



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

August 2, 2010

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

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

Dear Delegate Surovell:

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

Issues Presented

You inquire whether a Clerk of Court may install recording systems into a Circuit Court, General District Court, and/or Juvenile and Domestic Relations Court and require such systems to be on at all times court is in session. You also ask whether the Clerk may charge a fee for access to such recordings provided that confidentiality is maintained for all proceedings as required by the *Code of Virginia* or orders of the Court.

Response

It is my opinion that a Clerk of Court may install recording systems into a Circuit Court, General District Court, and/or Juvenile and Domestic Relations Court and require such systems to be on at all times court is in session and, further, that the Clerk may charge a fee for access to such recordings provided that confidentiality is maintained for all proceedings as required by the Virginia Code or Court orders.

Background

You relate that during the 2010 legislative session, you introduced House Bill 827, a bill designed to authorize Clerks to install in courtrooms electronic recording systems that remain permanently on and to charge a fee for providing a copy of the recording. Referring to the fact that the U.S. District Court for the Eastern District of Virginia in Alexandria and the D.C. Superior Court have maintained a digital recording system for at least ten years, you suggest that such a system minimizes the need for court reporters, thereby saving clients and the Commonwealth money; protects the record and the openness and integrity of the proceedings; and improves the quality of jurisprudence in Virginia.

Applicable Law and Discussion

Any number of prior opinions of this office conclude that clerks of court have broad discretion to carry out their duties, and to perform additional duties, so long as (1) the General Assembly has not forbidden them from engaging in a particular practice, or (2) a particular task does not conflict with the

The Honorable Scott A. Surovell
August 2, 2010
Page 2

higher authority of other judicial officers in specific situations.¹ I know of no statute that would prohibit a clerk from recording proceedings or from installing equipment that would record proceedings. Therefore, clerks may, in their discretion, record court proceedings provided that the confidentiality of the recordings is maintained as required by the Virginia Code or Court orders.

Code § 17.1-275(8) authorizes a Clerk to charge a fee for duplication of an “electronic record.”² Electronic recordings of court proceedings would qualify as an electronic record. The fees may not exceed the actual cost of preparing the record.³ Furthermore, Clerks may not charge a fee *to the Commonwealth* unless specifically authorized by statute.⁴

Conclusion

Accordingly, it is my opinion that that a Clerk of Court may install recording systems into a Circuit Court, General District Court, and/or Juvenile and Domestic Relations Court and require such systems to be on at all times court is in session and, further, that the Clerk may charge a fee for access to such recordings provided that confidentiality is maintained for all proceedings as required by the Code of Virginia or other orders of the Court.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

¹ See, e.g., 2009 Op. Va. Att’y Gen. 60 (circuit court clerk may, but is not required to, assist judge with preparation of sketch orders); 2003 Op. Va. Att’y Gen. 60 (clerks have discretion but are not obligated to provide deputy clerk in courtroom during civil proceedings); 2001 Op. Va. Att’y Gen. 113 (court may enter a standing order requiring clerk to credit payments toward restitution before collecting court costs); 1987-88 Op. Va. Att’y Gen. 258 (chief judge has authority to close clerk’s office when necessary to protect health and safety of court personnel or public).

² This Office previously opined that a clerk could charge a fee for making microfilm copies under this section. 1989 Op. Va. Att’y Gen. 156.

³ See VA. CODE ANN. §§ 17.1-278(8) (2010) (providing that the fees for making copies of electronic records must be accessed in conformity with § 2.2-3704); 2.2-3704(F) (Supp. 2010) (specifying that fees for making copies of public records may “not exceed [the Clerk’s] actual cost incurred in accessing, duplicating, supplying or searching for the requested records.”).

⁴ VA. CODE ANN. § 17.1-266 (2010).