



# COMMONWEALTH of VIRGINIA

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The Honorable Anita D. Filson  
Chief Judge  
Juvenile and Domestic Relations District Court  
25th Judicial District  
20 South Randolph Street, Suite 201  
Lexington, Virginia 24450

Dear Judge Filson:

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 juvenile and domestic relations court ("JDR court") may enforce, through contempt proceedings, a provision of an emergency protective order ("EPO") granting the petitioner the possession of a companion animal when the EPO was issued by a magistrate. If the court may enforce such a provision, you further ask the appropriate mechanism for initiating the proceedings. Finally, you ask the maximum punishment that may be imposed for violating an EPO provision relating to a companion animal.

## Response

It is my opinion that a JDR court may enforce, through indirect contempt proceedings, a provision of an EPO granting the petitioner the possession of a companion animal when a magistrate has issued the EPO. Further, it is my opinion that the contempt proceedings may be initiated by a JDR court through the issuance of a show cause summons. Finally, it is my opinion that a JDR court has discretion in imposing punishment for a violation of a companion animal provision in an EPO, but the punishment may not exceed a jail sentence in excess of six months or a fine in excess of \$500 without affording the defendant the right to trial by jury.

## Applicable Law and Discussion

As an initial matter, I note the following principles of statutory construction that guide response to your inquiry. First, "[w]hen 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>1</sup> Nonetheless, statutes are not to

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<sup>1</sup> *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425, 722 S.E.2d 626, 629 (2012) (quoting *Commonwealth v. Amerson*, 281 Va. 414, 418, 706 S.E.2d 879, 882 (2011)) (further citation and internal quotation marks omitted).

be interpreted in isolation, but are to be read *in pari materia*.<sup>2</sup> Moreover, “[s]tatutes must be construed consistently with each other and so as to reasonably and logically effectuate their intended purpose.”<sup>3</sup> “Remedial statutes are to be ‘construed liberally, so as to suppress the mischief and advance the remedy’ in accordance with the legislature’s intended purpose. All other rules of construction are subservient to that intent.”<sup>4</sup>

EPOs in instances of family abuse are governed by § 16.1-253.4 of the *Code of Virginia*. The law provides that “[a]ny judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue [an EPO] in order to protect the health or safety of any person.”<sup>5</sup> When issuing an EPO, the judge or magistrate may impose certain conditions on the respondent.<sup>6</sup> During its 2014 legislative session, the General Assembly amended § 16.1-253.4 to allow the judge or magistrate additionally to “[grant] the petitioner the possession of any companion animal as defined in § 3.2-6500[,] if such petitioner meets the definition of owner in § 3.2-6500.”<sup>7</sup> While a violation of any other condition of an EPO is subject to the criminal sanctions contained in § 16.1-253.2, § 16.1-253.4(L) provides that a violation of a companion animal provision “shall constitute contempt of court.”<sup>8</sup>

In declaring the failure to obey a companion animal provision of an EPO contempt of court, § 16.1-253.4 makes no distinction between EPOs that are issued by magistrates and those that are issued by judges. By providing the same sanction irrespective of who issues the EPO, the General Assembly has shown its intent to treat a companion animal provision in a magistrate-issued EPO as equivalent to a court order or process for purposes of enforcement.

“The power of a court to punish for contempt is inherent in the nature and constitution of the court,”<sup>9</sup> but a magistrate has no such inherent power, and no statute confers such enforcement power upon magistrates.<sup>10</sup>

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<sup>2</sup> See, e.g., 2012 Op. Va. Att’y Gen. 90, 91 (citing *Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957)).

<sup>3</sup> *Nelson v. Cnty. of Henrico*, 10 Va. App. 558, 561, 393 S.E.2d 644, 646 (1990).

<sup>4</sup> *Univ. of Va. v. Harris*, 239 Va. 119, 124, 387 S.E.2d 772, 775 (1990) (quoting *Bd. of Supvrs. v. King Land Corp.*, 238 Va. 97, 103, 380 S.E.2d 895, 898 (1989)).

