

**OP. NO. 03-059**

**COURTS OF RECORD: CLERKS, CLERKS' OFFICES AND RECORDS <sup>3</sup>/<sub>4</sub>  
CIRCUIT COURTS.**

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY  
OFFICERS).**

**COUNTIES, CITIES AND TOWNS: LOCAL CONSTITUTIONAL OFFICERS,  
COURTHOUSES AND SUPPLIES.**

**Circuit court clerks, under their statutory duty to establish system that  
satisfies statutory requirement for maintaining records, have discretion,  
but no obligation, to provide deputy clerk in courtroom during civil  
proceedings.**

The Honorable Judy L. Worthington  
Clerk, Circuit Court of Chesterfield County  
August 14, 2003

Dear Ms. Worthington:

I am responding to your request for an official advisory opinion in accordance  
with § 2.2-505 of the *Code of Virginia*.

#### **Issue Presented**

You ask whether a circuit court clerk is obligated to assign a deputy circuit court  
clerk to the courtroom during civil proceedings before the court.

#### **Response**

It is my opinion that circuit court clerks, under their duty to establish a system that  
satisfies the statutory purpose for maintaining their records, have the discretion,  
but no obligation, to provide a deputy clerk in the courtroom during civil  
proceedings.

#### **Background**

For the purposes of this opinion, I assume that it is not always possible for you to  
provide a deputy clerk to serve as the courtroom clerk during civil proceedings,  
because other demands have been placed on your office for the assignment of  
personnel elsewhere.

#### **Applicable Law and Discussion**

Article VII, § 4 of the Constitution of Virginia creates the office of circuit court  
clerk and provides that a clerk's duties "shall be prescribed by general law or  
special act."<sup>1</sup> As a general rule, circuit court clerks have no inherent powers, and

the scope of their powers must be determined by reference to applicable statutes.<sup>2</sup>

Prior opinions of the Attorney General note that the clerk's office is an integral part of the administrative operations of the circuit court and provides numerous services to judicial and other public officials, as well as to the public.<sup>3</sup> Nonetheless, as an elected constitutional officer, considerable deference must be given to the decisions made by a clerk of the circuit court, unless such decisions are contrary to law.<sup>4</sup> In the absence of a legislative mandate specifying a particular method, a clerk may establish a system that satisfies the statutory purpose for maintaining the records of a clerk of court.<sup>5</sup> In light of the duties of a circuit court clerk as established by the General Assembly, any function that a clerk or deputy clerk would perform in a courtroom would be to maintain the records of the clerk. Prior opinions of the Attorney General consistently conclude that, in the absence of a constitutional or statutory provision to the contrary, constitutional officers have exclusive control over the operation of their offices, including the selection and supervision of personnel in the positions assigned to the clerk.<sup>6</sup> Accordingly, absent a legislative mandate to the contrary, deference is to be shown to the clerk in establishing a system that satisfies the statutory purpose for maintaining the records, including whether a clerk or deputy clerk is present in the courtroom for civil proceedings.

It is my opinion that, in view of the general statutory responsibilities assigned to circuit court clerks, they are not obligated to ensure the presence of a deputy clerk in the courtroom during civil proceedings. When the General Assembly intends to enact a mandatory requirement in this regard, it knows how to express its intention. For instance, § 16.1-69.40 requires clerks of courts not of record to "develop, implement and administer procedures necessary for the efficient operation of the clerk's office . . . and discharge such other duties as may be prescribed by the judge." In setting forth the duties and responsibilities of the clerks of courts of record, however, the General Assembly has not required such clerks to perform duties that may be prescribed by a judge.<sup>7</sup>

In light of the existing statutory provisions, absent a legislative mandate to the contrary, it falls within the discretion of the clerk of a court of record to determine whether a deputy clerk is to be present in the courtroom for civil proceedings. To conclude otherwise would significantly restrict the ability of circuit court clerks to address changing and competing demands for personnel and resources in their jurisdiction.

### **Conclusion**

Accordingly, I must conclude that circuit court clerks, under their statutory duty to establish a system that satisfies the statutory requirement for maintaining records, have the discretion, but no obligation, to provide a deputy clerk in the courtroom during civil proceedings.

<sup>1</sup>See also VA. CODE ANN. § 15.2-1600(A) (LexisNexis Repl. Vol. 2003).

<sup>2</sup>See *Mendez v. Commonwealth*, 220 Va. 97, 102, 255 S.E.2d 533, 535 (1979) (stating that "authority of a clerk of court to administer an oath or take an affidavit is purely a creature of statute"); *Harvey v. Chesapeake & Potomac Tel. Co.*, 198 Va. 213, 218, 93 S.E.2d 309, 313 (1956) (noting that duties of clerk are

ministerial); 21 C.J.S. *Courts* §§ 236, 249-254 (1990 & Pocket Pt. 2003); Op. Va. Att'y Gen.: 2001 at 121, 123; 1987-1988 at 80, 81.

<sup>3</sup>See 2002 Op. Va. Att'y Gen. 62, 62 (citing 1989 Op. Va. Att'y. Gen. 62, 63); see *generally* Va. Code Ann. tit. 17.1, ch. 2, arts. 2, 3, §§ 17.1-206 to 17.1-254 (LexisNexis Repl. Vol. 2003) (relating to maintenance and inspection of court records, and recordation and indexing of documents by circuit court clerks).

<sup>4</sup>2002 Op. Va. Att'y Gen., *supra* note 3, at 62.

<sup>5</sup>*Id.* (citing 1996 Op. Va. Att'y. Gen. 84, 85).

<sup>6</sup>See Op. Va. Att'y Gen.: 1987-1988 at 467, 468; 1986-1987 at 130, 131; 1985-1986 at 255, 255; 1984-1985 at 285, 285; 1982-1983 at 462, 463-64; 1976-1977 at 250, 251.

<sup>7</sup>See *generally* tit. 17.1, ch. 1, §§ 17.1-100 to 17.1-131 ("General Provisions"); *id.* ch. 2, §§ 17.1-200 to 17.1-291 ("Clerks, Clerks' Offices and Records"); *id.* ch. 5, §§ 17.1-500 to 17.1-524 ("Circuit Courts").

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