

OP. NO. 03-052

NOTARIES AND OUT-OF-STATE COMMISSIONERS: POWERS AND DUTIES.

DOMESTIC RELATIONS: PREMARITAL AGREEMENT ACT.

Attorney's secretary, who is notary public, accurately recording, by stenographic, electronic or other means, testimony of party to divorce proceeding is 'court reporter' within context of § 20-155(ii).

The Honorable William J. Howell
Speaker of the House of Delegates
July 31, 2003

Issue Presented

You inquire whether an attorney's secretary, who is a notary public, taking and transcribing testimony as part of a divorce proceeding is a "court reporter" within the context of § 20-155(ii).

Response

It is my opinion that an attorney's secretary, who is a notary public, accurately recording, by stenographic, electronic or other means, the testimony of a party to a divorce proceeding is a "court reporter" within the context of § 20-155(ii).

Background

You inquire regarding the 2003 amendment to § 20-155 in response to a 2002 decision of the Supreme Court of Virginia.¹

You explain that in *Flanary v. Milton*,² on the day preceding the husband's death, and while the wife's deposition was being taken in the divorce proceeding between the husband and wife, the parties' attorneys recited into the record an oral agreement between the parties. Under the provisions of the oral agreement, the wife affirmed that such agreement would constitute a full and final settlement of all rights accrued by virtue of their marriage.³ The wife subsequently petitioned for spousal allowances and an elective share in the husband's augmented estate.⁴ The Supreme Court reversed the trial court's ruling that the oral agreement was valid

and effectively released these rights, because the oral agreement of the wife was subject to the requirements of § 20-155 to be in writing and signed by the parties.⁵ The 2003 Session of the General Assembly amended § 20-155 to provide that marital agreements are not required to be in writing and are considered executed if the terms of such agreements (i) are contained in a court order endorsed by counsel or the parties of record, or (ii) are recorded and transcribed by a court reporter and affirmed personally by the parties.

You relate that your question arises in the context of a married person's deposition being taken in an attorney's office, before the attorney's secretary who is a notary public, as a part of a divorce proceeding. Assuming all other requirements of § 20-155(ii) are met, you ask whether the notary public in such a case is a "court reporter" within the context of § 20-155(ii). You note that the Virginia Code does not define the term "court reporter," and that there is disagreement among lawyers concerning the correct answer to this question.

Applicable Authorities and Discussion

The 2003 Session of the General Assembly amended § 20-155 as follows:

Married persons may enter into agreements with each other for the purpose of settling the rights and obligations of either or both of them, to the same extent, with the same effect, and subject to the same conditions, as provided in §§ [20-147](#) through [20-154](#) for agreements between prospective spouses, except that such marital agreements shall become effective immediately upon their execution. *However, if the terms of such agreement are (i) contained in a court order endorsed by counsel or the parties or (ii) recorded and transcribed by a court reporter and affirmed by the parties on the record personally, the agreement is not required to be in writing and is considered to be executed.* A reconciliation of the parties after the signing of a separation or property settlement agreement shall abrogate such agreement unless otherwise expressly set forth in the agreement.^[6]

When a particular word in a statute is not defined therein, it must be given its ordinary meaning.⁷ In the absence of a statutory definition,

the plain and ordinary meaning of the term is controlling.⁸ The term "court reporter" is generally defined to mean "[a] person who records testimony, stenographically or by electronic or other means, and when requested, prepares a transcript."⁹

Several additional rules of statutory construction apply to your request. "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."¹⁰ In addition, statutes should not be construed to frustrate their purpose.¹¹ "[T]ake the words as written' and give them their plain meaning."¹² One must look to the entire statute to ascertain the intent of the General Assembly.¹³

For the purposes of responding to your request, I must assume that the attorney's secretary, who is a notary public, administers an oath to the individual giving the deposition. Section 47.1-12 provides that "[e]ach notary shall be empowered to ... (ii) administer oaths." Furthermore, I must assume that the attorney's secretary you describe accurately records, by stenographic, electronic or other means, the testimony of the married person in the trial-related proceedings, i.e., the taking of depositions in the attorney's office as part of a divorce proceeding. Making these required assumptions, the attorney's secretary in the described circumstances fulfills all of the plain and ordinary requirements of a "court reporter."

Conclusion

Accordingly, I am of the opinion that an attorney's secretary, who is a notary public, accurately recording, by stenographic, electronic or other means, the testimony of a party to a divorce proceeding is a "court reporter" within the context of § 20-155(ii).

¹ See *Flanary v. Milton*, 263 Va. 20, 556 S.E.2d 767 (2002).

² See 263 Va. at 21-22, 556 S.E.2d at 768.

³ See *id.* at 22, 556 S.E.2d at 768.

⁴ See *id.*

⁵ See *id.* at 24, 556 S.E.2d at 769.

⁶ 2003 Va. Acts chs. 662, 669 (approved Mar. 19, 2003), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0662>, <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0669> ,

respectively. I note that Article IV, § 13 of the Constitution of Virginia and § 1-12(A) contain the general rule in Virginia concerning the effective date of new legislation: All "regular" legislation, as opposed to appropriation bills, emergency acts and other special legislation, takes effect on July 1 following adjournment of the regular session of the General Assembly at which it was enacted, unless a subsequent date is specified in the legislation. "[A] statute speaks as of the time when it takes effect and not of the time it was passed." *County School Bd. v. Town of Herndon*, 194 Va. 810, 814, 75 S.E.2d 474, 477 (1953) (citation omitted).

⁷See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

⁸See *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); *Commonwealth v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); 1999 Op. Va. Att'y Gen. 10, 11.

⁹Black's Law Dictionary 368 (7th ed. 1999).

¹⁰*Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

¹¹See 1982-1983 Op. Va. Att'y Gen. 309, 311 (illogical result frustrates purpose of statute).

¹²*Birdsong Peanut Co. v. Cowling*, 8 Va. App. 274, 277, 381 S.E.2d 24, 26 (1989) (quoting *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985)), *cited in* *Adkins v. Commonwealth*, 27 Va. App. 166, 169, 497 S.E.2d 896, 897 (1998).

¹³See *Commonwealth v. Jones*, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953) (to derive true purpose of act, "statute should be construed so as to give effect to its component parts").

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