . had not[,] . . . it constituted direct contempt for Paul to take the position that he was not going to comply based on his jurisdictional objection."[113] In fact, the chancellor explicitly stated, "It's hard for me to imagine more of a direct contempt than to walk into the Circuit Court and say, I'm not complying and I don't intend to comply."[114]

The chancellor then "denied Paul's motion to reconsider, imposed contempt sanctions on Paul of $10,200, and increased the daily sanction from $300 to $600 a day until Paul complied."[115] The chancellor then ordered "Paul to appear in person for a hearing on November 14 and warned that, if he were still not in compliance, 'then under the civil contempt finding, the Court will consider taking him into custody at that time.'"[116] That same day "Paul filed a notice of appeal from the chancellor's September 5 contempt order," which was separately docketed.[117]

"On October 7, the chancellor issued a show-cause order, returnable to November 14."[118] The order "direct[ed] Paul to show cause why he 'should not be held in civil contempt and fined or imprisoned for failure to comply with the orders [previously] entered . . . and why the contempt order of September 5, 2024, should not now be modified to provide for additional sanctions.'"[119] Separate defense counsel on the contempt issue noted their appearance for Paul.[120] "On October 27, the chancellor issued an order, nunc pro tunc to October 4, memorializing the $600-per-day sanction at the

111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.* at 172, 921 S.E.2d at 267.
119. *Id.*
120. *Id.*

October 4 hearing" and "grant[ing] Tasos's motion for attorney fees for enforcing the May 25 and September 25 orders, in an amount to be determined" later.[121] The chancellor further "warned that Paul would be taken into custody under the court's civil contempt powers if he were not in compliance with the stay conditions at the November 14 hearing."[122] Ultimately, that hearing "was continued to December 18, 2024."[123] Meanwhile, Paul noted another appeal, this time of the October 27 order, which was separately docketed.[124]

The parties appeared for the December 18 hearing.[125] "Tasos provided sworn testimony to show that Paul had still not complied with the stay conditions."[126] Paul countered that his counsel had that morning "tendered a stack of documents to the court that he represented were the records."[127] Tasos conceded he had received a pleading from Paul referencing a production, but had not actually received any records.[128] Paul's contempt defense counsel "assured the chancellor that, now that he was involved . . . Paul had 'turned a corner, and [was] prepared to continue compliance with the Court's orders.'"[129] On that basis, counsel "asked the chancellor not to impose further monetary sanctions on Paul and to dismiss the criminal-contempt citation."[130]

While the chancellor remained skeptical given "Paul's insistence that he did not have to comply with the court's orders," he ultimately "suspended that contempt citation" and expressed hope "it [would] remain suspended" with "a possible dismissal of that finding at a later date."[131] Based on Paul's contempt counsel's assurance of continued "work to have Paul comply with the order and that suspending that penalty would help, the chancellor agreed to suspend that penalty too, pending proof that Paul would

121. *Id.*
122. *Id.*
123. *Id.* at 172, 921 S.E.2d at 267–68.
124. *Id.* at 172, 921 S.E.2d at 268.
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.* at 172–73, 921 S.E.2d at 268.

comply."[132] The chancellor did award Tasos "attorney fees of $14,207.70 for having to bring the motion to compel enforcement."[133]

"Paul challenge[d] two of the orders—entered a month apart—memorializing the chancellor's December 18 bench rulings."[134] Specifically, Paul separately appealed the chancellor's "order dated December 19, 2024, awarding Tasos $14,207.70 in attorney fees," and the chancellor's order dated January 29, 2025, "confirming the contempt sanction of $45,500 (calculated using the $600-per-day figure), but declining to enter judgment 'conditioned upon future compliance.'"[135] Those two appeals were also docketed under separate record numbers.[136]

On appeal, Paul argued that each order was void because pursuant to Rule 1:1(a) of the Rules of the Supreme Court of Virginia, the court "lost jurisdiction over him 21 days after the December 12, 2023 final order," and therefore lacked jurisdiction to find him in contempt for violating the orders.[137] Finally, he argued that "the criminal-contempt citation was not a valid exercise of the court's summary-contempt power because not all of the alleged misconduct occurred in the presence of the court."[138] Tasos countered that Rule 1:1B(a)(3) of the Rules of the Supreme Court of Virginia gave the court jurisdiction "to issue and modify . . . stay conditions" and "that the threat of jail was not a criminal-contempt sanction but a civil-contempt sanction to coerce Paul's compliance with the stay conditions."[139] Both arguments were legal issues reviewed de novo by the court of appeals.[140]

"Rule 1:1(a) addresses the '[e]xpiration' of the trial court's jurisdiction. It provides that '[a]ll final judgments, orders, and decrees . . . remain under the control of the trial court and may be modified, vacated, or suspended for [21] days after the date of entry, *and no longer*.'"[141]

---

132. *Id.* at 173, 921 S.E.2d at 268.
133. *Id.*
134. *Id.*
135. *Id.*
136. *Id.*
137. *Id.* at 174, 921 S.E.2d at 268–69.
138. *Id.* at 174, 921 S.E.2d at 269.
139. *Id.*
140. *Id.* at 174–75, 921 S.E.2d at 269 (citations omitted).
141. *Id.* at 175, 921 S.E.2d at 269 (alteration in original).

The court noted that underpinning Paul's argument was the "theme" that "all the contempt orders entered more than 21 days after the final order were void."[142] The court agreed that if it were, he could not be held in contempt because "disobedience of, or resistance to a void order, judgment, or decree is not contempt."[143] The court found that "Paul . . . consistently shortchanged Rule 1:1B(a)(3), which makes clear that the trial court retains concurrent jurisdiction with the appellate court to resolve disputes about the conditions for a stay pending appeal."[144] The court noted that the rule was "relatively new" and that it "pull[ed] together various rules and statutory provisions that permit a trial court to engage in certain limited functions during the pendency of an appeal despite the expiration of the 21-day period."[145] But, most importantly, the rule "confer[red] concurrent jurisdiction on the trial court to grant and modify a stay pending appeal and to set and modify the security to suspend execution pending appeal."[146] The court further explained that the rule did not add anything to Virginia law but "simply restated existing principles," particularly that a "trial court retains jurisdiction beyond the 21 days to set a bond to suspend execution of a judgment or to modify the terms of the security for the appeal."[147]

The court stated that "Paul's starting premise [wa]s thus mistaken that the chancellor lost all jurisdiction over him 21 days after the December 12, 2023 final order."[148] "While Steve's and Paul's notices of appeal immediately established appellate jurisdiction in the court of appeals, the circuit court retained 'concurrent jurisdiction for the purposes' listed in the rule," which "included 'addressing motions to stay the judgment pending appeal' and 'motions and objections . . . to the amount or form of a[] . . . suspending bond pursuant to Code [of Virginia] § 8.01-676.1.'"[149] The court found that Tasos's original motion to enforce the December 12 final order "fell comfortably within the trial court's concurrent jurisdiction

142. *Id.*

143. *Id.* (citing Sasson v. Shenhar, 276 Va. 611, 624, 667 S.E.2d 555 (2008) (quoting Leisge v. Leisge, 224 Va. 303, 306, 296 S.E.2d 538 (1982))).

