



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell  
Attorney General

February 20, 2007

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

The Honorable Onzlee Ware  
Member, House of Delegates  
P.O. Box 406  
Richmond, Virginia 23218

Dear Delegate Ware:

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 under what circumstances a juvenile and domestic relations district court should provide or withhold full access to court files or reports for self-represented parties. Primarily, you are concerned with custody cases, and whether due process requires the court to notify self-represented parties of rights of access to pleadings, orders, or reports routinely furnished to others.

## Response

It is my opinion that juvenile and domestic relations district courts must allow self-represented individuals full access to the court files of cases to which they are parties. However, it further is my opinion that juvenile courts are not required to provide such self-represented litigants with notice regarding their rights of access to such court files.

## Background

You relate that constituents have informed you of inconsistent practices by juvenile and domestic relations district courts ("juvenile courts") regarding access to case files and reports by self-represented individuals. You note a particular concern with such practices by juvenile courts in custody cases. You state that persons other than self-represented individuals routinely are provided access to such files and reports. You ask whether the Due Process Clauses of the Constitutions of the United States and Virginia would require juvenile courts to provide notice to self-represented parties regarding their rights of access to files and records.

### Applicable Law and Discussion

Rule 8:2 of the Rules of the Supreme Court of Virginia states that a party who appears in court pro se, or self-represented, is considered his or her own “counsel of record.”<sup>1</sup> The court must provide copies of studies and reports in juvenile matters to the counsel of record, which includes pro se litigants.<sup>2</sup> In addition, pleadings must be served on each counsel of record.<sup>3</sup> Because a self-represented litigant is considered the counsel of record pursuant to the Rules, statutory provisions regarding access to information by a counsel of record also are applicable to such self-represented litigant. Chapter 11 of Title 16.1, §§ 16.1-226 through 16.1-361, governs records, information, and matters related to juvenile proceedings. For example, juvenile court clerks must furnish copies of investigations and evaluations of juveniles to “all attorneys representing parties in the matter before the court” within the specified time limits.<sup>4</sup>

You note that § 16.1-300 addresses records; however, it specifically deals with confidentiality of Department of Juvenile Justice records instead of court records. The Department’s “social, medical, psychiatric and psychological reports and records of children who are or have been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or who are committed to the Department of Juvenile Justice”<sup>5</sup> are confidential. Inspection of such information is limited to specific individuals and entities, *i.e.*, “[t]he child’s parent, guardian, legal custodian or other person standing in loco parentis and the child’s attorney.”<sup>6</sup> However, the Department is permitted to withhold this information from inspection by a child’s parent, guardian, legal custodian or other person standing in loco parentis when it deems that disclosure would be detrimental to the child or a third party, provided the appropriate juvenile court concurs with such determination.<sup>7</sup>

Section 16.1-305 specifically addresses the confidentiality of court records in juvenile matters. Section 16.1-305(A) provides that social, medical, and psychiatric or psychological reports must be filed in juvenile case files. Additionally, all juvenile case files shall be open for inspection only to the specified

---

<sup>1</sup>“‘Counsel of Record’ in any pending case includes an attorney who has signed a pleading in the case or who has notified the clerk or judge that the attorney appears in the case and shall also include a guardian ad litem and a party who appears in court pro se.” VA. SUP. CT. R. 8:2(b)(2).

<sup>2</sup>“Copies of all studies and reports pursuant to §§ 16.1-269.2 [admissibility of statements by a juvenile, investigation and reports], 16.1-273 [social history investigations], 16.1-274 [time for filing reports, copies to attorneys], 16.1-275 [physical and mental examinations, medical care] and 63.2[-1524] [examinations of children alleged to be abused or neglected], when received by the court shall be furnished by the court to counsel of record, and upon request shall be mailed to such counsel. Counsel of record shall return such reports to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion of either.” *Id.* at 8:5.

<sup>3</sup>“All pleadings not otherwise required to be served shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing.” *Id.* at 8:8(e).

