

COURTS NOT OF RECORD: SMALL CLAIMS COURT - VENUE,
JURISDICTION AND PROCEDURE IN CIVIL MATTERS.

CIVIL REMEDIES AND PROCEDURE: ACTIONS - TORT CLAIMS
AGAINST THE COMMONWEALTH OF VIRGINIA - VENUE.

RULES OF SUPREME COURT OF VIRGINIA: INTEGRATION OF
THE STATE BAR - UNAUTHORIZED PRACTICE RULES AND
CONSIDERATIONS.

Tort claims action brought against Commonwealth or
transportation district is not within jurisdiction of
small claims court. Corporate and partnership
representatives who are nonlawyers may appear in
small claims court on behalf of their employers,
provided such persons prepare only authorized
pleadings and are confined at trial to presenting
facts, figures or factual conclusions. Plaintiff in
small claims court action is required to inform
defendant, in clear, nontechnical language in initial
pleading, of right to object to venue when such
action is not brought in preferred or permissible
forum or by multiple parties.

The Honorable Edgar L. Turlington Jr.

The Honorable William L. Wimbish

The Honorable Margaret P. Spencer

Judges, City of Richmond General District Court,
Civil Division

September 15, 1996

You ask several questions regarding an act passed by
the 1996 Session of the General Assembly, authorizing
the City of Richmond, among other localities, to
establish a small claims court division within its
general district court.¹

You first ask whether a small claims court would be
included in the jurisdiction granted in § 8.01195.4

of the *Code of Virginia*,² a portion of the Virginia Tort Claims Act.³ If the answer is in the affirmative, you further ask who is permitted to appear and participate for the Commonwealth in a trial before a small claims court or to remove a case from that court to the general district court, pursuant to § 16.1122.4.⁴

The primary goal of statutory construction is to ascertain and give effect to the intent of the legislature.⁵ Article 5, Chapter 6 of Title 16.1, §§ 16.1122.1 through 16.1122.7, relates to the establishment of a small claims court in certain of the Commonwealth's general district courts.⁶ Section 16.1122.2 provides that "the small claims court shall^[7] have jurisdiction, concurrent with that of the general district court, over the civil action specified in § 16.177(1) when the amount claimed does not exceed \$1,000." (Emphasis added.) The civil action specified in § 16.177(1) does not include suits against the Commonwealth and transportation districts.⁸ Under well-accepted principles of statutory construction, when a statute contains a specific grant of authority, the authority exists only to the extent specifically granted in the statute.⁹ In addition, "mention of a specific item in a statute implies that omitted items were not intended to be included within the scope of the statute."¹⁰ Jurisdiction for suits against the Commonwealth and transportation districts is contained in separate statutory provisions.

The Tort Claims Act is in derogation of the common law doctrine of sovereign immunity and, therefore, "its limited waiver of immunity must be strictly construed."¹¹ Section 8.01195.4 of the Act gives general district courts "exclusive original jurisdiction to hear, determine, and render judgment on any claim against the Commonwealth or any transportation district."¹² "If the language of a statute is plain and unambiguous, and its meaning

perfectly clear and definite, effect must be given to it."¹³

Therefore, I am of the opinion that a claim brought under the Tort Claims Act against the Commonwealth or a transportation district may not be brought in a small claims court.¹⁴

You next ask for reconciliation of § 16.188.03(B) with § 16.1122.4(A)(1), which appears to permit the lay practice of law by corporate or partnership persons.¹⁵ Section 16.188.03(B) prohibits certain conduct and the filing of certain pleadings by nonlawyers in the general district courts:

Nothing in [§ 16.188.03] shall allow a nonlawyer to file a bill of particulars or grounds of defense or to argue motions, issue a subpoena, rule to show cause, or capias; file or interrogate at debtor interrogatories; or to file, issue or argue any other paper, pleading or proceeding not set forth in subsection A.^[16]

The prohibitions in § 16.188.03(B), however, do not preclude a corporate or partnership representative from appearing in general district court on behalf of the employer, and presenting "facts, figures or factual conclusions, as distinguished from legal conclusions" supporting the case.¹⁷

