



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

July 8, 2010

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The Honorable John T. Frey
Clerk, Fairfax County Circuit Court
4110 Chain Bridge Rd.
Fairfax, Virginia 22030-4048

Dear Mr. Frey:

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 foreign judgment for spousal support and maintenance tendered for recording, which does not contain a specific monetary amount, should be docketed in the judgment docket (judgment lien book) or if it can be entered of record in the clerk's order book.

Response

It is my opinion that because the judgment does not detail a specific monetary award, it may be entered either in the judgment docket or in the order book, or in any other record deemed suitable, in accord with local practice and the sound discretion of the clerk.

Background

You relate that a Maryland court order provides that the former wife is entitled to a portion of the former husband's pension plan. The order does not provide a specific judgment amount, nor does it state that the former husband is in arrears. You note that the attorney for the former wife has presented the order to your Office so that it might be docketed in the judgment lien book.

Applicable Law and Discussion

Article VII, § 4 of the Constitution of Virginia establishes the office of "a clerk, who shall be clerk of the court in the office of which deeds are recorded" and mandates that the duties of the office "shall be prescribed by general law or special act." As a general rule, circuit court clerks have no inherent powers, and the scope of powers must be determined by reference to applicable statutes.¹ There are several hundred specific statutes that prescribe the duties of the clerk, which include the recording of

¹ See 2003 Op. Va. Att'y Gen. 60, 61.

deeds, orders, financing statements and other instruments.² This requires the clerk to effectively address changing and competing demands for personnel and resources. The manner in which these duties are performed are a function of management, tradition, custom and local practice.³

Considerable deference is given to decisions made by clerks and, “in the absence of a constitutional or statutory provision to the contrary, constitutional officers have exclusive control over the operation of their offices.”⁴ The clerk, as a constitutional officer, “is free to discharge his prescribed powers and duties in the manner in which he deems appropriate” unless limited by law.⁵ Nor can clerks be compelled to perform duties that are not required by statute, but may assume additional responsibilities at their discretion.⁶

A 1995 opinion of the Attorney General concluded the Uniform Enforcement of Foreign Judgments Act (“the Act”) is not solely limited to monetary judgments and noted that the Act “authorizes circuit court clerks to accept properly authenticated copies of nonmonetary foreign judgments, in addition to monetary decrees or awards.”⁷ The clerk “shall treat the foreign judgment in the same manner” and such judgment “has the same effect and is subject to the same procedures, defenses and proceedings” as if rendered by a circuit court of this Commonwealth.⁸

The clerk is required by statute to keep a “judgment docket” in book or other form, popularly known as a judgment lien book, “in which he shall docket, without delay, any judgment for a specific amount of money.”⁹ Entry in the judgment docket constitutes a lien against real property.¹⁰ A properly authenticated and legible foreign or domestic money judgment must be recorded in the judgment docket. Likewise, a decree for support and maintenance “payable in future installments or a monetary award for future installments as provided for in § 20-107.3,” shall be entered in the judgment docket if “so ordered by the court in such decree.”¹¹

In this instance, you relate that the subject Maryland court order provides that a former wife is entitled to a portion of the former husband’s pension plan without referencing a specific amount. Entry in the judgment docket is not required because the judgment does not mention a specific amount of money. If a statute specifically directs the manner in which a clerk performs a duty, the clerk must comply with the statute. Where, as here, the statute is silent or ambiguous as to how a clerk is to comply with a duty,

² See “Circuit Court Clerk’s Duties List” of the Office of the Executive Secretary of the Supreme Court of Virginia, <http://www.courts.state.va.us/courts/circuit/resources/cccdl.pdf>.

³ See 2002 Op. Va. Att’y Gen. 62, 62; 2006 Op. Va. Att’y Gen. 99, 100.

⁴ See 2009 Op. Va. Att’y Gen. 56, 57.

⁵ See 1984-1985 Op. Va. Att’y Gen. 284, 284.

⁶ See 2003 Op. Va. Att’y Gen. 60; 2005 Op. Va. Att’y Gen. 78; 2009 Op. Va. Att’y Gen. 60.

⁷ See 1995 Op. Va. Att’y Gen. 26, 27.

⁸ See VA. CODE ANN. § 8.01-465.2 (2007) and 1987-1988 Op. Va. Att’y Gen. 83.

⁹ See § 8.01-446 (Supp. 2009).

¹⁰ See § 8.01-458 (2007).

¹¹ See § 8.01-460 (2007).

The Honorable John T. Frey
July 8, 2010
Page 3

how the duty is discharged lies within the sound discretion of the clerk. Therefore, where such an order is made a matter of record lies within the sound discretion of the clerk.

Conclusion

Accordingly, it is my opinion that that because the judgment does not detail a specific monetary award, it may be entered either in the judgment docket or in the order book, or in any other record deemed suitable, in accord with local practice and the sound discretion of the clerk.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Ken C II". The signature is stylized, with the first name "Ken" written in a cursive script and the last name "C" followed by the Roman numeral "II" written in a simple, blocky font.

Kenneth T. Cuccinelli, II
Attorney General

1:485; 1:941/10-009