144. *Id.*

145. *Id.* at 176, 921 S.E.2d at 269.

146. *Id.*

147. *Id.* at 176, 921 S.E.2d at 269–70 (citing Velazquez v. Commonwealth, 292 Va. 603, 614, 791 S.E.2d 556 (2016) (citing VA. CODE ANN. § 8.01-676.1 (Cum. Supp. 2026))).

148. *Id.* at 176, 921 S.E.2d at 270.

149. *Id.* (citing VA. SUP. CT. R. 1:1B(a)(1), 1:1B(a)(3)(B)–(C) (2026)).

under those provisions."[150] Just because the court did not provide the specific relief Tasos requested, but instead "modified the stay conditions themselves to extend them to Paul," did not invalidate the court's ability to do so under Rule 1:1B(a)(3)(B).[151] "Just as in federal practice, the rule here permits the trial court 'to maintain the status quo during the pendency of the appeal.'"[152]

The court then analyzed each order in turn. First, the court analyzed whether it had jurisdiction to hear Paul's appeal of the May 25 order.[153] Tasos had moved to dismiss it "for lack of appellate jurisdiction, arguing that Paul was required to seek review of that order in the then-pending appeal of the underlying judgment."[154] The court noted that only an appellate court reviewing the underlying appeal can review a "trial court's decision to stay a judgment pending appeal or to set or modify the terms of the security to suspend execution pending appeal."[155] "In other words, when Paul objected to the chancellor's May 25 order extending the stay conditions to him, he should have sought review in the then-pending appeal of the underlying judgment."[156] He should not have "notic[ed] a new appeal to proceed on a different track before a different three-judge panel of the Court of Appeals."[157]

The court provided four reasons in justification. First, the appeal was not authorized by any statutory provision authorizing jurisdiction.[158] "The May 25 order d[id] not qualify for appellate review under any [statutory] provisions" because it was not a "final order" nor did fall under "the only two types of interlocutory orders mentioned" in the Code of Virginia.[159] Second, Rule 1:1(B)(a)(3) provides for "concurrent jurisdiction" between the trial court and appellate court as opposed to "appellate jurisdiction in a different panel of the Court of Appeals from the one adjudicating the underlying appeal."[160] "Third, Code [of Virginia] § 8.01-676.1(E)(1) also

150. *Id.* (same).
151. *Id.* at 176–77, 921 S.E.2d at 270.
152. *Id.* at 177, 921 S.E.2d at 270 (citing Moore's Federal Practice—Civil § 303.32[2][b][ii], at 303-80.3 & n.21 (3d ed. 2025) (collecting cases)).
153. *Id.*
154. *Id.*
155. *Id.* at 177–78, 921 S.E.2d at 270.
156. *Id.* at 178, 921 S.E.2d at 270.
157. *Id.*
158. *Id.* at 178, 921 S.E.2d at 270–71.
159. *Id.*
160. *Id.* at 178–179, 921 S.E.2d at 271.

makes clear that trial-court rulings on such motions are reviewed by the appellate court hearing the underlying appeal."[161] The statute explicitly provided that the aggrieved party "may request a review of such decision *by the appellate court before which the case is pending*" but it also provided the procedure for that review.[162] The court then explained "it would make no sense for a new and different appellate panel to get up to speed on issues that are already pending before the merits panel hearing the underlying appeal."[163] "Finally, as shown by what happened here, commencing a new appeal to challenge a trial court's stay ruling takes much longer than simply asking for direct review by the appellate tribunal hearing the appeal."[164] The court specifically noted this issue would have been decided about eighteen months earlier had Paul properly sought appellate review.[165] Finding "no independent jurisdictional basis to consider Paul's appeal of the chancellor's May 25 ruling extending the stay conditions to him," the court dismissed that appeal.[166]

The court then analyzed the remaining contempt orders. It first found that it did not have jurisdiction over the January 29, 2025, contempt order.[167] The court of appeals did not have jurisdiction over that order because the circuit court "decline[d] to enter sanctions on the show cause, conditioned on future compliance," and a contempt "order *declining* to hold a party in contempt is not appealable."[168] The remaining orders were all appealable. The September 5 order was appealable even "though it stayed execution of the sentence" because it "found Paul in contempt and specified the penalty," namely ten days of incarceration and a $300 per day fine.[169] The October 27 order meanwhile was appealable because it ordered Paul "pay $10,200 in 'civil contempt sanctions' within 90 days" and an increased penalty of $600 a day.[170] Finally, the December 19 order was appealable because "it ordered Paul to pay

161. *Id.* at 179, 921 S.E.2d at 271.
162. *Id.* (quoting VA. CODE ANN. § 8.01-676.1(E)(1) (Cum. Supp. 2026)).
163. *Id.*
164. *Id.*
165. *Id.*
166. *Id.* at 179–80, 921 S.E.2d at 271.
167. *Id.* at 181, 921 S.E.2d at 272.
168. *Id.* at 181–82, 921 S.E.2d at 272.
169. *Id.* at 181, 921 S.E.2d at 272.
170. *Id.*

$14,207.70 in attorney fees, the Court having previously granted Tasos's motion for fees in the October 27 order."[171]

The court then turned to the merits of Paul's arguments on the three remaining contempt orders. The court found Paul was "mistaken that each of these three contempt orders is void on the theory that the trial court lost jurisdiction to issue the May 25 order and then to hold Paul in contempt for violating it."[172] The court had already found that "the trial court had jurisdiction under Rule 1:1B(a)(3)(B) to set the stay conditions applicable to the parties pending appeal, as well as to modify those conditions."[173] Since the court had jurisdiction and power to set those conditions, then "it also had the inherent power to enforce those conditions by holding Paul in contempt for violating them."[174] "This inherent authority not only ensures compliance with court orders but also upholds public confidence and respect for the judiciary, both of which are essential to protecting and enforcing the rights of the people."[175] After all, "[w]ithout such power, . . . the administration of the law would be in continual danger of being thwarted by the lawless."[176]

The court next analyzed whether the September 5 order was criminal contempt as described by the court or civil contempt. The court had "found [Paul] to be in criminal contempt" and sentenced him to ten days of incarceration, which was "stayed condition[ed] on his compliance with the May 25, 2024 Order."[177] The court explained that "because civil contempt sanctions are viewed as nonpunitive and avoidable, fewer procedural protections for such sanctions have been required."[178] The difference between civil and criminal contempt is that civil contempt is "designed to compel future compliance with a court order, [and] are considered to be coercive and avoidable through obedience"[179] whereas "criminal contempt punishes the offender for his contemptuous conduct."[180]

