

OP. NO. 05-086

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

Absent explicit statutory scheme outlining procedures required for electronic filing of documents or legislative enactment to contrary, clerk of circuit court has discretion to establish such procedures, including decision regarding persons with whom he must enter into agreements for such filings.

The Honorable Paul M. Metzger
Spotsylvania County Circuit Court Clerk
March 27, 2006

Issue Presented

You ask whether § 17.1-258.3 requires a circuit court clerk to enter into an agreement with every legal person that is the original party filing ("original filer") a land recording, instrument, and related document or whether a clerk may instead enter into an agreement with the legal person submitting such filings on behalf of the original filer.

Response

It is my opinion that absent an explicit statutory scheme outlining the procedures required for electronic filing of documents or a legislative enactment to the contrary, it is within the discretion of a clerk of the circuit court to establish such procedures, including the decision regarding the persons with whom he must enter into agreements for such filings.

Background

You relate that as the Clerk of the Circuit Court of Spotsylvania County, you are preparing to accept certificates of satisfaction for electronic filing. You note that § 17.1-258.3 permits clerks of the circuit courts to establish a system for electronic filing and that, once established, any "person," as defined in § 59.1-480, may electronically file documents. Finally, you relate that your vendor of automated land recording equipment supports the position that "person" should be interpreted to mean the actual person who transmits the documents and not a remote person on whose behalf the transmitter files such documents.

Applicable Law and Discussion

Article VII, § 4 of the Constitution of Virginia establishes the office of clerk of the court and provides that the clerk's duties are "prescribed by general law or special act."¹ As a general rule, the scope of the powers of circuit court clerks must be determined by reference to applicable statutes.² Among the powers granted to circuit court clerks by statute is the ability to "establish a system for electronic filing or recordation of documents."³ In so doing, the clerk must "enter into an agreement with each person," as defined by § 59.1-480(11), "whom the

clerk authorizes to file documents electronically, specifying the electronic filing procedures to be followed."⁴ Section 59.1-480(11) defines "person" as "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body, public corporation, or any other legal or commercial entity."

A 2003 opinion of the Attorney General notes that, absent a legislative enactment to the contrary, developing a system for maintenance of electronic records lies within the sound discretion of the clerk.⁵ In my opinion, such discretion would include the decision regarding whether a clerk may only enter into an agreement with the original filer of a land recording or other document or also may enter into such an agreement with the person submitting the filing. Both are "persons" as contemplated by §§ 17.1-258.3 and 59.1-480(11).

Conclusion

Accordingly, it is my opinion that absent an explicit statutory scheme outlining the procedures required for electronic filing of documents or a legislative enactment to the contrary, it is within the discretion of a clerk of the circuit court to establish such procedures, including the decision regarding the persons with whom he must enter into agreements for such filings.

¹The General Assembly has established the duties of clerks of the court. See Va. Code Ann. tit. 17.1, ch. 2, §§ 17.1-200 to 17.1-291 (2003 & Supp. 2005) ("Clerks, Clerks' Offices and Records"). The General Assembly has also established provisions governing courts of record, which includes certain duties for circuit court clerks. See *generally* tit. 17.1, ch 1, §§ 17.1-100 to 17.1-131 (2003 & Supp. 2005) ("General Provisions"); ch. 5, §§ 17.1-500 to 17.1-524 (2003 & Supp. 2005) ("Circuit Courts").

²See *Mendez v. Commonwealth*, 220 Va. 97, 102, 255 S.E.2d 533, 535 (1979) (stating that "authority of a clerk of court to administer an oath or take an affidavit is purely a creature of statute"); *Harvey v. Chesapeake & Potomac Tel. Co.*, 198 Va. 213, 218, 93 S.E.2d 309, 313 (1956) (noting that duties of clerk are ministerial); 2003 Op. Va. Att'y Gen. 60, 60 and opinions cited therein; see *also* 21 C.J.S. *Courts* §§ 236, 250-51 (1990).

³Section 17.1-258.3 (Supp. 2005).

⁴*Id.*

⁵See 2003 Op. Va. Att'y Gen., *supra* note 2, at 60; see *also* 1996 Op. Va. Att'y Gen. 84, 85.