

02-063

**MENTAL HEALTH GENERALLY: ADMISSIONS AND DISPOSITIONS IN GENERAL.**

**RULES OF SUPREME COURT OF VIRGINIA: INTEGRATION OF THE STATE BAR – CANONS OF JUDICIAL CONDUCT FOR THE STATE OF VIRGINIA.**

**Special justice, appointed to preside over commitment proceedings involving persons alleged to be mentally retarded or mentally ill and in need of hospitalization, may represent individuals in commitment hearings held within judicial circuit of such justice.**

The Honorable William G. Barkley  
Judge, Albemarle General District Court  
August 21, 2002

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

**Issue Presented**

You ask whether a special justice appointed pursuant to § 37.1-88 may represent individuals in § 37.1-67.3 commitment hearings held in the judicial circuit in which the special justice serves.

**Response**

It is my opinion that a special justice appointed pursuant to § 37.1-88 may represent individuals in § 37.1-67.3 commitment hearings held in the judicial circuit in which the special justice serves.

**Applicable Law and Discussion**

The chief judge of each judicial circuit may appoint special justices to perform "the duties required of a judge by [Title 37.1],"<sup>1</sup> pertaining to mental health generally. A special justice must be licensed by the State Bar to practice law.<sup>2</sup> A special justice serves at the pleasure of the appointing chief judge and has "all the powers and jurisdiction conferred upon a judge by [Title 37.1]."<sup>3</sup> Title 37.1 confers on a special justice authority to preside over commitment proceedings of persons "alleged to be mentally retarded"<sup>4</sup> and of persons alleged or reliably reported to be "mentally ill and in need of hospitalization."<sup>5</sup> In all other respects, special justices are not clothed with judicial authority as are general district court judges, juvenile and domestic relations district court judges and circuit court judges.<sup>6</sup> As such, special justices are not viewed as judges in the traditional sense of the word.<sup>7</sup> Rather, they are persons appointed by the chief circuit court judge for the limited purposes set forth in Title 37.1.<sup>8</sup>

Among the powers conferred on a special justice is the authority to preside over commitment hearings conducted pursuant to § 37.1-67.3. If the special justice is not presiding in the particular case, no provision in the Constitution of Virginia or

the Virginia Code prohibits him from representing individuals in such hearings in the judicial circuit in which he serves. Similarly, there is no case law or prior opinion of the Attorney General prohibiting such a practice. The Canons of Judicial Conduct for the State of Virginia provide that a "special justice ... may practice law in the court on which he serves."<sup>9</sup> Please note that nothing in this opinion should be construed as a comment on the ethical propriety of a special justice serving as counsel in a particular case, as such a question would be within the province of the Judicial Inquiry and Review Commission and the Virginia State Bar.<sup>10</sup>

### Conclusion

Accordingly, it is my opinion that a special justice appointed pursuant to § 37.1-88 may represent individuals in § 37.1-67.3 commitment hearings held in the judicial circuit in which the special justice serves.

<sup>1</sup>Va. Code Ann. § 37.1-88 (Michie Repl. Vol. 1996)

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>Va. Code Ann. § 37.1-65.1(A), (B) (Michie Repl. Vol. 1996).

<sup>5</sup>Va. Code Ann. § 37.1-67.1 (LexisNexis Supp. 2002). Section 37.1-67.1 uses the term "judge," which includes "special justices authorized by § 37.1-88." Va. Code Ann. § 37.1-1 (LexisNexis Supp. 2002).

<sup>6</sup>1984-1985 Op. Va. Att'y Gen. 154, 154.

<sup>7</sup>*Id.* at 154.

<sup>8</sup>*Id.*

<sup>9</sup>Va. Sup. Ct. R. pt. 6, § III, Canon 6(C), at

[http://www.courts.state.va.us/scv/amendments/rule3B\\_2\\_040101.html#sectionIII](http://www.courts.state.va.us/scv/amendments/rule3B_2_040101.html#sectionIII) (last modified Apr. 16, 2001).

<sup>10</sup>See 1971-1972 Op. Va. Att'y Gen. 112, 112.

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