171. *Id.*
172. *Id.* at 182, 921 S.E.2d at 272.
173. *Id.* at 182, 921 S.E.2d at 272–73.
174. *Id.* at 182, 921 S.E.2d at 273.
175. *Id.* at 183, 921 S.E.2d at 273 (quoting Orndoff v. Commonwealth, 304 Va. 419, 430–31, 920 S.E.2d 305, 311 (2025)).
176. *Id.* (quoting *Ex Parte* Terry, 128 U.S. 289, 303 (1888)).
177. *Id.* at 183, 921 S.E.2d at 273.
178. *Id.* (quoting Int'l Union v. Bagwell, 512 U.S. 821, 831 (1994)).
179. *Id.* (same).
180. *Id.* (quoting Local 28 of Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. 421, 444 (1986)).

"'Criminal contempt is a crime in the ordinary sense,' and 'criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings.'"[181] Furthermore, a trial court's description of whether its contempt finding is civil or criminal is not determinative.[182] Nor does "[t]he fact that a contempt sanction calls for imprisonment . . . make it criminal contempt."[183] "The 'labels affixed to the contempt proceeding or the relief imposed under state law are not controlling and will not be allowed to defeat the applicable protections of federal constitutional law.'"[184] The court concluded that the contempt was civil in nature because Paul's "ten-day jail sentence in the September 5 order . . . was designed to coerce Paul into complying with the stay conditions."[185]

Finally, the court did not find that the hearing and order violated Paul's due process rights.[186] The court noted that the parties had fully briefed the issue and Paul's counsel presented argument at the hearing.[187] Meanwhile, all due process requires is "at a minimum, 'some kind of notice' and 'some kind of hearing.'"[188] The court held "Paul was afforded ample 'notice and an opportunity to be heard'" since, in addition to the briefing and oral argument, and after being apprised of the criminal penalties that were forthcoming, "Paul and his counsel had another opportunity to address the court, now promising that Paul would comply going forward."[189]

The court quickly dispensed with Paul's arguments related to the October 27 order.[190] The order "was also a proper exercise of the chancellor's civil-contempt authority" where the court memorialized a penalty of "$10,200 for [Paul's] 34-day delay in complying with the stay . . . ."[191] "Although the order required that the

181. *Id.* at 183–84, 921 S.E.2d at 273 (quoting Int'l Union v. Bagwell, 512 U.S. 821, 826 (1994)).

182. *Id.* at 186, 921 S.E.2d at 274–75.

183. *Id.* at 186, 921 S.E.2d at 274.

184. *Id.* at 186, 921 S.E.2d at 275 (quoting Krieger v. Commonwealth, 38 Va. App. 569, 579, 567 S.E.2d 557 (2002) (en banc)).

185. *Id.* at 187, 921 S.E.2d at 275.

186. *Id.*

187. *Id.*

188. *Id.* (quoting Fairfax Cnty. Sch. Bd. v. S.C., 297 Va. 363, 376, 827 S.E.2d 592, 597 (2019)).

189. *Id.* at 187–88, 921 S.E.2d at 275 (quoting Int'l Union v. Bagwell, 512 U.S. 821, 827 (1994)).

190. *Id.* at 189, 921 S.E.2d at 275–76.

191. *Id.* at 188, 921 S.E.2d at 275.

sanctions be paid to the clerk of the Virginia Beach Circuit Court, not to Tasos, that does not make it punitive rather than coercive" as the ordered "sanctions 'were clearly designed to coerce compliance with the court's orders, rather than to punish . . . for . . . contemptuous conduct.'"[192] Fines are remedial rather than punitive "when the defendant can avoid paying the fine simply by performing the affirmative act required by the court's order."[193] The court found "Paul's due-process objections to the October 27 order . . . likewise meritless."[194] The court found that Paul had plenty of notice and opportunity to be heard given that "Tasos moved to enforce the stay conditions a week before the October 4 hearing, laying out Paul's continued failure to comply and asking the court again to hold Paul in contempt" and at the October 4 hearing, "Paul's counsel was also given an opportunity . . . to address the court."[195]

The court concluded with its analysis of the December 19 order that provided "$14,207.70 in attorney fees to Tasos."[196] "A trial court is authorized to make an award of monetary damages in a civil contempt proceeding to 'compensate a plaintiff for losses sustained because a defendant disobeyed a court's order.'"[197] The court found this "resulting fee award was thus part of the civil-contempt remedy" based on the procedural history and context.[198] Just like the previous orders, the court found that Paul "had ample notice and opportunity to be heard" and brushed away Paul's due process arguments.[199]

The court succinctly summarized the applicable lesson: "Paul gambled that he could ignore the chancellor's stay conditions and defeat any contempt charges by arguing that the chancellor had lost jurisdiction over the case," but "Paul miscalculated."[200] In other words, if "you come for the king [i.e., judge], you best not miss."[201]

---

192. *Id.* (quoting Local 28 of Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. 421, 444 (1986)).
193. *Id.* at 188, 921 S.E.2d at 276 (quoting Hicks v. Feiock, 485 U.S. 624, 632 (1988)).
194. *Id.*
195. *Id.* at 188–89, 921 S.E.2d at 276.
196. *Id.* at 189, 921 S.E.2d at 276.
197. *Id.* (quoting Lee v. Spoden, 290 Va. 235, 247, 776 S.E.2d 798, 804 (2015)).
198. *Id.*
199. *Id.*
200. *Id.* at 190, 921 S.E.2d at 276–77.
201. THE WIRE, *Lessons* (HBO, released July 28, 2002).