<sup>4</sup>See VA. CODE ANN. § 16.1-274(A) (Supp. 2006) (providing also when additional information is discovered, amended report must be filed and sent to each person receiving original report).

<sup>5</sup>Section 16.1-300(A) (Supp. 2006).

<sup>6</sup>Section 16.1-300(A)(3).

<sup>7</sup>Section 16.1-300(B).

individuals or entities, including the “attorney for any party.”<sup>8</sup> Further, § 16.1-305(B) requires that this information “shall also be made available to the parties to the proceedings and their attorneys.” In addition to these types of records in case files, “[a]ll other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B of this section.”<sup>9</sup> Since a self-represented litigant would be both a party to the proceeding and pro se counsel, he would qualify for access under § 16.1-305(A)-(B).

Prior opinions of the Attorney General point to § 16.1-305 as the controlling statute in determining who may inspect juvenile court records.<sup>10</sup> For example, one opinion notes that the release of information contained in juvenile case files held by the juvenile and domestic relations district courts is governed by § 16.1-305, which provides that juvenile case files and records shall be open for inspection only to specified individuals.<sup>11</sup>

You also inquire whether due process requires that self-represented litigants be notified about access to juvenile court files. Due process requires that a person have reasonable notice and opportunity to be heard before an impartial tribunal prior to any binding determination that affects his rights of life, liberty, or property.<sup>12</sup> A pro se litigant’s procedural right of access to juvenile court files does not involve reasonable notice of a hearing or opportunity to be heard before an impartial tribunal, nor does it affect such rights. Thus, no constitutionally protected interest is involved, and the failure to provide such notice is not a violation of the due process clause of the United States Constitution<sup>13</sup> or the Virginia Constitution.<sup>14</sup> Additionally, I find no statutory requirement that juvenile courts must provide notice about a pro se litigant’s right to access court files.

### Conclusion

Accordingly, it is my opinion that juvenile and domestic relations district courts must allow self-represented individuals full access to the court files of cases to which they are parties. However, it further is my opinion that juvenile courts are not required to provide such self-represented litigants with notice regarding their rights of access to such court files.

---

<sup>8</sup>Section 16.1-305(A)(3) (Supp. 2006).

<sup>9</sup>Section 16.1-305(C).

<sup>10</sup>See *infra* note 11.

<sup>11</sup>See 1985-1986 Op. Va. Att’y Gen. 116, 116; see also Op. Va. Att’y Gen.: 1989 at 151, 152 (concluding that under § 16.1-305, juvenile court case files are confidential except for persons specified in statute); 1983-1984 at 211, 212 (concluding that social history, medical, psychological, or psychiatric reports prepared at direction of court become “property” of court and part of its record); 1980-1981 at 217, 218 (noting that § 16.1-305 allows inspection of court records only by certain enumerated persons); 1977-1978 at 219, 219 (concluding that § 16.1-305 provides for inspection of juvenile court records only by persons enumerated therein); *id.* at 217, 217 (concluding that § 16.1-305 only allows certain enumerated parties to inspect court records dealing with juvenile).

<sup>12</sup>See *Comm’n of Fisheries v. Hampton Rds. Oyster Packers & Planters Ass’n*, 109 Va. 565, 585, 64 S.E. 1041, 1048 (1909); *Ward Lumber Co. v. Henderson-White Mfg. Co.*, 107 Va. 626, 630, 59 S.E. 476, 478 (1907).

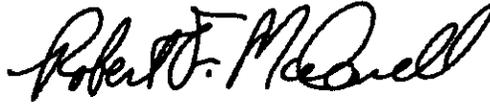
<sup>13</sup>U.S. CONST. amend. XIV, § 1.

<sup>14</sup>VA. CONST. art. I, § 11.

The Honorable Onzlee Ware  
February 20, 2007  
Page 4

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent initial "R".

Robert F. McDonnell

6:60; 1:941/06-107