<sup>5</sup> VA. CODE ANN. § 16.1-253.4(A). I note that, in contrast to EPOs, which can be issued by a magistrate, preliminary and final protective orders may be issued only by a court. See §§ 16.1-253.1 (Supp. 2014); 16.1-279.1 (Supp. 2014).

<sup>6</sup> Section 16.1-253.4(A).

<sup>7</sup> 2014 Va. Acts ch. 346. The 2014 legislation similarly amended the statutes governing preliminary and final protective orders in cases of family abuse as well those that apply to protective orders issued pursuant to Title 19.2 of the Code.

<sup>8</sup> Section 16.1-253.4(L) expressly provides that, “Except as provided in 16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court.” Section 16.1-253.2 sets forth criminal penalties for all EPO violations, with the exception of violations of companion animal provisions. See § 16.1-253.2 (Supp. 2014). By process of elimination, therefore, § 16.1-253.4(L) applies only to companion animal provisions, and establishes contempt as the applicable enforcement mechanism.

<sup>9</sup> *Bryant v. Commonwealth*, 198 Va. 148, 152, 93 S.E.2d 130, 133 (1956).

<sup>10</sup> Although deemed a judicial officer for certain purposes, see VA. SUP. CT. R. 3A:2; *Berry v. Smith*, 148 Va. 424, 426-27, 139 S.E. 252, 253 (1927), a magistrate’s powers are limited by statute. See VA. CODE ANN. § 19.2-45 (Supp. 2014) (providing that a magistrate’s authority is limited to the powers enumerated therein and “such other acts or functions specifically authorized by law”); *Fenner v. Dawes*, 748 F. Supp. 404, 411 (E.D. Va. 1990); cf., e.g., *Wall v. Am. Bank & Trust Co.*, 159 Va. 871, 875, 167 S.E. 425, 426 (1933) (referring to the limited powers of

The General Assembly has given JDR courts jurisdiction over all “[p]etitions filed for the purpose of obtaining an order of protection pursuant to . . . [§] 16.1-253.4 . . .” that fall within [the court’s] geographic territory.<sup>11</sup> Moreover, except for those EPOs issued by a circuit court, a copy of an EPO is required to be filed with the JDR court, and all returns of service of EPOs are to be made to JDR court, irrespective of who issued the protective order.<sup>12</sup> Also, amendments to EPOs remain within the province of the JDR court.<sup>13</sup> Accordingly, in light of the broad jurisdiction conferred by the General Assembly upon JDR courts over family abuse EPOs and the clear mandate that violations of any companion animal provision of such orders be punishable as contempt of court, I conclude that a JDR court may use its inherent contempt powers to enforce a companion animal provision in a magistrate-issued EPO.<sup>14</sup>

Because a violation of a companion animal provision in an EPO presumably will occur outside the presence of the court, the court’s power to employ summary contempt proceedings is not applicable,<sup>15</sup> and the offense is indirect contempt.<sup>16</sup> Accordingly, an aggrieved party first must file a petition with the court,<sup>17</sup> and then, “the offender must be brought before the court by a rule or some other sufficient process.”<sup>18</sup> Here, the proper procedure is for the court to issue a show cause summons to provide the alleged violator with notice and the opportunity to be heard.<sup>19</sup> Should the alleged violator fail to appear

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justices of the peace, the historical predecessors to magistrates in Virginia). I find no statutory provision authorizing a magistrate to conduct contempt proceedings, nor to impose fines or jail sentences.

<sup>11</sup> Section 16.1-241(M) (Supp. 2014).

<sup>12</sup> Section 16.1-253.4(E).

<sup>13</sup> See § 16.1-253.4(C) (“The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order[.]”).

<sup>14</sup> This conclusion comports with the directive of § 16.1-227, which establishes that the law related to JDR courts shall be construed liberally and as remedial in character, and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all proceedings the welfare of the child and the family, the safety of the community and the protection of the rights of victims are the paramount concerns of the Commonwealth and to the end that these purposes may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.