B. *Abuse of Discretion & Summary Judgment*

The Court of Appeals of Virginia identified what can happen when there is "an egregious abuse of judicial power."[202] In October of 2021, Robert Thornhill ("Thornhill") sued Commonwealth Eye Center and Dr. Russell Brear (collectively "CEC") for medical malpractice.[203] The circuit court entered a Uniform Pretrial Scheduling Order ("UPSO"), setting the trial to begin on March 20, 2023.[204] According to Section V of the UPSO, the parties were then supposed to exchange their witness and exhibit lists "fifteen (15) days before trial," filing it "with the Clerk of the Court" because "[a]ny exhibit or witness not so identified and filed will not be received in evidence."[205] Notably, the rule does provide an exception that allows an exhibit or testimony if it "would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence."[206]

On March 1, 2023, Thornhill exchanged his lists with the CEC personally, but he missed the court filing deadline, so the CEC was the only one to file on time.[207] Despite the CEC's lack of surprise by the late filing, the circuit court "prohibited Thornhill from introducing exhibits or witnesses at trial, and entered summary judgment."[208] The circuit court emphasized the filing requirement of the exception to Section V of the UPSO, finding "that the UPSO requires the parties to file the witness and exhibit list while simultaneously providing a copy to opposing counsel."[209] Thornhill appealed.[210]

The court of appeals emerged as a divided panel on this matter.[211] After the panel's decision, Thornhill then petitioned for en banc review, and the court of appeals granted review on "the circuit

202. Thornhill v. Commonwealth Eye Ctr., P.C., 86 Va. App. 805, 817, 925 S.E.2d 453, 459–60 (2026).
203. *See id.* at 808, 925 S.E.2d at 455.
204. *Id.* at 809, 925 S.E.2d at 455.
205. *Id.* at 809–10, 925 S.E.2d at 455–56 (emphasis added).
206. *Id.* at 809–10, 925 S.E.2d at 456 (emphasis added).
207. *See id.* at 810, 925 S.E.2d at 456.
208. *Id.* at 811, 925 S.E.2d at 456.
209. *Id.*
210. *Id.* at 812, 925 S.E.2d at 457.
211. *See id.*

court's enforcement of the UPSO and its imposition of sanctions for an abuse of discretion."[212]

The Supreme Court of Virginia has provided that a circuit court abuses its discretion in the following ways: "[W]hen a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper factors, and no improper ones, are considered, but the court, . . . commits a clear error of judgment."[213]

To determine whether the circuit court abused its discretion, the Court of Appeals of Virginia examined the scope of the circuit court's authority, acknowledging that "[a]t common law, a circuit court may impose contempt sanctions for a willful violation of the UPSO."[214] However, in this case, the circuit court's sanction of excluding all of Thornhill's witnesses and exhibits "was not merited."[215] The court of appeals believed that "the circuit court's judgment misalign[ed] with the reality of the circumstances it confronted."[216]

The court of appeals emphasized the importance of Rule 1:18 of the Rules of the Supreme Court of Virginia, the framework for the UPSO, and the Code of Virginia section 8.01-4, which provides docket control procedures.[217] However, "the General Assembly's expressed intention [is] that docket control procedures 'not abridge the substantive rights of the parties.'"[218] The court of appeals believed that without compelling justification, the rules should not hinder a party from establishing their case simply because there were procedural violations.[219] Therefore, the court of appeals reversed the circuit court's judgment, holding that the lower court did abuse its discretion and entering summary judgment was incorrect.[220]

212. *Id.* at 812–13, 925 S.E.2d at 457.

213. *Id.* (quoting Lawlor v. Commonwealth, 285 Va. 187, 213, 738 S.E.2d 847, 861 (2013)).

214. *Id.* at 814, 925 S.E.2d at 458.

215. *Id.* at 814–15, 925 S.E.2d at 458.

216. *Id.* at 815, 925 S.E.2d at 458.

217. *See id.* at 813, 925 S.E.2d at 457.

218. *Id.* at 815–16, 925 S.E.2d at 459.

219. *See id.* at 814, 925 S.E.2d at 458.

220. *See id.* at 817–18, 925 S.E.2d at 460.

This case is a useful reminder that the judiciary is not always perfect, and its docket control is not unfettered. The court of appeals emphasized the need for neutrality and a practical approach to equity, focusing on the full picture (i.e., the facts and the law).[221] Thornhill's actions were a minor violation of the UPSO, and certainly the opposing side could not complain of prejudice or surprise when it timely received the required disclosures, yet the circuit court was willing to impose "the civil 'death penalty' based on [that] minor violation."[222]

C. *Nonsuits, Legal Nullities, & the Tolling of the Statute of Limitations*

The Court of Appeals of Virginia analyzed a convoluted case involving repeated lawsuits and various entities controlled by one person, all to determine whether this state-court action fell within the statute of limitations. On March 5, 2013, in the Circuit Court of the City of Chesapeake, CPM Virginia, LLC ("CPM") sued MJM Golf, LLC ("MJM") under specific performance and breach of contract, due to MJM failing to pay the full purchase price of CPM's interest in the Battlefield Golf Course in Chesapeake.[223] However, the circuit court only accepted the breach of contract claim, so in August of 2016, CPM filed a separate breach of contract claim ("CL16-1901") against MJM, 3G Real Estate Holdings, LLC ("3G"), and Dominion Energy Virginia ("Dominion").[224] In September of 2018, the circuit court dismissed most of CPM's claims, and in February of 2019, "the court denied CPM's motion to amend the claims."[225] Then, on June 8, 2020, the circuit court granted CPM's voluntary nonsuit of all claims.[226]

However, on June 15, 2020, in the United States District Court for the Eastern District of Virginia, Tee Feral Gold, LLC ("TFG") refiled the identical nonsuited state-court claims.[227] Neil Wallace ("Wallace"), the main perpetrator behind the lawsuits and the sole owner of TFG, attempted to argue that CPM's merger into TFG

221. *See id.* at 817, 925 S.E.2d at 459–60.
222. *Id.* at 816–817, 925 S.E.2d at 459.
223. *See* Wallace v. MJM Golf, LLC, 86 Va. App. 663, 668–70, 925 S.E.2d 78, 80–81 (2026).
224. *Id.* at 670, 925 S.E.2d at 81.
225. *Id.* at 670–71, 925 S.E.2d at 81.
226. *See id.* at 671, 925 S.E.2d at 81–82.
227. *See id.* at 671, 925 S.E.2d at 82.

"created diversity jurisdiction."[228] On March 31, 2021, Wallace's claims were dismissed by the federal district court, and "[o]n December 9, 2022, the United States Court of Appeals for the Fourth Circuit affirmed."[229] Both courts believed that Wallace manufactured jurisdiction, which is a violation of 28 U.S.C. section 1359.[230]

The filings did not end there. On July 24, 2023, Wallace filed another state-court action in circuit court, which contained the same claims as the prior state and federal lawsuits.[231] Ultimately, the circuit court dismissed the case with prejudice, determining that "all nine counts were time-barred" because the statute of limitations periods for each count were not tolled.[232] Wallace appealed, limiting his lawsuit to breach of contract, interference with contract, and civil conspiracy.[233]

The court of appeals began its analysis by addressing Wallace's five assignments of error.[234] After reviewing the assignments, the court determined that "the statute of limitations provides the best and narrowest ground for resolving this appeal," focusing this appeal on that issue alone.[235] The law surrounding the statute of limitations is clear: "A limitations period cannot be extended, nor may 'an exception [be] applied, in the absence of a clear statutory enactment to [that] effect.'"[236]

Due to the harsh reality of the unbending statute of limitations periods, Wallace attempted to argue that he can "stack tolling provisions by invoking [the Code of Virginia section 8.01-229(E)(3)] to obtain a six-month nonsuit extension, refiling in federal court, and then retroactively relying on [the Code of Virginia section 8.01-229(E)(1)] to toll the pendency of the federal action."[237] However, "[s]ubdivision (E)(1) thus applies [only] to involuntary dismissals, and subdivision (E)(3) governs when a plaintiff takes a voluntary

228. *Id.*

229. *Id.* at 672, 925 S.E.2d at 82 (citing Tee Feral Golf, LLC v. MJM Golf, LLC, No. 21-1648, 2022 U.S. App. LEXIS 33928, at *5–7 (4th Cir. Dec. 9, 2022)).

