



COMMONWEALTH of VIRGINIA

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The Honorable Paul Ferguson
Clerk of the Circuit Court
Arlington County
1425 North Courthouse Road
Suite 6700
Arlington, Virginia 22201

Dear Mr. Ferguson:

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

Issues Presented

You inquire whether, consistent with § 8.01-341(5), a licensed practicing attorney is permitted to serve as a juror or whether that individual must be excused from jury service. You further inquire whether the exemption provided in § 8.01-341(5) is limited to attorneys who practice in Virginia.

Response

It is my opinion that, while § 8.01-341(5) provides an exemption from jury service for licensed practicing attorneys, it does not bar lawyers from serving on a jury when a lawyer is willing to waive the exemption. It is further my opinion that, for the purpose of § 8.01-341(5), a "licensed practicing attorney" is a person licensed to practice law in any state or territory of the United States, including the District of Columbia, who is engaged in the active practice of law.

Applicable Law and Discussion

Section 8.01-341 of the *Code of Virginia* provides, in pertinent part, "The following shall be exempt from serving on juries in civil and criminal cases: . . . 5. Licensed practicing attorneys . . ." Thus, in clear and unequivocal terms, the General Assembly has exempted licensed practicing attorneys from jury service. You ask whether this exemption serves to bar licensed practicing attorneys from sitting on a jury or whether licensed practicing attorneys may waive the exemption, and thus, be eligible for jury service.

The Supreme Court of Virginia has expressed that the statutory exemption from jury service found in § 8.01-341(5) does not bar licensed practicing attorneys from serving on juries. Specifically, in *Caterpillar Tractor Co. v. Hulvey*, the Court noted that while § 8.01-341(5), renders a "[licensed practicing attorney] exempt from jury service, [it does] not make him incompetent to serve"¹ on a jury. I

¹ 233 Va. 77, 85, 353 S.E.2d 747, 752 (1987) (citation omitted).

therefore conclude that licensed practicing attorneys are permitted to serve on juries if they are willing to waive the exemption granted by statute.

With respect to your second question, whether the exemption afforded “licensed practicing attorneys” extends to attorneys licensed and practicing outside Virginia, I find no cases directly on point. Thus, I rely on familiar rules of statutory construction to answer your inquiry. Foremost, in construing a statute, the plain meaning of the language determines the legislative intent unless a literal construction would lead to a manifest absurdity.² Further, statutes must be construed to give meaning to all of the words enacted by the General Assembly, and a court is “not free to add language, nor to ignore language, contained in statutes.”³

Section 8.01-341(5) does not contain language limiting the exemption for licensed practicing attorneys to those licensed and practicing law in the Commonwealth of Virginia. While other statutes in the *Code of Virginia* specifically reference “Virginia attorneys” to indicate a requirement that the attorney be licensed by the Virginia State Bar,⁴ § 8.01-341(5) does not contain any words of qualification or limitation in reference to licensed attorneys. For example, §§ 54.1-3900.01 and 54.1-3936, which relate to the regulation of the legal profession and protection of client funds and interests, specify that these statutes concern “the quality of legal services provided by *Virginia attorneys*.”⁵ Similarly, § 54.1-3901, which relates to the practice of patent law, distinguishes among an attorney “who is admitted as an active member of the Virginia State Bar,” an attorney “who is not an active member of the Virginia State Bar,” and an attorney “who is authorized to practice law in any state or territory of the United States, or the District of Columbia.” Unlike these statutes, § 8.01-341(5) does not include a reference to Virginia or the Commonwealth. Absent language qualifying or limiting application of the exemption to attorneys from a particular jurisdiction, the exemption must extend to all licensed practicing attorneys.⁶ Accordingly, § 8.01-341(5) encompasses all attorneys who are licensed and practicing in any state or territory of the United States, including the District of Columbia.⁷

I do note, however, that irrespective of any jurisdictional question, § 8.01-341(5) does require that the lawyer be a “practicing” attorney for the exemption to apply. The adjective “practicing” is commonly defined as “[a]ctively working in a particular profession or occupation: *a practicing attorney*.”⁸ Thus, a practicing attorney is engaged in the active practice of law. *Black’s Law Dictionary* defines the practice of law as “[t]he rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent.”⁹ The “active practice of law” thus

² *Halifax Corp. v. First Union Nat’l Bank*, 262 Va. 91, 99-100, 546 S.E.2d 696, 702 (2001).

³ *Signal Corp. v. Keane Fed. Sys.*, 265 Va. 38, 46, 574 S.E.2d 253, 257 (2003).

⁴ See VA. CODE ANN. §§ 54.1-2348 (2010); 54.1-3900.01 (2008); 54.1-3936 (2005); 54.1-3901 (2000).

⁵ (Emphasis added).

⁶ See *Smith Mt. Lake Yacht Club v. Ramaker*, 261 Va. 240, 246, 542 S.E.2d 392, 395 (2001).

⁷ Dicta in *Hulvey* buttresses this conclusion. The juror whose alleged misconduct was the subject of the case “was licensed to practice in the District of Columbia but not in the Commonwealth of Virginia.” *Hulvey* at 79, 353 S.E. 2d at 748. Because the Court found that the exemption did not serve as a bar to jury service, it did not have to directly address whether an attorney licensed other than in Virginia would fall within the exemption. In referencing § 8.01-341(5) and noting that the juror’s status as an attorney “may have rendered him exempt from jury service[,]” however, the Court suggested he would. *Id.* at 85, 353 S.E. 2d at 752.

⁸ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, NEW COLLEGE EDITION 972 (1981) (emphasis in original).

⁹ BLACK’S LAW DICTIONARY 1172 (6th ed. 1990).

contemplates an attorney-client relationship.¹⁰ *Black's Law Dictionary* further states that the practice of law "is not limited to appearing in court, or various shapes of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and in larger sense includes legal advice and counsel and preparation of legal instruments by which legal rights and obligations are established."¹¹ In short, anyone who is licensed as an attorney and regularly engages in what is generally thought of as the practice of law, whether in a courtroom, in an office setting, or in a corporate setting, is a "licensed practicing attorney[]" for the purposes of § 8.01-341(5), and thus, is exempt from jury service.

Based on the above, I conclude that § 8.01-341(5) exempts from jury service those persons licensed to practice law in any state or territory of the United States, including the District of Columbia, who are engaged in the active practice of law.

Conclusion

Accordingly, it is my opinion that, while § 8.01-341(5) provides an exemption from jury service for licensed practicing attorneys, it does not bar lawyers from serving on a jury when a lawyer is willing to waive the exemption. It is further my opinion that, for the purpose of § 8.01-341(5), a "licensed practicing attorney" is a person licensed to practice law in any state or territory of the United States, including the District of Columbia, who is engaged in the active practice of law.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

¹⁰ *Id.*

¹¹ *Id.*