



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

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

April 1, 2008

Judith Dockery, Esq.
Special Justice, City of Virginia Beach
411 34th Street
Virginia Beach, Virginia 23451

Dear Ms. Dockery:

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 special justices appointed to serve the city of Norfolk have jurisdiction to conduct adult civil commitment hearings in the city of Virginia Beach for a person hospitalized from a locality other than Norfolk.

Response

It is my opinion that special justices serving the city of Norfolk have concurrent jurisdiction with special justices serving the city of Virginia Beach to conduct hearings under § 37.2-820 only for persons detained in Virginia Beach for whom subject matter and *in personam*¹ jurisdiction have been obtained by the Norfolk special justices from a temporary detention order issued under § 37.2-809. Further, it is my opinion that special justices serving Virginia Beach have jurisdiction to conduct commitment hearings for all persons located in Virginia Beach, including persons detained in Virginia Beach under a temporary detention order issued in another jurisdiction.

Background

You indicate that both Virginia Beach and Norfolk special justices conduct all adult civil commitment hearings at the Virginia Beach Psychiatric Center. However, you relate that the Psychiatric Center assigns all patients who come into the hospital from outside the limits of Virginia Beach, such as the Eastern Shore, Hampton, Newport News, Western Tidewater, and Chesapeake, to the Norfolk special justices to conduct the hearings.²

¹*In personam* means “[i]nvolving or determining the personal rights and obligations of the parties.” BLACK’S LAW DICTIONARY 807 (8th ed. 2004).

²See VA. CODE ANN. § 16.1-69.35 (Supp. 2007) (imposing responsibility upon chief district court judge to designate judges within district or judge of another district court within Commonwealth to hear and dispose of any actions coming before district court for disposition). It is my opinion that the Virginia Beach Psychiatric Center has no authority to assign cases to specific judges or special justices.

Applicable Law and Discussion

Section 37.2-803 authorizes the chief judge of each judicial circuit to appoint one or more special justices to conduct adult civil commitment hearings pursuant to Chapter 8 of Title 37.2, §§ 37.2-800 through 37.2-847.³ Each special justice has “all the powers and jurisdiction conferred upon a judge” and serves “under the supervision and at the pleasure of the chief judge making the appointment.”⁴ Thus, a special justice is appointed to conduct civil commitment hearings in the judicial circuit in which he serves.⁵ Section 37.2-820 provides that:

The hearing provided for pursuant to §§ 37.2-814 through 37.2-819 may be conducted by the district court judge or a special justice at the convenient facility or other place open to the public provided for in § 37.2-809, if he deems it advisable, even though the facility or place is located in a county or city other than his own. In conducting such hearings in a county or city other than his own, the judge or special justice shall have all of the authority and power that he would have in his own county or city. A district court judge or special justice of the county or city in which the facility or place is located may conduct the hearing provided for in §§ 37.2-814 through 37.2-819.

Therefore, special justices appointed to serve Virginia Beach have jurisdiction to conduct commitment hearings for any patient detained at the Virginia Beach Psychiatric Center regardless of his place of residence or location immediately prior to detention under § 37.2-809. However, special justices appointed to serve Norfolk would only have jurisdiction to conduct such hearings for persons at the Virginia Beach Psychiatric Center over whom they would have had jurisdiction if the detention were initiated in Norfolk.

“In order for a court to have jurisdiction of the subject matter, the particular issue to be determined must be properly brought before it in the particular proceeding for determination.”⁶ “Jurisdiction of a court over the subject matter of a case is commenced with the filing of a complaint, petition, or other pleading.”⁷ The court must also acquire jurisdiction over the person through service of

³“The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of performing the duties required of a judge by [Chapter 8], Chapter 11 (§ 37.2-1100 et seq.), and §§ 16.1-69.28, 16.1-335 through 16.1-348, 19.2-169.6, 19.2-174.1, 19.2-177.1, 19.2-182.9, 53.1-40.1, 53.1-40.2 and 53.1-40.9. Each special justice shall be a person licensed to practice law in the Commonwealth or a retired or substitute judge in good standing and shall have all the powers and jurisdiction conferred upon a judge. The special justice shall serve under the supervision and at the pleasure of the chief judge making the appointment for a period of up to six years.” VA. CODE ANN. § 37.2-803 (Supp. 2007).

⁴*Id.*

⁵*See* 2002 Op. Va. Att’y Gen. 197, 197. Similarly, under § 16.1-69.28, a district court judge may exercise, concurrently with special justices appointed for the purpose, jurisdiction “in all matters in connection with the adjudication and commitment of incapacitated persons, ... and the institution and conduct of such proceedings thereof. Such proceedings may be had at any place within the jurisdiction of the court over which such judge presides.”

⁶21 C.J.S. *Courts* § 77, at 85 (2006).

⁷*Id.*

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process or the prescribed legal or statutory notice.⁸ Courts must stay within the limits of their jurisdiction and powers and must have basic jurisdiction over the parties and the controversy.⁹ A commitment hearing is initiated upon the petition of any responsible person.¹⁰ You inquire about a situation in which a person who resides in a city other than Norfolk temporarily is detained in a hospital located in Virginia Beach. Based on the facts you present, a special justice serving the Norfolk judicial circuit would not obtain either subject matter jurisdiction over a commitment proceeding or *in personam* jurisdiction over a person who was not located within Norfolk when the temporary detention order was issued.¹¹

Conclusion

Accordingly, it is my opinion that special justices serving the city of Norfolk have concurrent jurisdiction with special justices serving the city of Virginia Beach to conduct hearings under § 37.2-820 only for persons detained in Virginia Beach for whom subject matter and *in personam*¹² jurisdiction have been obtained by the Norfolk special justices from a temporary detention order issued under § 37.2-809. Further, it is my opinion that special justices serving Virginia Beach have jurisdiction to conduct commitment hearings for all persons located in Virginia Beach, including persons detained in Virginia Beach under a temporary detention order issued in another jurisdiction.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

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⁸Robertson v. R.R. Labor Bd., 268 U.S. 619, 622-23 (1925) (discussing jurisdiction of federal district court system).

⁹21 C.J.S., *supra* note 6, at § 88.

¹⁰Section 37.2-809(B) (Supp. 2007); *see also* § 37.2-814 (2005) (governing conduct of commitment hearings).

¹¹*See supra* notes 5-7 and accompanying text.

¹²*See supra* note 1.