**99-064**

**NOTARIES AND OUT-OF-STATE COMMISSIONERS: VIRGINIA NOTARY ACT.**

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS).**

**No statute directs that applicant's name on notary commission be full legal name or that commission be in any particular form. Clerk may not require name presented on commission to be in any particular form. Clerk is required to use reasonable or ordinary care in determining whether identification presented by applicant identifies him as individual commissioned by Secretary of Commonwealth. Fact that name on commission does not precisely match name on applicant's identification is not wholly determinative of identity of applicant.**

The Honorable John T. Frey
Clerk, Circuit Court of Fairfax County
December 27, 1999

You ask whether the clerk of a circuit court may require the name on the commission of a notary public to match the name on the identification presented by a notary public applicant before administering the notary public oath. You relate as examples situations where the name on the applicant's commission is a nickname or uses initials, but the name on the identification presented by the applicant is the applicant's full legal name.[1]

Title 47.1, §§ 47.1-1 through 47.1-33, sets forth the Virginia Notary Act. Specifically, §§ 47.1-3 through 47.1-11 govern the appointment process of notaries public. Pursuant to § 47.1-5, an applicant must submit an application, "in a form prescribed by the appointing authority,"[2] to the Secretary of the Commonwealth. Section 47.1-8 provides:

> [T]he Secretary, if satisfied the applicant is qualified to be appointed and commissioned as a notary public, shall prepare a notary commission for the applicant and forward the commission to the clerk of the circuit court in which the applicant shall elect to qualify. The Secretary shall thereupon notify the applicant that the commission has been granted and where and how it may be secured.

It is clear from the plain language of § 47.1-8 that the duty of assessing an applicant for appointment as notary public and the granting of a commission is delegated to the Secretary of the Commonwealth.[3] Before receiving the commission, however, § 47.1-9 provides that the applicant must appear before the appropriate circuit court clerk within sixty days of his appointment and "make oath" swearing or affirming his familiarity with notary laws, his duty to uphold the federal constitution, the state constitution and state laws, and his faithful performance of his duties. Section 47.1-9 further prescribes that "[s]uch oath shall be signed by the applicant and attested by the clerk. The clerk shall thereupon issue to the applicant his commission as notary public."

Article VII, § 4 of the Constitution of Virginia (1971) creates the office of clerk of the circuit court and provides that a clerk's duties "shall be prescribed by general law or special act."[4] As a rule, clerks of court have no inherent powers, and the scope of their powers must be determined by reference to applicable statutes.[5] I am unaware of any statute which directs that the name on the commission be the applicant's full legal name.[6] Although it may be prudent for the name on the commission to be the applicant's full legal name, there is no statute which requires the

commission to be in any particular form.[7] It is thus my opinion that a clerk may not require the name presented on the commission to be in any particular form.[8]

Section 47.1-9 does not prescribe the standard of care a clerk must exercise in attesting to a notary public applicant's oath.[9] Generally, a clerk is required to use reasonable care[10] or ordinary care[11] in the performance of his duties. What constitutes reasonable or ordinary care necessarily depends on the particular facts and circumstances present.[12] Accordingly, whether the identification presented by an applicant reasonably identifies him as the individual commissioned by the Secretary is a determination for the clerk to make in light of the attending facts and circumstances. Since a clerk is not authorized to require the name on the commission to be the applicant's full legal name, it is my opinion that the fact that the name on the commission does not precisely match the name on the applicant's identification is not wholly determinative of the identity of the applicant.

[1]For example, the name "Jim Doe" appears on the commission but the name "James Doe" appears on the applicant's identification, or the name "J. William Doe" appears on the commission but the name "James William Doe" appears on the applicant's identification.

[2]*See* § 47.1-3 (authorizing Governor to appoint "as many notaries as to him shall seem proper").

[3]*See* Ambrogi v. Koontz, 224 Va. 381, 297 S.E.2d 660 (1982) (where language of statute is clear and unambiguous, effect must be given to its plain and ordinary meaning).

[4]*See also* § 15.2-1600 (requiring counties and cities to elect circuit court clerks).

[5]1996 Op. Va. Att'y Gen. 84, 84. *See generally* 21 C.J.S. *Courts* §§ 249-255 (1990).

[6]*Compare e.g.,* § 46.2-341.12(A)(1) (requiring that application for commercial driver's license reflect applicant's "[f]ull legal name").

[7]*See* 1944-1945 Op. Va. Att'y Gen. 102, 102 (noting that no Virginia statute requires notary's seal to be in any particular form and thus anything that comes within statutory provisions for seal is sufficient).

[8]*Compare* § 47.1-17 (requiring notary public who legally changes his name during term of office to notate to his certificate "I was commissioned notary as …….., or the equivalent").

[9]*Compare* § 47.1-14 (articulating duty of care that notary must exercise as "reasonable care" in performance of his duties generally and "high degree of care" in ascertaining identity of person who is subject of notarial act).

[10]*See* 1984-1985 Op. Va. Att'y Gen. 42, 43 (concluding that clerk is required to use "reasonable care" to determine if all parties mentioned in instrument are in fact affected by it).

[11]*See* 1993 Op. Va. Att'y Gen. 54 (concluding that clerk must exercise "ordinary care" when determining whether to accept payments by personal check).

[12]*See* Perlin v. Chappell, 198 Va. 861, 864, 96 S.E.2d 805, 808 (1957); 1993 Op. Va. Att'y Gen., *supra*, at 55.