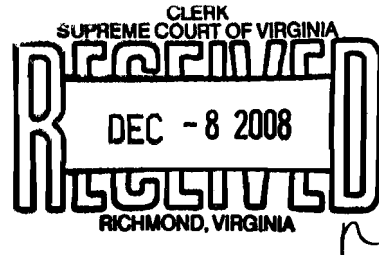


VIRGINIA:

IN THE SUPREME COURT



IN RE:	JUDY L. WORTHINGTON,) CLERK OF CIRCUIT) COURT FOR THE) COUNTY OF) CHESTERFIELD) Petitioner)	RECORD NO.: _____
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PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS

Judy L. Worthington, Clerk of Circuit Court for the County of Chesterfield, by counsel, applies to this Court for a writ of prohibition and writ of mandamus directed to the Honorable Michael C. Allen, Judge of the Circuit Court of Chesterfield County prohibiting him from enforcing and directing him to vacate his order of November 12, 2008 insofar as that order directs the Clerk to post the name of Aubrey M. Davis, Jr. on the Marriage Celebrant listing on the Clerk's Office website.

The petitioner applies to this Court pursuant to Article VI, § 1 of the Constitution of Virginia, § 17.1-309 of the Code of Virginia and Rule 5:7 of the Rules of the Supreme Court of Virginia. The reasons requiring the issuance of the writ of prohibition and writ of mandamus are set forth in the

accompanying memorandum of law which is incorporated herein by reference. The facts of the case are as follows:

Petitioner Judy L. Worthington, Clerk of Circuit Court for the County of Chesterfield (“Worthington” or “the Clerk”), voluntarily authored and maintains a Clerk of Circuit Court web page.¹ The web page is not affiliated with or a part of the official page² of the Chesterfield County Circuit Court, which is a portion of the “Virginia’s Judicial System” website. Instead, the Clerk’s Office page is part of a larger Chesterfield County government website. The Chesterfield County site includes information on, for example, constitutional officers, police services, county administration, public events, tourism and other topics of general interest to Chesterfield County residents and visitors. A portion of this site is the “Circuit Court Clerk” subsection. This portion of the website includes a variety of information related to the Clerk’s duties, including, for example, obtaining copies of public records, recordation of military discharges, and obtaining concealed handgun permits. This page includes a section on “Marriage Licenses/Marriage Celebrants,” which includes a list of individuals authorized to celebrate the rites of marriage in Virginia.

¹<http://www.co.chesterfield.va.us/JusticeAdministration/CircuitCourtClerk/clerhome.asp>

² <http://www.courts.state.va.us/courts/circuit/Chesterfield/home.html>

In late October 2008, Worthington directed her staff to revise the Clerk's Office web page to include only those Marriage Celebrants who had been authorized by the Circuit Court for the County of Chesterfield. The name of Aubrey M. Davis, Jr. was among those removed from the list because he had not been authorized by the Circuit Court for the County of Chesterfield.

On November 12, 2008, Michael C. Allen, Respondent and Judge³ of the Circuit Court for the County of Chesterfield ("Judge Allen" or "Respondent"), entered a two-paragraph, one-page order which provided in its entirety:

Pursuant to Virginia Code § 20-25, and conditioned on the requirement that before acting under the authority granted by this Order he enter into bond in the penalty of Five Hundred Dollars (\$500) without surety, the Court hereby authorizes AUBREY M. DAVIS, JR. to celebrate the rites of marriage in the Commonwealth of Virginia.

The Clerk is directed to forward an attested copy of this Order to Mr. Davis at Post Office Box 130, Chesterfield, Virginia 23832, and to add his name to those listed on the Court's and/or Clerk's website(s) as having been authorized by this Court to act as celebrants.

Judge Allen's signed Order was sent to the Office of the Clerk of

³ Allen currently serves as the Chief Judge of the Circuit Court for the County of Chesterfield.

Circuit Court. A deputy clerk in the Clerk's Office, unable to match the November 12 Order to any existing file, case number, petition or record of fee payment, returned the Order to Judge Allen.

On November 13, 2008, Judge Allen sent the same Order back to the Clerk's Office. The Order returned to the Clerk's Office had a handwritten note in the lower left corner, which read in its entirety: "Please work this order (when first sent down it was returned). Thanks, MCA."

A deputy clerk brought the Order to Worthington's attention. Worthington directed her deputy to send the Order back to Judge Allen. On this second return to Judge Allen, dated November 13, the Order was attached to a routine correspondence sheet that called attention to the lack of a petition and filing fee for Davis. Judge Allen added a handwritten note to the correspondence sheet and returned the Order again. Allen's note asserted that the statute cited in the Order does not require a filing fee or a petition, and requested that the Order be "work[ed]" if there was no statute that did require a fee and petition.

The Clerk's Office returned the Order a third time on November 18, this time with a new correspondence sheet. The Clerk's Office note cited the collection of fees pursuant to Virginia Code § 17.1-275(A) and asked Judge Allen about the apparent change in procedures represented by the

Order. Again Judge Allen replied by handwritten note. He cited § 20-25 and asserted that § 17.1-275(A) was inapplicable. He again directed the Clerk's Office to work the Order and to make an appointment to speak with him to discuss any additional questions.