Section 16.1122.4(A)(1) provides that the owner or general partner, or an officer or employee, of a corporation or partnership may represent such entity in small claims court actions.¹⁸ An attorney may serve in a pro se, but not in a representative, capacity.¹⁹ The terms "represent" and "representative capacity," however, are not defined in this section. Words and phrases must be considered in the context in which they are used to arrive at a construction that will promote the object and purpose of the statute.²⁰ It is also a recognized rule of statutory construction that words in a statute are to be given

their usual, commonly understood meaning.²¹ The term "represent" generally is defined as "to appear in the character of; personate; to exhibit; to expose before the eyes."²² The term "representative capacity" is defined as "[t]he office or other position an agent holds in relation to his or her principal which, along with the principal's name, should be indicated on any instrument the agent signs for the principal so that the agent himself or herself avoids personal liability."²³ The rules of statutory construction dictate that the meaning of these terms is established by their relationship to associated words and phrases. Therefore, it is clear that when the owner or general partner, or an officer or employee, of a corporation or partnership represents such corporation or partnership in the small claims court pursuant to § 16.1122.4(A)(1), such person is appearing "in the character of" that entity, and not in an independent representative capacity on behalf of that entity. Accordingly, it is my opinion that corporations and partnerships may be represented in a small claims court by any of the persons specified in § 16.1122.4(A)(1) who are not lawyers, provided such persons prepare only authorized pleadings and are confined at trial to presenting facts, figures or factual conclusions to the court.

Your final inquiry is whether § 8.01264(C) applies to actions filed in a small claims court. Section 8.01-264(C) requires that the initial pleading in a general district court action inform the defendant, "in clear, nontechnical language," "of his right to object to venue if the action is brought in any forum other than that specified in §§ 8.01261, 8.01262, or § 8.01263."

Section 8.01259 provides that in actions not otherwise excluded by this section, "venue shall be in accordance with the provisions of this chapter,^[24] and, in case of conflict [with] other provisions outside this chapter relating to venue, all such other provisions are hereby superseded."

Statutes relating to the same subject "are not to be considered as isolated fragments of law, but as a whole, or as parts of a great connected, homogeneous system, or a single and complete statutory arrangement.'"²⁵ Section 8.01260 provides that "[e]xcept for those actions expressly excluded [by § 8.01259] from the operation of this chapter, the venue for *any* action *shall* be deemed proper *only* if laid in accordance with the provisions of §§ 8.01261 and 8.01262."²⁶ (Emphasis added.) The use of the mandatory word "shall" and the limiting word "only" clearly requires compliance with these statutory procedures, unless specifically excluded.²⁷ Actions in a small claims court are not specifically excluded by § 8.01259 and, therefore, must comply with the mandate of § 8.01260.

A 1986 opinion of the Attorney General concludes that § 8.01264(C) is unequivocal in requiring a general district court plaintiff in the initial pleading to notify the defendant of his right to object to venue.²⁸ The opinion also notes that "[t]he clear purpose of [§ 8.01264(C)] is to ensure that defendants are informed of their right to object to venue. This public purpose would be defeated if notification is left to the discretion of a plaintiff."²⁹

The principles of statutory construction require that statutes be harmonized with other existing statutes, if possible, to produce a consistently logical result that gives effect to the legislative intent.³⁰ The clear language of §§ 8.01259 and 8.01260 mandates the conclusion that the General Assembly did not intend to deprive litigants in small claims court actions of their rights under the applicable venue statutes. The opposite result would defeat the public purpose of appraising defendants of their right to object to venue.

Accordingly, it is my opinion that the plaintiff in a small claims court action is required in the initial

pleading to inform the defendant of his right to object to venue when such action is brought in a forum not specified in §§ 8.01261, 8.01262, or § 8.01263. Such notification must be in clear, nontechnical language reasonably calculated to accomplish the purpose of § 8.01264(C).

¹"The Cities of Harrisonburg and Richmond and the Counties of Brunswick, Greensville, Roanoke, Rockingham and Washington are hereby authorized to establish within their general district court a small claims court division, which shall be designated the small claims court, pursuant to the provisions of § 16.1122.1." Ch. 1033, 1996 Va. Acts Reg. Sess. Section 16.1122.1 establishes in certain general district courts of the Commonwealth "a small claims division to be designated a small claims court."

²The first sentence of § 8.01195.4 provides, in part, that "[t]he *general district courts shall have exclusive original jurisdiction* to hear, determine, and render judgment on any claim against the Commonwealth or any transportation district cognizable under this article *when the amount of the claim does not exceed \$1,000.*" (Emphasis added.)

³Tit. 8.01, Ch. 3, Art. 18.1, §§ 8.01195.1 to 8.01-195.9.