230. *See id.*

231. *See id.*

232. *Id.* at 672–73, 925 S.E.2d at 82–83.

233. *Id.* at 673, 925 S.E.2d at 83.

234. *Id.* at 673–74, 925 S.E.2d at 83.

235. *Id.* at 674, 925 S.E.2d at 83.

236. *Id.* at 676, 925 S.E.2d at 84 (quoting Arrington v. Peoples Sec. Life Ins. Co., 250 Va. 52, 55–56, 458 S.E.2d 289, 291 (1995)).

237. *Id.* at 676–77, 925 S.E.2d at 84.

nonsuit."[238] This means that the General Assembly intended "to prevent litigants from stacking the subdivisions to obtain multiple extensions for the same action" by adding in language that excludes subdivision (E)(1).[239] Furthermore, subdivision (E)(3) is the only one that applies to Wallace's refiling in federal court due to Wallace's voluntary nonsuit.[240]

Despite subdivision (E)(3) governing Wallace's federal refiling, the court of appeals still had to determine whether the filing tolled the statute of limitations.[241] Ultimately, "because TFG was not the same plaintiff entitled to recommence CPM's nonsuited action under [subdivision (E)(3)], the federal filing was a legal nullity incapable of tolling the statute of limitations."[242] According to Virginia law, "a 'legal nullity' is an act void from inception that is treated as though it never occurred," and because of that treatment it cannot trigger tolling.[243] In this case, the act was Wallace's engagement of manufacturing jurisdiction, so his attempt to fraudulently transfer claims to himself from TFG excluded him from subdivision (E)(3).[244] Additionally, Wallace lacked the tolling benefit because this action was not filed during subdivision (E)(3)'s six-month grace period or the original statute of limitations periods, so "[a]ll three counts [wer]e therefore time-barred."[245]

This decision is a useful reminder that the unlawful manipulation of civil procedure can (and will be) stopped by the courts. In this case, it appears that Wallace created and used TFG for the sole purpose of relitigating claims that he had already voluntarily nonsuited. Therefore, the courts put a stop to it, arguing that "Wallace could 'not rely on, or benefit from, the fraud that he and [TFG] committed on the federal court.'"[246] Courts review cases in the eyes of the law and the facts, and that is what each court involved did here by not allowing Wallace to prevail after a clear procedural abuse of the court system.

---

238. *Id.* at 678, 925 S.E.2d at 85.

239. *Id.*

240. *Id.* at 679, 925 S.E.2d at 86.

241. *Id.*

242. *Id.* at 684, 925 S.E.2d at 88.

243. *Id.* at 680–81, 925 S.E.2d at 86–87 (quoting Hood v. Commonwealth, 75 Va. App. 358, 364, 876 S.E.2d 710, 713 (2022)).

244. *Id.* at 682–83, 925 S.E.2d at 87.

245. *Id.* at 684–85, 925 S.E.2d at 88.

246. *Id.* at 673, 925 S.E.2d at 82 (citing Wallace v. MGM Golf, LLC, No. CL-23-04804, 2024 WL 4520663, at *9 (Va. Cir. May 29, 2024) (Chesapeake City)).

D. *Res Judicata & Joinder*

The Court of Appeals of Virginia analyzed whether the burden of proof was met for a plea in bar based on a res judicata theory. From March of 2020 to November of 2023, Seaview Apartments, LLC ("Seaview") only paid the City of Newport News ("City") for six of the twenty-two bills owed for providing water and sewer services.[247] Because of Seaview's lack of payment, the City in December of 2022 "filed a warrant in debt in general district court."[248] Ultimately, "on June 6, 2023, the City sued Seaview in circuit court for $139,446.75 in unpaid bills," which once amended was $98,480.68.[249]

While Seaview attempted to assert a plea in bar, that argument fell flat.[250] Seaview argued that "the City impermissibly split claims that qualified for joinder" because the bills were from one running account.[251] However, the circuit court determined that Seaview's res judicata theory was incorrect because "each unpaid bill represented a separate transaction," not "one long running account."[252]

The backbone of this case is the doctrine of res judicata:

> A party whose claim for relief arising from identified conduct, a transaction, or an occurrence, is decided on the merits by a final judgment, is forever barred from prosecuting any . . . subsequent civil action against the same opposing party . . . on any claim or cause of action that arises from that same conduct, transaction or occurrence.[253]

The main function of res judicata is to preclude claims and stop unpermitted claim-splitting.[254] The role of the final judgment mentioned above is "not only to [bind] the parties as to every question actually raised and decided, but as to every claim which properly belonged to the subject of litigation and which the parties . . . might

247. *See* Seaview Apts., LLC v. City of Newport News, 86 Va. App. 583, 589–90, 924 S.E.2d 707, 710–11 (2026).

248. *Id.* at 589, 924 S.E.2d at 710.

249. *Id.*

250. *See id.*

251. *Id.*

252. *See id.* at 590, 924 S.E.2d at 711.

253. *Id.* at 592, 924 S.E.2d at 712 (emphasis added) (quoting VA. SUP. CT. R. 1:6(a) (2026)).

254. *See id.* at 591–92, 924 S.E.2d at 712.

have raised at the time."[255] This means that the court is trying to prevent parties from: (1) filing multiple lawsuits with pieces of the same cause of action (i.e., claim-splitting); (2) relitigating an essential, litigated fact or question (i.e., issue preclusion); and (3) continuing to litigate "the same cause of action against the same party."[256] Furthermore, Virginia law strongly recommends litigants to "unite every joinable claim" because while joinder is not required, it is preferred to not "risk the preclusion of . . . other claims."[257]

To properly conduct a res judicata analysis, the court used the six factors from *Funny Guy, LLC v. Lecego, LLC* with a specific goal of "uncovering the true underlying dispute between the parties."[258] The six factors are the following: (1) time, (2) space, (3) origin, (4) motivation, (5) convenient trial unit, and (6) expectations, business understanding, or usage.[259] Each factor was used collectively to form an analysis, and the court decided that "the claims do not reflect separate conduct, transactions, or occurrences for res judicata purposes," so the City could have joined their claims together.[260] Under the doctrine of res judicata, the court of appeals held that "the City [was precluded] from bringing a subsequent action on the portion of the debt that it could have included in its first action."[261]

The City should have utilized joinder from the beginning and filed suit on all unpaid bills at the same time. "The doctrine of res judicata is intertwined with the rules allowing joinder," and as such, it appears it would have changed the ruling if the City had brought their claims together.[262] The six-factor test is not fully determinative but rather serves as a collective guide to courts.[263] This case is a great reminder that Virginia encourages joinder, ultimately viewing it as more of a requirement than an option.

