



COMMONWEALTH of VIRGINIA

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The Honorable Colleen K. Killilea, Judge
Williamsburg / James City County General District Court
5201 Monticello Avenue, Suite 2
Williamsburg, Virginia 23188-8218

Dear Judge Killilea:

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 retired judge, who has voluntarily removed himself from the recall list of the Supreme Court of Virginia, after years of honorable active and recall list service, may celebrate the rites of marriage under § 20-25 of the *Code of Virginia* without necessity of bond or order of authorization.

Applicable Law and Discussion

In Virginia, a judge who has retired under the Judicial Retirement System¹ may offer to perform recall service to hear certain cases or perform other judicial duties on a temporary basis.² Pursuant to § 16.1-69.35 of the *Code*, the Executive Secretary of the Supreme Court of Virginia maintains a list of such retired judges who have offered their services and are eligible for recall duty.³ Should a retired judge decide that he no longer desires to remain on the list, he may request that his name be removed. However, that judge still remains subject to possible recall at the discretion of the Chief Justice under the provisions of §§ 16.1-69.22:1 or 17.1-106.

Section 20-25 of the *Code*, which is the subject of your inquiry, provides that “retired judges” are authorized to celebrate the rites of marriage in Virginia without necessity of bond or order of authorization. That statute provides, in relevant part, that

[a]ny judge or justice of a court of record, any judge of a district court, any retired judge or justice of the Commonwealth, and any active, senior, or retired federal judge or justice who is a resident of the Commonwealth may celebrate the rites of marriage anywhere in the Commonwealth without the necessity of bond or order of authorization.⁴

¹ See VA. CODE ANN. §§ 51.1-300 – 51.1-309 (2013 & Supp. 2016).

² See VA. CODE ANN. §§ 16.1-69.22:1 (2015), 16.1-69.35 (2015), 17.1-105 (2015), 17.1-106 (2015).

³ This list is approved by the Chief Justice of the Supreme Court of Virginia. See VA. CODE ANN. § 16.1-69.35.

⁴ VA. CODE ANN. § 20-25 (2016).

Prior to 1987, this provision of § 20-25 did not include “retired judges of the Commonwealth” in the list of individuals authorized to perform marriages without necessity of bond or order of authorization. Although the provision included “any judge or justice of a court of record and any judge of a district court,”⁵ it was silent as to the authority of a retired judge. Interpreting that prior language of the provision, in 1985 the Attorney General issued an opinion concluding that a retired judge was not authorized to perform marriages without bond or order of authorization, unless he had been recalled by the Chief Justice and had thereby regained—on a temporary basis—all the “powers, duties[,] and privileges” of the position.⁶ In response to this opinion, the General Assembly amended the statute in 1987 to allow retired judges and justices of the Commonwealth to perform marriages with no bond or order of authorization—and with no requirement that a judge be on active recall status at the time.⁷

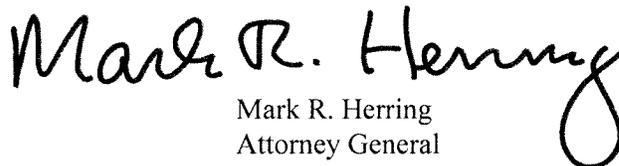
I conclude that the 1987 amendment indicates that a retired judge may perform marriages even if he has voluntarily had his name removed from the Supreme Court’s recall list. Such an individual is still a “retired judge” so long as he remains in good standing with the Supreme Court of Virginia, and is a “public official” in the limited sense that he remains subject to possible recall under §§ 16.1-69.22:1 or 17.1-106.⁸ Therefore, in light of his status, he may perform marriages in the Commonwealth without necessity of bond or order of authorization.⁹ This is so regardless of whether he is ever recalled to active service or whether he even remains on the recall list.

Conclusion

Accordingly, based on the language and legislative history of § 20-25, it is my opinion that a retired judge under the circumstances you describe may celebrate the rites of marriage in the Commonwealth without necessity of bond or order of authorization.¹⁰

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General

⁵ See 1984-85 Op. Va. Att’y Gen. 153, 153.

⁶ See *id.*

⁷ 1987 Va. Acts. ch. 149 (adding the phrase “any retired judge or justice” to the list of persons authorized to perform marriages); 1996 Op. Va. Att’y Gen. 114, 116. “Rules of statutory construction prohibit adding language to . . . a statute.” *Appalachian Power Co. v. State Corp. Comm’n*, 284 Va. 695, 706 (2012) (citing *BBF, Inc. v. Alstom Power, Inc.*, 274 Va. 326, 331 (2007)).

⁸ See 1978-1979 Op. Va. Att’y Gen. 147, 149; 1977-1978 Op. Va. Att’y Gen. 341, 342; *cf.* 2003 Op. Va. Att’y Gen. 124, 127.

⁹ “The primary objective of statutory construction is to ascertain and give effect to legislative intent.” *Melanson v. Commonwealth*, 261 Va. 178, 183 (2001); see generally VA. CODE ANN. §§ 16.1-69.22:1(B), 17.1-106(B) (providing, in certain circumstances, for the obligatory recall of retired judges).

¹⁰ This conclusion is not intended to address situations in which a retired judge is removed from the recall list by the Supreme Court following disability or misconduct. Further, it is not intended to address situations in which a retired judge voluntarily has had himself removed from the recall list for reasons of disability (*i.e.*, self-reporting of disability). Those scenarios are outside the scope of this Opinion.