⁴Section 16.1122.4 provides:

"A. All parties shall be represented by themselves in actions before the small claims court except as follows:

"1. A corporate or partnership plaintiff or defendant may be represented by an owner, a general partner, an officer or an employee of that corporation or partnership. An attorney may serve in this capacity if he is appearing pro se, but he may not serve in a representative capacity.

"B. A defendant shall have the right to remove the case to the general district court at any point preceding the handing down of the decision by the judge."

⁵See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1993 Op. Va. Att'y Gen. 237, 239.

⁶See § 16.1122.1.

⁷The use of the word "shall" in a statute generally implies that its terms are intended by the General Assembly to be mandatory, rather than permissive or directive. See *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); Op. Va. Att'y Gen.: 1995 at 118, 119; *id.* at 123, 124; 1989 at 250, 251-52; 1985-1986 at 133, 134.

⁸Section 16.177(1) provides, in part: "Except as provided in Article 5 (§ 16.1122.1 et seq.) of [Chapter 6 of Title 16.1], each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

"(1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person, which would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed \$1,000 exclusive of interest and any attorney's fees contracted for in the instrument, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$1,000 but does not exceed \$10,000, exclusive of interest and any attorney's fees contracted for in the instrument."

⁹See *Tate v. Ogg*, 170 Va. 95, 195 S.E. 496 (1938) (statutes specifically naming certain domestic animals exclude turkeys); 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47.23 (5th ed. 1992 & Supp. 1996).

¹⁰*Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992); see also *Christiansburg v. Montgomery County*, 216 Va. 654, 658, 222 S.E.2d 513, 516 (1976) ("*Expressio unius est exclusio alterius.*"); 1992 Op. Va. Att'y Gen. 145, 146, and opinions cited therein.

¹¹*Baumgardner v. Southwestern Va. Mental Hlth. Inst.*, 247 Va. 486, 489, 442 S.E.2d 400, 402 (1994).

¹²See § 8.01195.4 quoted *supra* note 2 (use of mandatory term "shall" in first sentence of statute).

¹³*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); see also 1993 Op. Va. Att'y Gen. 256, 257.

¹⁴Having answered the first part of your first inquiry in the negative, it is unnecessary to respond to the second part.

¹⁵See § 16.1122.4(A)(1) quoted *supra* note 4.

¹⁶Section 16.188.03(A) provides, in part: "Any corporation or partnership may prepare, execute, file, and have served on other parties in any proceeding in a general district court a warrant in debt, motion for judgment, warrant in detinue, distress warrant, summons for unlawful detainer, counterclaim, crossclaim, suggestion for summons in garnishment, garnishment summons, writ of possession, writ of fieri facias, interpleader and civil appeal notice without the intervention of an attorney. A partnership shall sign such pleadings by a general partner, and a corporation shall sign such pleadings by its president, vice-president, treasurer, or other

officer or full-time bona fide employee authorized to do so by its board of directors."

¹⁷VA. SUP. CT. R. pt. 6, § I, UPR 1101(A).

¹⁸See § 16.1122.4(A)(1) quoted *supra* note 4.

¹⁹See *id.*

²⁰See *Turner v. Commonwealth*, *supra* note 5, 226 Va. at 460, 309 S.E.2d at 339 (meaning of words finds expression from purport of entire phrase of which it is part); 1995 Op. Va. Att'y Gen. 18, 19.

²¹See 1995 Op. Va. Att'y Gen, *supra*, and opinions cited at 20 n.8.

²²BLACK'S LAW DICTIONARY 1301 (6th ed. 1990).

²³*Id.* at 1302.

²⁴Ch. 5 of Tit. 8.01, §§ 8.01257 to 8.01267, entitled "Venue."

²⁵*Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957) (quoting former edition of 73 AM. JUR. 2D *Statutes* § 188 (1974)); see also 1995 Op. Va. Att'y Gen. 69, 70.

²⁶Sections 8.01261 and 8.01262 enumerate "preferred" and "permissible" forums, respectively, for initiating tort claims actions.

²⁷See 1991 Op. Va. Att'y Gen. 229, 232 (use of word "only" in statute connotes limiting language).

²⁸1985-1986 Op. Va. Att'y Gen. 26.

²⁹*Id.* at 26.

³⁰See 2A NORMAN J. SINGER, *supra* note 9, § 46.06; 1995 Op. Va. Att'y Gen. 118, 120.

