



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

William C. Mims  
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

February 27, 2009

The Honorable Judy L. Worthington  
Chesterfield County Circuit Court Clerk  
P.O. Box 125  
Chesterfield, Virginia 23832-0125

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*.

## Issues Presented

You ask whether a circuit court clerk has a statutory obligation to prepare sketch orders in civil cases for the court. Additionally, you ask whether a circuit court clerk has a statutory obligation to attend civil and criminal docket call proceedings.

## Response

It is my opinion that the statutory duties of a circuit court clerk do not require the preparation of sketch orders in civil cases. It further is my opinion that such duties do not require attendance at civil or criminal docket call proceedings. However, I would caution that when a clerk does not attend a docket call, significant care must be exercised by the clerk to ensure that accurate records of such proceedings are maintained.

## 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."<sup>1</sup> Among the duties the General Assembly requires clerks' offices to perform are keeping records of the proceedings in circuit court,<sup>2</sup> providing access to such records,<sup>3</sup> and maintaining and purging the records.<sup>4</sup>

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<sup>1</sup>The General Assembly has established the duties of clerks of the court. *See* VA. CODE ANN. tit. 17.1, ch. 2, §§ 17.1-200 to 17.1-295 (2003 & Supp. 2008). The General Assembly also has established provisions governing courts of record, which include certain duties for circuit court clerks. *See generally* tit. 17.1, ch. 1, §§ 17.1-100 to 17.1-132 (2003 & Supp. 2008); ch. 5, §§ 17.1-500 to 17.1-524 (2003 & Supp. 2008).

<sup>2</sup>*See* § 17.1-123(A) (2003) (requiring clerk to record orders from each day's proceedings in order book); § 17.1-124 (Supp. 2008) (requiring clerk to keep order books recording all proceedings, orders, and judgments of court).

<sup>3</sup>*See* § 17.1-208 (Supp. 2008).

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>5</sup> While circuit court clerks may, in their discretion, assist the court by preparing orders in civil cases, I find no statute that compels this practice. Circuit courts may set cases for trial at a docket call on such days or at such intervals as directed by order of the court.<sup>6</sup> While clerks may assist circuit courts at docket calls to set civil and criminal cases for trial, I find no statute that compels this practice. Notwithstanding the lack of a statutory provision, a clerk who does not attend a docket call must exercise significant care to ensure that accurate records of such proceedings are maintained. The decision not to attend a docket call may make fulfillment of this responsibility more difficult.

The comprehensive list of statutory duties placed upon circuit court clerks demonstrates that when the General Assembly intends to require a clerk to perform a task, it knows how to express its intention.<sup>7</sup> Furthermore, unlike the clerks of the general district and juvenile and domestic relations district courts, the General Assembly has not required circuit court clerks to perform "other duties as may be prescribed by the judge."<sup>8</sup>

### Conclusion

Accordingly, it is my opinion that the statutory duties of a circuit court clerk do not require the preparation of sketch orders in civil cases. It further is my opinion that such duties do not require attendance at civil or criminal docket call proceedings. However, I would caution that when a clerk does not attend a docket call, significant care must be exercised by the clerk to ensure that accurate records of such proceedings are maintained.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Mims", with a stylized flourish at the end.

William C. Mims

2:1353; 1:941/09-007

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<sup>4</sup>See § 17.1-209 (Supp. 2008) (requiring clerk to preserve all papers lawfully returned to or filed in clerk's office); § 17.1-213 (Supp. 2008) (requiring clerk to keep certain records permanently; authorizing clerk to destroy certain records).

<sup>5</sup>See 2003 Op. Va. Att'y Gen. 60, 60 and opinions cited therein.

<sup>6</sup>See VA. SUP. CT. R. 1:20; see also § 17.1-517 (2003) (authorizing chief judge to fix days for dockets); VA. CODE ANN. § 8.01-332 (2007) (providing that current docket may be called to fix cases for trial on days or at intervals as directed by court order); VA. CODE ANN. § 19.2-241 (2008) (authorizing circuit court judges to fix days for commencement of criminal trials).

<sup>7</sup>See 2005 Op. Va. Att'y Gen. 78, 78 and opinions cited therein.

<sup>8</sup>VA. CODE ANN. § 16.1-69.40 (2003) (governing personnel of district courts).