

OP. NO. 05-054

COURTS OF RECORD: CLERKS, CLERKS' OFFICES AND RECORDS — GENERAL PROVISIONS — CIRCUIT COURTS.

Circuit court clerk's statutory duties do not extend to preparation of sketch orders in criminal cases.

The Honorable Judy L. Worthington
Clerk of Circuit Court of Chesterfield County
September 19, 2005

Issue Presented

You ask whether a circuit court clerk has a statutory obligation to prepare sketch criminal orders for the court.

Response

It is my opinion that a circuit court clerk's statutory duties do not extend to the preparation of sketch orders in criminal cases.

Applicable Law and Discussion

Article VII, § 4 of the Constitution of Virginia establishes the office of clerk of the court and provides that the clerk's duties are "prescribed by general law or special act."¹ Among the duties the General Assembly requires clerks' offices to perform are keeping records of the orders of each day's proceedings in circuit court,² providing access to these records,³ and maintaining and purging such records.⁴ Although it is the longstanding practice of clerks to assist circuit courts in the preparation of sketch orders in criminal cases,⁵ I find no statute that compels this practice.

The comprehensive list of statutory duties placed upon circuit court clerks demonstrates that when the General Assembly intends to require clerks' offices to perform a task, it knows how to express its intention.⁶ Furthermore, unlike the clerks of the general district and juvenile and domestic relations courts, the General Assembly has not required circuit court clerks to perform "other duties as may be prescribed by a judge."⁷

Conclusion

Accordingly, it is my opinion that a circuit court clerk's statutory duties do not extend to the preparation of sketch orders in criminal cases.

¹The General Assembly has established the duties of clerks of the court. See Va. Code Ann. tit. 17.1, ch. 2, §§ 17.1-200 to 17.1-291 (LexisNexis Repl. Vol. 2003 & Supp. 2005) ("Clerks, Clerks' Offices and Records"). The General Assembly has also established provisions governing courts of record, which includes certain duties for circuit court clerks. See *generally* tit. 17.1, ch 1, §§ 17.1-100 to 17.1-131 (LexisNexis Repl. Vol. 2003 & Supp. 2005) ("General Provisions"); ch. 5, §§ 17.1-500 to 17.1-524 (LexisNexis Repl. Vol. 2003 & Supp. 2005) ("Circuit Courts").

²See §§ 17.1-123(A), 17.1-124 (LexisNexis Repl. Vol. 2003).

³See § 17.1-208 (LexisNexis Repl. Vol. 2003).

⁴See § 17.1-213 (LexisNexis Supp. 2005); see also Va. Code Ann. § 19.2-165 (LexisNexis Repl. Vol. 2004) (requiring circuit court clerks to preserve recording or transcripts of criminal trials).

⁵See Va. Supreme Ct. *Circuit Court Clerk's Manual – Criminal (2004)*, ch. 5, § 5.30, at 5-45 (rev. July 2003) (providing that clerks prepare judgment orders in criminal cases), § 5.50, at 5-71 (rev. March 1993) (providing that clerks prepare trial orders in criminal cases), available at http://www.courts.state.va.us/ed/resources/cc_manual_criminal/chapter5.pdf.

⁶See 2004 Op. Va. Att'y Gen. 68, 71 n.16, and opinions cited therein (noting that when General Assembly intends statute to impose requirements, it knows how to express its intention).

⁷Va. Code Ann. § 16.1-69.40 (LexisNexis Repl. Vol. 2003).

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