



# COMMONWEALTH of VIRGINIA

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The Honorable Scott A. Surovell  
Member, House of Delegates  
Post Office Box 289  
Mount Vernon, Virginia 22121

Dear Delegate Surovell:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-205 of the *Code of Virginia*.

## Issue Presented

You inquire whether § 8.01-273 of the *Code of Virginia* authorizes demurrers in general district courts or only in circuit courts.<sup>1</sup>

## Applicable Law and Discussion

Pursuant to § 8.01-273, “the contention that a pleading does not state a cause of action or that such pleading fails to state facts upon which the relief demanded can be granted may be made by demurrer.” Section 8.01-273 expressly provides that such contention can be made “[i]n *any* suit in equity or action at law,” but that “[a]ll demurrers shall be in writing . . . .” You ask whether this provision permits a written demurrer to be filed in general district courts as well as circuit courts.

“When construing a statute, our primary objective is ‘to ascertain and give effect to legislative intent,’ as expressed by the language used in the statute[;]”<sup>2</sup> and “[w]e ‘assume that the legislature chose, with care, the words it used when it enacted the relevant statute.’”<sup>3</sup> Although § 8.01-273 makes no specific reference to district court proceedings, the terms “action” and “suit” generally include “all civil proceedings whether upon claims at law, in equity or statutory in nature and whether in circuit courts or district courts.”<sup>4</sup> I find no provision that otherwise would limit the use of demurrers to circuit courts.<sup>5</sup>

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<sup>1</sup> I note that a demurrer also may be filed in a criminal case. Because your inquiry is about demurrers in civil cases pursuant to § 8.01-273, this Opinion will presume your question is limited to only civil cases pending in general district courts.

<sup>2</sup> *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425 (2012) (quoting *Commonwealth v. Amerson*, 281 Va. 414, 418 (2011)) (further citation and internal quotation marks omitted).

<sup>3</sup> *Alger v. Commonwealth*, 267 Va. 255, 261 (2004) (quoting *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295 (1990)).

<sup>4</sup> VA. CODE ANN. § 8.01-2(1) (Supp. 2014). I note that “district court” is defined to include both general district courts and juvenile and domestic relations district courts. VA. CODE ANN. § 16.1-69.5(d) (2010).

<sup>5</sup> This includes a survey of Title 16.1, particularly Chapter 4.1, which contains provisions specifically applicable to district court procedures, and the procedural standards set forth in Rules of the Supreme Court of Virginia.

Accordingly, I conclude that § 8.01-273 authorizes a written demurrer to be filed in any civil action, whether in a circuit court or a general district court.

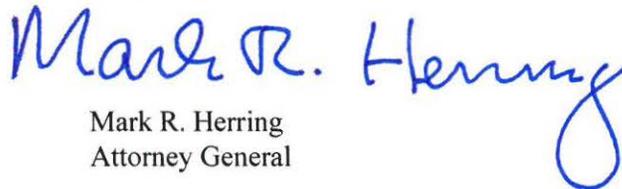
I note that the attendant procedure for filing a demurrer in a district court case may differ slightly from that in a circuit court case. Unlike a circuit court case, which is initiated by filing a complaint that must “state the facts on which the plaintiff relies” and will be “sufficient” only if it “clearly informs the defendant or defendants of the true nature of the claim asserted,” a general district court case also may be initiated by a plaintiff’s filing a warrant,<sup>6</sup> often based on forms provided by the Supreme Court of Virginia.<sup>7</sup> In some instances, given the limited information they convey, these form warrants may not provide a valid basis upon which a defendant could demur. Nevertheless, either party may request that the judge “direct the filing of a written bill of particulars”<sup>8</sup> in order “to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case.”<sup>9</sup> Once the claim supplies sufficient facts, the case may be in a posture in which a defendant could challenge the factual allegations against him as failing to state a claim upon which relief may be granted by filing a demurrer.<sup>10</sup> Accordingly, it is clear that even in a general district court case, a demurrer is an available responsive pleading that allows the defendant to test the legal sufficiency of the claims asserted by the plaintiff.

### Conclusion

Accordingly, it is my opinion that a demurrer can be filed in both general district courts and circuit courts to challenge the legal sufficiency of a cause of action.

With kindest regards, I am

Very truly yours,



Mark R. Herring  
Attorney General

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Nothing in Title 16.1 limits or restricts the pleadings permitted in general district courts, and neither of the Rules pertaining to district court pleadings addresses demurrers. *See* VA. SUP. CT. RS. 7B:2 (Permitting a court to award a party summary judgment if the opposing party does not file a pleading as ordered by the judge presiding over the case) and 7B:3 (defining general provisions as to pleadings, but not discussing demurrers).

<sup>6</sup> Section 16.1-79 (2010).

<sup>7</sup> *See General District Court Civil Forms*, VIRGINIA’S JUDICIAL SYSTEM, available at <http://www.courts.state.va.us/forms/district/civil.html> (last visited Dec. 1, 2014).

<sup>8</sup> Section 16.1-69.25:1 (2010).

<sup>9</sup> VA. SUP. CT. R. 3:7(a). Although this definition is from the Rules that are specifically applicable only in circuit court cases, the use of bills of particulars in the general district courts serve the same function. There is no statute or Rule that defines a bill of particulars used in a general district court case differently than one used in the circuit courts.

<sup>10</sup> I note that a demurrer is distinct from a motion to strike an insufficient bill of particulars. *See* VA. SUP. CT. R. 3:7(b). An insufficient bill of particulars “fails to inform the opposing party . . . of the true nature of the claim.” By contrast a demurrer tests the legal sufficiency of the claims stated in the pleadings, not the factual sufficiency. *Thompson v. Skate Am., Inc.*, 261 Va. 121, 128 (2001). The question raised in a demurrer is “whether the facts thus pleaded, implied, and fairly and justly inferred are legally sufficient to state a clause of action against the defendant.” *Id.*