

00-036

CRIMINAL PROCEDURE: MAGISTRATES.

Magistrate may not issue warrant to sheriff who is first cousin of magistrate; may issue warrant to sheriff's deputy.

The Honorable Claude Meinhard
Sheriff for Cumberland County
June 7, 2000

You ask whether § 19.2-37 of the *Code of Virginia* prohibits a magistrate from issuing a warrant requested by a deputy sheriff, when such deputy sheriff is employed by a sheriff who is a first cousin of the magistrate. You interpret § 19.2-37 to prohibit the magistrate's issuance of a warrant requested by the sheriff because of the familial relationship between the two officers.

Section 19.2-45 enumerates the powers of a magistrates to include the power to issue warrants.¹ Section 19.2-37 provides that "[n]o magistrate shall issue any warrant or process in complaint of his spouse, child, grandchild, parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law or sister-in-law, nephew, niece, uncle, aunt, [or] first cousin." Although it is arguable that the General Assembly may not have intended that this language preclude a sheriff from obtaining a warrant from a magistrate who is a first cousin of the sheriff, I concur in your interpretation that the sheriff may not do so.²

With respect to whether a deputy sheriff may request the issuance of a warrant from a magistrate who is a first cousin of the sheriff, it is my opinion that the prohibition expressed in § 19.2-37 does not extend to deputies of such sheriffs. A rule of statutory construction provides that where the language of a statute is clear and unambiguous, effect must be given to its plain and ordinary meaning.³ The plain language of § 19.2-37 clearly expresses the prohibition in issue as between the magistrate and certain individuals enumerated in the statute. Nothing in the statutory language extends its proscription beyond such individuals.⁴ Thus, such language is not applicable to individuals other than those enumerated. A deputy sheriff, therefore, unless otherwise related to the magistrate in one of the capacities articulated in the statute, is not included within the scope of the prohibition.⁵

Accordingly, it is my opinion that § 19.2-37 does not preclude a sheriff's deputy from obtaining a warrant from a magistrate who is the first cousin of the sheriff.

¹See § 19.2-45 (1), (2), (5); *see also* 1997 Op. Va. Att'y Gen. 105, 106 (noting that § 19.2-45(1), (5) authorizes magistrate to issue process for arrest of person charged with criminal offense and also to issue civil warrants).

²For example, the language "in complaint of" in § 19.2-37 may be interpreted to refer only to warrants issued to one of the relatives enumerated in the section as opposed to warrants issued upon the request of one of the relatives. In my opinion, however, in light of similar statutes, as well as the presumed intent of such statutes that the issuing officer be prohibited from being involved in matters concerning his family, the better reasoned interpretation is that the language of the statute encompasses both situations. *Compare* § 16.1-69.40 ("No clerk or deputy clerk shall issue any warrant or process based *on* complaint of his spouse, child, grandchild, parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, first cousin," (Emphasis added.)). Additionally, it is arguable that the presumed intent of the language, that the magistrate be prohibited from being involved in matters concerning his family, poses no bar to a sheriff seeking a warrant in the ordinary course of his duties with respect to a nonfamily member. It is my opinion such a result is inconsistent with the broad language in issue. Should this conclusion be inconsistent with the intent of the General Assembly, it may amend the statute to clarify its intent.

³*See* *Ambrogi v. Koontz*, 224 Va. 381, 297 S.E.2d 660 (1982); 1999 Op. Va. Att'y Gen. 164, 165.

⁴*Compare* the express language in the first part of § 19.2-37, making ineligible for the office of magistrate a person or the spouse of such person who is a "law-enforcement officer" or "a clerk, deputy or assistant clerk, or employee charged with the duty of enforcing any of the laws of this Commonwealth or any ordinance of any political subdivision thereof."

⁵*Compare* *Bray v. Brown*, 258 Va. 618, 521 S.E.2d 526 (1999) (holding that because language in Article VII, § 6 of Constitution of Virginia (1971), prohibiting certain multiple officeholdings, does not include deputy sheriffs within its scope, deputy, unlike sheriff, is not encompassed in prohibition and is thus not subject to its provisions).