255. *Id.* at 593, 924 S.E.2d at 712 (alteration in original) (emphasis omitted) (quoting Funny Guy, LLC v. Lecego, LLC, 293 Va. 135, 147, 795 S.E.2d 887, 892–93 (2017)).

256. *Id.* at 592–93, 924 S.E.2d at 712 (quoting County of Henrico v. O'Neil, 75 Va. App. 312, 322, 876 S.E.2d 210, 214 (2022)).

257. *Id.* at 594, 924 S.E.2d at 713 (quoting Funny Guy, 293 Va. at 146, 795 S.E.2d at 892).

258. *Id.* at 595, 924 S.E.2d at 713 (quoting Funny Guy, 293 Va. at 155, 795 S.E.2d at 897).

259. *Id.* at 595–97, 924 S.E.2d at 713–14.

260. *Id.* at 597–99, 924 S.E.2d at 714–15.

261. *Id.* at 599, 924 S.E.2d at 715.

262. *Id.* at 593, 594, 598–99, 924 S.E.2d at 712–15.

263. *Id.* at 597, 924 S.E.2d at 714.

E. *The Statute of Limitations, Misnomer & Protective Preconditions*

The Court of Appeals of Virginia also dealt with issues related to a misnomer and statute of limitation requirements. "On April 15, 2017, Catherine Ann Moulthrop [("Moulthrop")] and Isaias Tessema [("Tessema")] were involved in a vehicle-bicycle collision"; Moulthrop was distracted and ran her car into Tessema on his bicycle.[264] Two months later, State Farm denied payment to Tessema, believing their insured (i.e., Moulthrop) was not legally responsible for the accident.[265] Two years later, on April 9, 2019, Tessema filed a complaint against Katherine A. Illingworth, also known as Katherine A. Multhrop.[266] However, the crux of the issue was that Tessema identified the wrong person as the other party to the accident.[267]

As a result of the wrongful identification, "Tessema moved the Fairfax Circuit Court for leave to amend his complaint and correct a misnomer under Code [of Virginia] § 8.01-6"; the court then granted the motion on February 5, 2020.[268] On July 20, 2020, Tessema served the correct party, resulting in Moulthrop filing a plea in bar.[269] However, on December 10, 2021, "Tessema filed a new action against Moulthrop" due to nonsuiting the original case, and Moulthrop once again filed a plea in bar.[270] Ultimately, Moulthrop and Erie Insurance, the uninsured carrier Tessema also served, filed a joint document supporting the plea in bar.[271] The circuit court ruled in favor of Moulthrop, arguing Tessema was outside of the statute of limitations due to the misnomer.[272] Tessema appealed the circuit court order.[273]

On appeal, Tessema consistently argued that he met the conditions for the Code of Virginia section 8.01-6 whereas Moulthrop and Erie Insurance challenged the misnomer classification,

264. Tessema v. Moulthrop, 86 Va. App. 24, 30, 36, 920 S.E.2d 333, 336, 339 (2025).
265. *Id.* at 30, 920 S.E.2d at 336.
266. *Id.*
267. *Id.*
268. *Id.*
269. *Id.* at 31, 920 S.E.2d at 336.
270. *Id.* at 31, 920 S.E.2d at 337.
271. *Id.*
272. *Id.* at 31–32, 920 S.E.2d at 337.
273. *Id.* at 32, 920 S.E.2d at 337.

believing the naming mistake was a misjoinder instead.[274] The court of appeals re-analyzed the protective preconditions of section 8.01-6 and re-addressed the misnomer versus misjoinder argument that the circuit court already ruled on.[275]

The Code of Virginia section 8.01-6, which solely applies to misnomer corrections, lays out four protective preconditions that must be met for a plaintiff to fix their mistake.[276] This means that in order for Tessema to change the name to the correct party, the court must be allowed to adjudicate the case, and the preconditions must be met.[277] Here, the court of appeals was allowed to adjudicate because "Tessema's new action stood independently of the prior nonsuited action," and Moulthrop was entitled to provide a defense.[278]

To determine if Tessema met the preconditions, the court had to determine whether misnomer or misjoinder applied. For clarification, "[a] misnomer is a mistake in the name . . . of a party" whereas a misjoinder is when the pleading identifies the wrong party.[279] Here, "the intended defendant was the driver of a specific vehicle that was in a specific location at a specific time," committing a specific act, so the intention was to always identify Moulthrop as the driver.[280] "This was a mistake of name, not of parties," so this is a misnomer.[281]

Because this was a misnomer, the court clarified that the two ways to rectify the mistake are both through section 8.01-6.[282] On one hand, Tessema can amend his pleading, and on the other, he can nonsuit and file a new action with the correct party names, but section 8.01-6 is the only way to be successful.[283] Upon reviewing the preconditions, the court focused on "whether Moulthrop or her agent received notice of the institution of the action within the statute of limitations."[284] Ultimately, after applying the plain meaning

274. *See id.* at 33, 920 S.E.2d at 338.
275. *See id.* at 30, 33–40, 920 S.E.2d at 338–41.
276. *See id.* at 37–38, 920 S.E.2d at 340.
277. *See id.* at 35, 37–38, 920 S.E.2d at 339–40.
278. *Id.* at 35, 920 S.E.2d at 339.
279. *Id.* at 36, 920 S.E.2d at 339 (quoting Richmond v. Volk, 291 Va. 60, 64, 781 S.E.2d 191, 193 (2016)).
280. *Id.* (quoting Richmond v. Volk, 291 Va. 60, 65, 781 S.E.2d 191, 193 (2016)).
281. *Id.* at 36–37, 920 S.E. at 339.
282. *Id.* at 37, 920 S.E.2d at 340.
283. *Id.*
284. *Id.* at 38, 920 S.E.2d at 340 (emphasis added).

of "institution of the action," the court could not find any proof that Tessema provided notice.[285] While Tessema did inquire about a claim with State Farm soon after the accident, "there is no evidence that State Farm or Moulthrop received notice of the suit until Moulthrop was served with the amended complaint," which was after the statute of limitations had passed.[286] The court of appeals affirmed the lower court's ruling due to the preconditions not being met.[287]

This case highlights the importance of verifying party names and not filing at the last minute. Tessema had two years to properly file her lawsuit, but due to a misnomer and lack of notice, her case was dismissed on procedural grounds. Notably, the court even provided Tessema with an opportunity for reconsideration, but only if there was evidence of State Farm's knowledge of the lawsuit within the statute of limitations.[288] Tessema never filed a motion for reconsideration.[289] It is unclear why Tessema never filed for reconsideration; however, one can assume it was because she did not have such evidence of notice. While procedural mistakes can be rectified if timely noticed, the options quickly dwindle when a party passes a set deadline, such as the statute of limitations. For tort actions, this case emphasizes the importance of making sure that all parties and insurers are aware not just that they may have a claim, but that they are filing suit before the statute passes.

