

**02-026**

**COURTS OF RECORD: CLERKS, CLERKS' OFFICES AND RECORDS.**

**Automated case management systems maintained by clerk of circuit court, whether storage media is on or off premises, are records of clerk's office under custody of such clerk. Access to such system lies within sound discretion of clerk.**

The Honorable Judy L. Worthington  
Clerk of the Circuit Court of Chesterfield County  
April 4, 2002

**Issue Presented**

You ask whether circuit court judges have the authority to direct that the clerk grant access to automated case management systems maintained by the clerk to individuals employed outside the clerk's office beyond the level of "inquiry only."<sup>1</sup>

**Response**

Under the reasoning provided below, I conclude that a circuit court clerk, as custodian of the records maintained in an automated case management system, has the discretion to grant access to such a system.

**Facts**

You relate that the automated case management system that exists in circuit court clerks' offices<sup>2</sup> is the official docketing and indexing system for the court and constitutes the official court record as reported by the clerk to the Department of Motor Vehicles and Department of State Police. Furthermore, the system's data is relied on for court schedules, dockets and case records. Thus, the data contained on the system must be accurate.

**Applicable Law and Discussion**

Article VII, § 4 of the Constitution of Virginia creates the office of circuit court clerk and provides that a clerk's duties "shall be prescribed by general law or special act."<sup>3</sup> As a general rule, clerks of court have no inherent powers, and the scope of their powers must be determined by reference to applicable statutes.

A prior opinion of the Attorney General notes 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>4</sup> Clerks of the circuit courts are the custodians of recorded documents, and as such are under an obligation to keep and carefully preserve all such books, records, maps, and papers deposited in their offices.<sup>5</sup>

A 1996 opinion of the Attorney General concludes that, in the absence of a legislative mandate specifying a particular method, a clerk may establish a system that satisfies the statutory purpose for maintaining the records.<sup>6</sup> As an elected constitutional officer, considerable deference should be paid to the decisions made by a clerk of court, unless such decisions are contrary to law. Electronic systems are used for all operations of clerks' offices, including the management and docketing of cases.<sup>7</sup> Some offices are maintaining the most traditional of paper records—those involving land transactions—in electronic format.

Rapid changes in electronic technology have necessitated revisions of statutes. The clerk, formerly a custodian of paper records, now must be intimately conversant with the security of electronic information. The efficacy of electronic systems depends on proper control of the entry and retrieval of data. Consequently, the 2001 Session of the General Assembly amended §§ 17.1-225 and 17.1-242, relating to remote access to nonconfidential circuit court records.<sup>8</sup> The 2001 amendment to § 17.1-225 defines the individuals considered under the section to be remote access users:

The clerk of the circuit court of any county or city may provide remote access, including Internet access, to all nonconfidential court records maintained by his office *and described in § 17.1-242*. The clerk shall be responsible for insuring that proper security measures are implemented and maintained to prevent remote access users from obtaining any data *that are confidential under this Code* and to prevent the modification or destruction of any records by remote access users. *For purposes of this section, remote access users are those individuals who are not employees of the clerk's office.*<sup>[9]</sup>

The 2001 amendment to § 17.1-242 pertains to the storage of electronic records.

The circuit court clerks shall have custody of and shall keep all books, records, maps and papers deposited in their offices *as well as records stored in electronic format whether the storage media for such electronic records are on premises or elsewhere.*<sup>[10]</sup>

These amendments further clarify that the clerk has responsibility for the integrity of all records maintained by the clerk's office, including those in electronic format. They also make clear that the granting of remote access to such systems in no manner implies either custody or control over the clerk's records.

When new provisions are added to existing legislation by amendment, a presumption arises that, in making such amendment, "the legislature acted with full knowledge of, and in reference to, the existing law upon the same subject and the construction placed upon it by the courts."<sup>11</sup> It is presumed further that the legislature acted purposefully with the intent to change existing law.<sup>12</sup>

In light of the existing interpretation of the law, the amendments to the relevant statutes further strengthen the conclusion that the circuit court clerk is responsible for the integrity of all records maintained by the clerk's office. That responsibility is not shared with any other court official, but rests exclusively with the elected clerk of the circuit court.

## **Conclusion**

Accordingly, I must conclude that automated case management systems maintained by the clerk of a circuit court, whether the storage media is on or off premises, are records of the clerk's office under the custody of such clerk. Access to such a case management system lies within the sound discretion of the clerk.

<sup>1</sup>I assume that, by "inquiry only," you mean a level of access that permits an individual to view, but not to modify, nonconfidential information contained on the system.

<sup>2</sup>I assume that your reference to an automated case management system means an electronic or computerized system, consisting of computer terminals or stations and an operational electronic program or database, with connecting wires or cable. The components of such system may or may not be housed entirely within the physical limits of the clerk's office.

<sup>3</sup>See *also* Va. Code Ann. § 15.2-1600(A) (Michie Repl. Vol. 1997).

<sup>4</sup>1989 Op. Va. Att'y Gen. 62, 63.

<sup>5</sup>See Va. Code Ann. §§ 17.1-209 (preservation of papers), 17.1-223 (recording and indexing "writing[s] authorized by law to be recorded") (Michie Repl. Vol. 1999); see also §§ 17.1-225 (remote access to nonconfidential court records), 17.1-242 (Michie Supp. 2001) (custody of records in electronic format).

<sup>6</sup>1996 Op. Va. Att'y. Gen. 84, 85

<sup>7</sup>A majority of circuit court clerks' offices have opted to use the case management system developed by the Executive Secretary of the Supreme Court of Virginia. A few clerks' offices—Fairfax and Prince William Counties, and the City of Alexandria—have developed their own electronic case management systems, while one jurisdiction—Charlotte County—has no electronic system.

<sup>8</sup>2001 Va. Acts ch. 497, at 527.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>Richmond v. Sutherland, 114 Va. 688, 693, 77 S.E. 470, 472 (1913).

<sup>12</sup>Cape Henry v. Natl. Gypsum, 229 Va. 596, 600, 331 S.E.2nd 476, 479 (1985); Wisniewski v. Johnson, 223 Va. 141, 144, 286 S.E.2nd 223, 224-25 (1982).

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