



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Michèle B. McQuigg
Clerk of the Circuit Court
Prince William County
9311 Lee Avenue
Manassas, Virginia 20110

Dear Ms. McQuigg:

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 inquire whether an electronic case management system, which indexes all cases in the circuit court and maintains copies of the indexed orders for all cases, fulfills the requirements for an order book as described in § 17.1-124 of the *Code of Virginia*.

Response

It is my opinion that an electronic case management system that provides the contents of an order book as prescribed in § 17.1-124, that is created using an electronic recording process compliant with the archival standards as recommended by the Library of Virginia, and that follows state electronic records guidelines as provided in § 42.1-82,¹ fulfills the requirement of an order book as described in § 17.1-124.

Applicable Law and Discussion

The General Assembly prescribed in § 17.1-123(A) that “[a]ll orders that make up each day’s proceedings of every circuit court shall be recorded by the clerk in a book known as the order book.” The General Assembly further prescribed the contents of an order book in § 17.1-124, which provides in relevant part:

Except as otherwise provided herein, each circuit court clerk shall keep order books recording all proceedings, orders and judgments of the court in all matters, all decrees, and decretal orders of such court and all matters pertaining to trusts, the appointment and qualification of trustees, committees, administrators, executors, conservators and guardians shall be recorded, except when the same are appointed by the clerk of court, in which event the order appointing such administrators or executors, shall be made and entered in the clerk's order book. *In any circuit court, the clerk may, with the approval of*

¹ VA. CODE ANN. § 42.1-82 (2013).

the chief judge of the court, by order entered of record, divide the order book into two sections, to be known as the civil order book and the criminal order book. All proceedings, orders and judgments of the court in all matters at civil law shall be recorded in the civil order book, and all proceedings, orders and judgments of the court in all matters at criminal law shall be recorded in the criminal order book. In any proceeding brought for the condemnation of property, all proceedings, orders, judgments and decrees of the court shall be recorded in the civil order book of the court. . . .

The clerk shall ensure that these order books have been microfilmed or converted to or created in an electronic format. Such microfilm and microphotographic processes and equipment shall meet state microfilm standards, and such electronic format shall follow state electronic records guidelines, pursuant to § 42.1-82.^[2]

Also relevant to your inquiry is § 17.1-240, which relates to using an electronic process for recording purposes. Section 17.1-240 provides, in relevant part, as follows:

A procedural microphotographic process, digital reproduction, or any other micrographic process which stores images of documents in reduced size or in electronic format, may be used to accomplish the recording of writings otherwise required by any provision of law to be spread in a book or retained in the circuit court clerk's office, including, but not limited to, the civil and criminal order books Any such micrographic, microphotographic or electronic recording process shall meet archival standards as recommended by The Library of Virginia.^[3]

In construing a statute, the plain meaning of the language determines the legislative intent unless a literal construction would lead to a manifest absurdity.⁴ 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.”⁵ Additionally, “a statute is not to be construed by singling out a particular phrase,” but must be construed as a whole.⁶ Related statutes must be considered together in construing their various material provisions.⁷

Section 17.1-124 expressly requires a circuit court clerk to “ensure” that an order book has been “microfilmed or converted to or created in an electronic format.” If a circuit court clerk does not microfilm an order book, a circuit court clerk either must create the order book in an electronic format or must convert the order book to such a format. While “convert” means to change from one form to another,⁸ “create” means to bring into existence.⁹ Pursuant to § 17.1-124, an order book may be created in electronic format so long as the electronic format follows the state electronic records guidelines as provided in § 42.1-82.

² VA. CODE ANN. § 17-124 (2010) (emphasis added).

³ Section 17.1-240 (2010) (emphasis added).

⁴ *Halifax Corp. v. First Union Nat'l Bank*, 262 Va. 91, 99-100, 546 S.E.2d 696, 702 (2001).

⁵ *Signal Corp. v. Keane Fed. Sys.*, 265 Va. 38, 46, 574 S.E.2d 253, 257 (2003).

⁶ *Virginia Elec. & Power Co. v. Citizens for Safe Power*, 222 Va. 866, 869, 284 S.E.2d 613, 615 (1981).

⁷ *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957); *see Colbert v. Commonwealth*, 47 Va. App. 390, 395, 624 S.E.2d 108, 110-11 (2006).

⁸ THE AMERICAN HERITAGE DICTIONARY 320 (2d ed. 1985).

⁹ *Id.* at 338.

Section 17.1-124, construed in conjunction with § 17.1-240, confirms that an order book may be in electronic format. Section 17.1-240 expressly permits “a digital reproduction, or any other micrographic process which stores . . . documents . . . in electronic format” to accomplish the recording of writings “to be spread in a book” or “retained in the circuit court clerk’s office.” Section 17.1-240 specifies that a recording of writings to be spread in a book or retained in the circuit court clerk’s office include the civil and criminal order books. Section 17.1-124 provides that an order book may be divided into two sections: the civil order book and the criminal order book. Pursuant to § 17.1-240, documents in electronic format may constitute the requisite recording of writings in an order book as long as the electronic recording process meets the archival standards as recommended by the Library of Virginia.

Conclusion

Accordingly, it is my opinion that an electronic case management system that provides the contents of an order book as prescribed in § 17.1-124, that is created using an electronic recording process compliant with the archival standards as recommended by the Library of Virginia, and that follows state electronic records guidelines as provided in § 42.1-82, fulfills the requirement of an order book as described in § 17.1-124.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General