III. NEW LEGISLATION

In an otherwise busy and newsworthy year, the General Assembly enacted notable changes in Virginia civil procedure as well.

A. *Expansion of Equity Capacity & Unauthorized Use of Voice and Likeness*

The General Assembly amended the Code to expand the capacity for a person to "maintain a suit in equity against [a] person, firm, or corporation."[290] The Code of Virginia section 8.01-40, which

285. *Id.* at 39, 920 S.E.2d at 341.
286. *Id.*
287. *Id.* at 40, 920 S.E.2d at 341.
288. *Id.* at 39–40, 920 S.E.2d at 341.
289. *Id.* at 40, 920 S.E.2d at 341.
290. 2026 Va. Acts chs. 629–630 (codified at VA. CODE ANN. § 8.01-40 (Cum. Supp. 2026)).

provides for the unauthorized use of name or picture of any person, now specifically includes voice and likeness; thus, the list now reads "name, portrait, picture, voice, or likeness" as characteristics that require written consent.[291] Notably, that section was also amended to include voice and likeness in relation to punitive damages.[292] This means that if one does not receive authorization, either from the person directly or their surviving family, to use one of those characteristics, punitive damages may be awarded appropriately.[293]

However, the statute of limitations remains unchanged; an action cannot be brought "more than 20 years after the death of such person."[294] Given increasing privacy concerns in today's technologically advanced society, this amended legislation provides increased protection and opportunity for a plaintiff to bring a lawsuit for stealing their "identity." A person's identity is more than their name, portrait, and picture, and this amendment acknowledges that for the better.

B. *Jury Service: To Serve or Not to Serve?*

The General Assembly amended Code of Virginia sections 8.01-337 and 8.01-341.1 to change the juror rules regarding who can be exempt.[295] Originally, the sections stated that "[n]o person shall be deemed incompetent to serve on any jury because of blindness or partial blindness."[296] However, now in an effort to be more inclusive of all disabilities and align with other disability provisions, potential jurors are only incompetent by any disability if they cannot competently serve even with "reasonable accommodation."[297] This amendment addresses the fact that there are far more disabilities besides blindness that can impact a potential juror's ability to serve, and the analysis should focus on whether they are competent with reasonable accommodations from the court. Examples of

291. § 8.01-40(A) (Cum. Supp. 2026).
292. *Id.*
293. *Id.*
294. *Id.* § 8.01-40(B).
295. *See generally* 2026 Va. Acts ch. 198 (codified at §§ 8.01-337, 8.01-341.1 (Cum. Supp. 2026)).
296. 2024 Va. Acts ch. 817 (codified at § 8.01-337 (2024), *repealed and reenacted by* 2026 Va. Acts ch. 198).
297. 2026 Va. Acts ch. 198 (codified as amended at § 8.01-337 (Cum. Supp. 2026)).

such potential disabilities are attention-deficit/hyperactivity disorder ("ADHD") and immobility issues.

Additionally, the General Assembly amended the Code regarding exemption requests to include "[a]ny person under a disability that substantially impairs the person's ability to perform jury duty."[298] Even though the person may serve on jury duty, either criminal or civil, they can be exempt through one of eleven ways.[299] Exemptions are not a guarantee, but this reflects a more updated standard that allows individuals to be properly exempt from jury service.[300] Notably, there are technically seventeen ways to be exempt; however, six of the exemptions were repealed.[301]

C. *Determining Whether Failure to Appear Was Willful*

The General Assembly amended Code of Virginia sections 18.2-456 and 19.2-128 for a court to consider mitigating circumstances when addressing an individual's "willful" failure to appear to court.[302] The statute defines a "willful[]" failure to appear as "intentional conduct for the purpose of avoiding the judicial process."[303] The statute specifies that while "[p]rior isolated instances of nonappearance, including convictions based on such nonappearance, are not evidence that a failure to appear was willful," a court can consider as a factor "a prior pattern of recurrent and purposeful conduct to evade prosecution."[304]

When considering "whether a nonappearance was willful, the court [must now] consider [specific] mitigating circumstances."[305] The statute lists the following circumstances a court must consider: "(i) an illness, an injury, or any other unforeseen medical condition; (ii) unforeseen transportation problems; (iii) an inability to obtain adequate dependent care; and (iv) any affirmative steps taken by a person to communicate or remedy his failure to appear before any court or judicial officer as required."[306] This amendment

298. 2026 Va. Acts ch. 198 (codified as amended at § 8.01-341.1 (Cum. Supp. 2026)).
299. *Id.*
300. *See generally id.*
301. *Id.*
302. 2026 Va. Acts ch. 242 (codified as amended at §§ 18.2-456, 19.2-128 (Cum. Supp. 2026)).
303. § 19.2-128 (Cum. Supp. 2026).
304. *Id.*
305. *Id.*
306. *Id.*

spells out the analysis that courts should consider when deliberating an individual's failure to appear in court. While such absences can be frustrating and delay a court docket, the court does need to consider mitigating circumstances.

D. *Punitive Damages for Hit and Run Drivers*

The General Assembly enacted a new statute to provide additional relief for individuals injured in a motor vehicle accident.[307] The new statute provides that a court or jury can award punitive damages "[i]n any action for personal injury or death arising from conduct that constitutes a felony violation of [Code of Virginia] § 46.2-894."[308] Section 46.2-894 requires any "driver of any vehicle involved in an accident in which a person is killed or injured or in which an attended vehicle or other attended property is damaged shall immediately stop as close to the scene of the accident as possible without obstructing traffic."[309] The driver must then "report his name, address, driver's license number, and vehicle registration number forthwith to [law enforcement], to the person struck and injured if such person appears to be capable of understanding and retaining the information, or to the driver or some other occupant of the vehicle collided with."[310] The statute also allows the report to be from "the custodian of other damaged property."[311] This amendment makes clear that the General Assembly believes that hit and run incidents are the type of behavior that can merit punitive damages.

