

OP. NO. 03-082

DOMESTIC RELATIONS: MARRIAGE GENERALLY.

GENERAL PROVISIONS: COMMON LAW, STATUTES AND RULES OF CONSTRUCTION.

Persons appointed as marriage celebrants before July 1, 2003, are not limited to performing marriages in their resident jurisdiction. Persons appointed by court order on or after July 1, 2003, are limited to performing marriages in their resident jurisdiction; change of residence to another jurisdiction terminates person's authority to perform marriages in former resident jurisdiction.

The Honorable Michael D. Wolfe
Clerk, Circuit Court of Alleghany County
October 10, 2003

Issues Presented

You ask several questions regarding changes made to § 20-25 during the 2003 Session of the General Assembly. You first ask whether persons appointed before July 1, 2003, to perform marriages are still authorized to perform marriages throughout the Commonwealth. In the case of persons appointed as marriage celebrants after July 1, 2003, you ask (1) whether such celebrants are authorized to perform marriages in any jurisdiction in which a judge sits or only in the jurisdiction in which they reside; and (2) whether, upon changing residence to another jurisdiction, a celebrant (a) must be appointed a celebrant in the new jurisdiction, and (b) has authority to perform marriages in the former jurisdiction of appointment.

Response

It is my opinion that marriage celebrants are governed by the law applicable at the time of appointment. Before July 1, 2003, § 20-25 permitted the performance of ceremonies by celebrants throughout the Commonwealth. Persons appointed to perform marriages on or after July 1, 2003, (1) are limited to performing marriages in the jurisdiction in which they reside; and (2) upon changing residence to another jurisdiction, a celebrant (a) must be appointed a celebrant in the new jurisdiction, and (b) has no authority to perform marriages in the former jurisdiction of appointment.

Applicable Law and Discussion

Prior to July 1, 2003, § 20-25 provided that:

[t]he circuit courts of the Commonwealth, the clerks of which are authorized to issue marriage licenses, shall appoint one or more persons, resident in the county or city for which such court is held, to celebrate the rites of marriage, and upon any person, so appointed, giving bond in the penalty of \$500 with surety, shall

make a like order as provided in § 20-23 authorizing him to celebrate the rites of marriage in the Commonwealth.^[1]

The 2003 Session of the General Assembly amended and *reenacted* § 20-25 to provide: "Any circuit court judge may issue an order authorizing one or more persons, resident in the jurisdiction in which the judge sits, to celebrate the rites of marriage in such jurisdiction."² Your first question relates to the impact of the 2003 amendment on marriage celebrants appointed before July 1, 2003.

Section 1-13.39:3 provides:

Whenever the word "*reenacted*" is used in the ... enactment of a bill ..., it shall mean that the changes enacted to a section of the Code of Virginia ... are in addition to the existing substantive provisions in that section ..., and are effective prospectively unless the bill expressly provides that such changes are effective retroactively on a specified date.^[3]

The Supreme Court of Virginia has noted that its analysis of legislation employing the word "reenacted" in stating the contents of the bill "is guided by the fundamental principles of statutory construction that retroactive laws are not favored, and that a statute is always construed to operate prospectively unless a contrary legislative intent is manifest."⁴

The 2003 Session of the General Assembly reenacted § 20-25 without any express provision or manifest legislative intent that the amendments apply retroactively. Accordingly, marriage celebrants appointed before July 1, 2003, under the language in § 20-25, providing that they may "celebrate the rites of marriage within the Commonwealth,"⁵ may continue to do so under the law applicable at the time of appointment.

You next ask whether appointments on or after July 1, 2003, are delineated by the jurisdiction of the judge or the person appointed. "Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent."⁶ The language in § 20-25, "resident in the jurisdiction in which the judge sits," immediately follows "persons" rather than "judge" and, therefore, limits "persons" who may be appointed to perform marriages to their resident jurisdiction. The authorization in § 20-25 "to celebrate the rites of marriage in such jurisdiction," as the final clause in the first sentence, also relates to the residence of the person so appointed. While a circuit judge's jurisdiction may extend to multiple localities, a person may only reside in a single jurisdiction.⁷

Having determined that persons appointed on or after July 1, 2003, are limited to performing marriages in their resident jurisdiction, your final questions address the right of a celebrant to continue performing marriages upon a change of residence. Prior to 1985, celebrants were limited to performing marriages in their "county or city" of residence.⁸ Section 20-25 is "an exercise by the General Assembly of its legislative power to delegate the authority to celebrate marriages,"⁹ and may restrict or expand the jurisdiction of celebrants in the exercise of that power. As persons appointed on or after July 1, 2003, are limited to their resident jurisdiction for both appointment by the court and the celebration of marriage, their authority terminates upon a change of residence to another jurisdiction.

Conclusion

Persons appointed as marriages celebrants under § 20-25 before July 1, 2003, may continue to perform marriages throughout the Commonwealth and are not limited by the 2003 amendment to that statute to their resident jurisdiction. Persons appointed by court order on or after July 1, 2003, are limited to performing marriages in their resident jurisdiction, and a change of residence to another jurisdiction will terminate the authority of a celebrant to perform marriages in the former resident jurisdiction.

¹Va. Code Ann. § 20-25 (Michie Repl. Vol. 2000).

²Section 20-25 (LexisNexis Supp. 2003); see 2003 Va. Acts ch. 228 (amending and reenacting § 20-25, relating to appointment of marriage celebrants), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0228>.

³The provisions of § 1-13.39:3 are intended to reverse the ruling in *Rubio v. Rubio*, 33 Va. App. 74, 531 S.E.2d 612 (2000) (holding that statute authorizing termination or modification of spousal support upon proof that payee and another person have been habitually cohabiting in marriage-like relationship for year or more, beginning on or occurring after July 1, 1997, does not apply retroactively to pre-July 1, 1998 decrees).

⁴*Berner v. Mills*, 265 Va. 408, 413, 579 S.E.2d 159, 161 (2003).

⁵See 2003 Va. Acts, *supra* note 2.

⁶2A Norman J. Singer, *Sutherland Statutory Construction* § 47:33, at 369 (West 6th ed. 2000).

⁷"[A] man cannot have more than one legal residence.... When he acquires a new legal residence he loses the old" *Kegley v. Johnson*, 207 Va. 54, 56-57, 147 S.E.2d 735, 737 (1966) (quoting *Williams v. Commonwealth ex rel. Smith*, 116 Va. 272, 277, 81 S.E. 61, 63 (1914)), *quoted in* 1967-1968 Op Va. Att'y Gen. 123, 124.

⁸1985 Va. Acts ch. 195, at 235, 235 (striking limitation to "such county or city" in § 20-25 and authorizing appointees "to celebrate the rites of marriage in ... *the Commonwealth*").

⁹*Cramer v. Commonwealth*, 214 Va. 561, 564, 202 S.E.2d 911, 914 (1974), *quoted in* 1996 Op. Va. Att'y Gen. 114, 115.

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