<sup>15</sup> Summary contempt proceedings dispense with formal process normally afforded defendants; summary contempt is available only for behavior that occurs in the presence of the court. See *Parham v. Commonwealth*, 60 Va. App. 450, 729 S.E.2d 734 (2012) (explaining differences between “direct” and “indirect” contempt); *Scialdone v. Commonwealth*, 279 Va. 422, 442-43, 689 S.E.2d 716, 727-28 (2010) (concluding that, because “all the essential elements of the alleged contemptible conduct did not occur in the presence of the [ ] court[,] . . . the defendants were, therefore, entitled to the due process rights associated with a plenary proceeding”). See also *United Steelworkers of Am. v. Newport News Shipbuilding & Dry Dock Co.*, 200 Va. 547, 550, 260 S.E.2d 222, 224 (1979) (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911)); *Davis v. Commonwealth*, 219 Va. 395, 398, 247 S.E.2d 681, 682 (1978) (quoting *Burdett’s Case*, 103 Va. 838, 845-846, 48 S.E. 878, 880-881 (1904)).

<sup>16</sup> “In dealing with indirect contempts -- that is, such as are committed not in the presence of the court -- the offender must be brought before the court by a rule or some other sufficient process.” *Burdett*, 103 Va. at 845-46, 48 S.E. at 880-81.

<sup>17</sup> See JUVENILE & DOMESTIC RELATIONS DIST. COURT MANUAL, at 8-18, 8-19 (rev. Sept. 2013), available at <http://www.courts.state.va.us/courts/jdr/jdrman/chapter08.pdf>.

<sup>18</sup> *Davis*, 219 Va. at 398, 247 S.E.2d at 682 (quoting *Burdett*, 103 Va. at 845-46, 48 S.E. at 880-81).

<sup>19</sup> See § 19.2-11 (2008); *Morris v. Creel*, 3 Va. 333, 334 (1814); but see *Commonwealth v. Dandridge*, 4 Va. 408, 426-27 (1824) (noting that a show cause summons is sometimes dispensed with in favor of a direct attachment on the defendant).

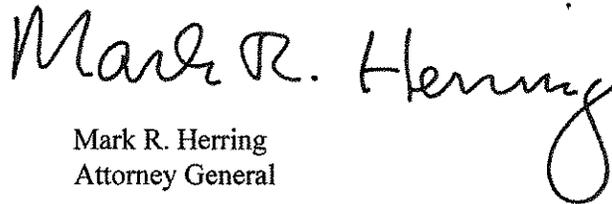
on the return date, the court may issue a *capias* to secure his appearance.<sup>20</sup> For indirect contempt, the sanctions that may be imposed by the court are subject only to the constitutional limitation that there may not be a jail sentence in excess of six months or a fine in excess of \$500 unless the defendant is afforded the right to trial by jury.<sup>21</sup>

### Conclusion

Accordingly, it is my opinion that a JDR court may enforce, through indirect contempt proceedings, a provision of an EPO granting the petitioner the possession of a companion animal when a magistrate has issued the EPO. Further, it is my opinion that the contempt proceedings may be initiated by the JDR court through the issuance of a show cause summons. Finally, it is my opinion that a JDR court has discretion in imposing punishment for a violation of a companion animal provision in an EPO, but the punishment may not exceed a jail sentence in excess of six months or a fine in excess of \$500 without affording the defendant the right to trial by jury.

With kindest regards, I am

Very truly yours,



Mark R. Herring  
Attorney General

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<sup>20</sup> *Dandridge*, 4 Va. at 427.

<sup>21</sup> See *Greene v. Tucker*, 375 F. Supp. 892, 898-99 (E.D. Va. 1974) (citing *Cheff v. Schnackenberg*, 384 U.S. 373 (1966)); *Kessler v. Commonwealth*, 18 Va. App. 14, 17, 441 S.E.2d 223, 225 (1994).