E. *Debt Collection Signature Defects*

The General Assembly enacted a new statute that specifically imposes signatory requirements on cases "to collect or enforce a consumer debt."[312] Specifically, "the attorney of record shall include in the initial pleading and any subsequent filing the name of the attorney of record, the attorney's business address, and the attorney's business telephone number where such attorney can be reached directly by the court and the consumer or the consumer's

307. 2026 Va. Acts ch. 473 (codified at § 8.01-44.5:1 (Cum. Supp. 2026)).
308. § 8.01-44.5:1 (Cum. Supp. 2026).
309. *Id.* § 46.2-894 (2022).
310. *Id.*
311. *Id.*
312. 2026 Va. Acts ch. 489 (codified at § 8.01-271.2. (Cum. Supp. 2026)).

attorney."[313] A defective signature "render[s] the pleading, motion, or other paper voidable."[314] The court shall strike any pleading where the signature has not been properly cured within twenty-one days of the defect being raised.[315] This amendment codifies what should already be considered best practice and minimizes the instances where defendants complain that they do not know who to contact or how to contact the plaintiff in debt collection cases.

F. *No Appeals Bonds for Indigent Defendants in Evictions*

The General Assembly amended Code of Virginia sections 8.01-129 and 16.1-107 to protect indigent defendants in unlawful detainer action.[316] These statutes now make clear that "indigent defendant[s] shall [not] be required to post an appeal bond" in unlawful detainer actions.[317] In the author's experience, appeal bonds were not ordered in such circumstances but were ultimately subject to the discretion of the presiding judge. Now, this amendment makes clear that judges do not have discretion to impose such appeal bonds.

IV. RULES OF THE SUPREME COURT OF VIRGINIA

It was a moderate year in terms of amendments to the Rules of the Supreme Court of Virginia. Rules regarding Artificial Intelligence have not materialized yet but expect to see those in the not-too-distant future. The amendments this year continued to be tweaks and clarifications rather than a major change.

A. *Automatic Substitution of Public Officers*

The rules now follow the Code of Virginia and explicitly provide for the automatic substitution of any "public officer who is a party in an official capacity" when they "die[], resign[], or otherwise cease[] to hold office while the action is pending."[318] The amended rule indicates that "[l]ater proceedings should be in the substituted

313. § 8.01-271.2 (Cum. Supp. 2026).
314. *Id.*
315. *See id.*
316. *See* 2026 Va. Acts ch. 579 (codified as amended at §§ 8.01-129, 16.1-107 (Cum. Supp. 2026)).
317. §§ 8.01-129, 16.1-107 (Cum. Supp. 2026).
318. VA. SUP. CT. R. 3:17(c) (2026).

party's name."[319] Furthermore, the court is to disregard "[a]ny misnomer not affecting the parties' substantial rights."[320] While the Court is free to "order substitution at any time . . . the absence of such an order does not affect the [automatic] substitution."[321] The rules for cases before the Supreme Court of Virginia and the Court of Appeals of Virginia were identically amended to ease the substitution of parties in the same circumstance.[322]

B. *Subpoenas for Privileged Records*

The rules explain the procedure for nonparty objections to a *subpoena duces tecum* for their "financial records or . . . records protected by the attorney-client privilege."[323] The nonparty "may move for a protective order, and for such other relief permitted by this subsection, in accordance with Code [of Virginia] § 8.01-420.9."[324] This rule change clarifies that non-parties do have the authority and standing to file motions to quash.[325]

C. *Substitution of Party on Appeal*

The rules for cases before the Supreme Court of Virginia and Court of Appeals of Virginia were identically amended to ease the substitution of parties in certain circumstances. "If a person becomes incapable of prosecuting or defending because of death, disability, conviction of felony, or other cause, and the claim is not extinguished, a successor in interest may be substituted as a party in such person's place."[326] The successor or any other party to the appeal can make the motion.[327] This change streamlines the procedure when a party substitution is required during the pendency of an appeal.

319. *Id.*
320. *Id.*
321. *Id.*
322. *See id.* R. 5:1(h), 5A:1(g) (2026).
323. *Id.* R. 4:1(c) (2026).
324. *Id.*
325. *See* VA. CODE ANN. § 8.01-420.9 (Cum. Supp. 2026).
326. R. 5:1(h)(1), 5A:1(g)(1) (2026).
327. *Id.* R. 5:1(h)(2), 5A:1(g)(2) (2026).

D. *Faster Decisions from the Court of Appeals*

The rules now provide for more streamlined dispositions by the Court of Appeals of Virginia. The court of appeals has additional circumstances in which it "may dispense with oral argument."[328] It may do so when "the parties agree that oral argument is not necessary."[329] It may also do so when "the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument."[330] This change follows the practice of many other appellate courts and gives the court of appeals discretion to issue decisions faster and provide finality to the parties sooner.

E. *Responsive Pleadings*

The rules also clarify the procedures regarding defendants' initial responsive pleading. The rules explicitly prohibit "serial pleading."[331] Once a defendant has filed "any pleading or pleadings as an initial response to a complaint or amended complaint, a defendant may not, without leave of court for good cause shown, file a demurrer, plea, or motion described in subsection (a)," unless otherwise authorized "under another rule of court or statute."[332] While the authors have not experienced serial pleading in the jurisdictions in which they practice, clearly it had to be a problem somewhere that needed to be addressed with an explicit rule amendment.

The rules now also specify that when the "court overrules a motion objecting to personal jurisdiction or defective process . . . then the defendant must file an answer or another responsive pleading within 21 days after entry of the court's order overruling the motion, or within such other time as the court may prescribe."[333]

328. *Id.* R. 5A:27 (2026).
329. *Id.*
330. *Id.*
331. *Id.* R. 3:8(a1) (2026).
332. *Id.*
333. *Id.* R. 3:8(b) (2026).

F. *Amicus Curiae Briefs*

The rules heightened requirements and increased transparency for amicus curiae briefs in both the Court of Appeals of Virginia and the Supreme Court of Virginia.[334]

Now, amicus curiae (except for the United States of America or the Commonwealth of Virginia) have to include a statement in their brief that:

> [I]ndicates whether: (i) a party's counsel authored the brief in whole or in part; (ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and (iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, that identifies each such person.[335]

G. *Mediations During Appeals*

The rules provide flexibility for parties to explore an amicable resolution during the pendency of an appeal before the Supreme Court of Virginia. "Upon joint motion of the parties in a civil case, the Court may extend the filing deadlines . . . to enable the parties to pursue mediation."[336] The extension order "will specify new filing deadlines or a deadline for the parties to file a joint progress report."[337] This is a common sense provision that allows parties to minimize the fees incurred during an appeal while settlement negotiations are ongoing.

334. *Id.* R. 5:30, 5A:23 (2026).
335. *Id.*
336. *Id.* R. 5:38(a) (2026).
337. *Id.*