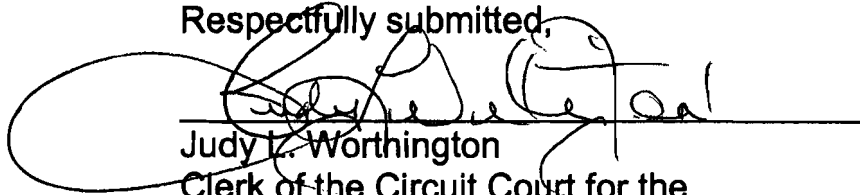
Davis has to date failed to perform the prerequisites for being authorized to celebrate the rites of marriage in Virginia. Davis did not post the \$500 bond required by the Order. Davis did not pay the fee that the Clerk of Circuit Court is required to collect from applicants pursuant to Virginia Code § 17.1-275(A)(18). The Clerk of Circuit Court also charges additional fees to all applicants. Davis did not pay these fees, either. Davis did not fill out and file a petition seeking authorization, as all applicants are required to do. Davis' matter was not docketed and no case number appeared on the November 12 Order. The Clerk has no record that any hearing was conducted.

Respondent's November 12 Order remains outstanding.

Davis' name has not been added to the list of Marriage Celebrants posted on the Clerk's Office website. Davis has not appeared to post the \$500 bond.

The petitioner states that the taking of evidence is not necessary for the proper disposition of this application.

Respectfully submitted,



Judy L. Worthington
Clerk of the Circuit Court for the
County of Chesterfield

STATE OF VIRGINIA)
) to wit:
COUNTY OF CHESTERFIELD)

This day the undersigned Judy L. Worthington appeared personally before me and, after first being sworn, stated that the foregoing petition is true and accurate to the best of her knowledge. Subscribed, sworn to and acknowledged before me by Judy L. Worthington this 1ST day of December, 2008.

Mary H. Barlow
Notary Public

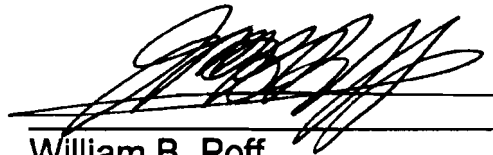
My commission expires

12/31/2011



CERTIFICATE OF SERVICE

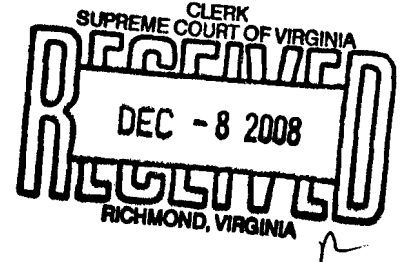
I hereby certify that a true copy of the foregoing petition, a notice thereof, and the accompanying memorandum of law was served this 1st day of December, 2008 on the Honorable Michael C. Allen, Judge, Circuit Court of Chesterfield County, by delivering copies to his chambers at 9500 Courthouse Rd., Chesterfield, Va. 23832.



William B. Poff
Counsel for Petitioner

VIRGINIA:

IN THE SUPREME COURT



IN RE: JUDY L. WORTHINGTON,) RECORD
CLERK OF CIRCUIT) NO.: _____
COURT FOR THE)
COUNTY OF)
CHESTERFIELD)
Petitioner)

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF
PROHIBITION AND WRIT OF MANDAMUS

Judy L. Worthington, Clerk of Circuit Court for the County of Chesterfield, by counsel, files this Memorandum in Support of her Petition for Writ of Prohibition and Writ of Mandamus.

Statement of the Case

The facts of this case revolve about a single, one-page order of the Circuit Court for the County of Chesterfield. The core issue concerns the degree of control that a circuit court judge has over the discretionary website maintained by a circuit court clerk.

Petitioner Judy L. Worthington, Clerk of Circuit Court for the County of Chesterfield ("Worthington" or "the Clerk"), voluntarily authored and

maintains a Clerk of Circuit Court web page.¹ The web page is not affiliated with or a part of the official page² of the Chesterfield County Circuit Court, which is a portion of the “Virginia’s Judicial System” website. Instead, the Clerk’s Office page is part of a larger Chesterfield County government website. The Chesterfield County site includes information on, for example, constitutional officers, police services, county administration, public events; tourism and other topics of general interest to Chesterfield County residents and visitors. A portion of this site is the “Circuit Court Clerk” subsection. This portion of the website includes a variety of information related to the Clerk’s duties, including, for example, obtaining copies of public records, recordation of military discharges, and obtaining concealed handgun permits. This page also has a section on “Marriage Licenses/Marriage Celebrants,” which includes a list of individuals authorized to celebrate the rites of marriage in Virginia.

In late October 2008, Worthington directed her staff to revise the Clerk’s Office web page to include only those Marriage Celebrants who had

¹Va. Code Ann. § 17.1-225 states that “the clerk of the circuit court of any county or city *may* provide remote access, including Internet access, to all nonconfidential court records” (emphasis added.) The clerk’s portion of the Chesterfield County web site can be found at this address: <http://www.co.chesterfield.va.us/JusticeAdministration/CircuitCourtClerk/clehome.asp>

² <http://www.courts.state.va.us/courts/circuit/Chesterfield/home.html>

been authorized by the Circuit Court for the County of Chesterfield. The name of Aubrey M. Davis, Jr. was among those removed from the list because he had not been authorized by the Circuit Court for the County of Chesterfield.

On November 12, 2008, Michael C. Allen, Respondent and Judge³ of the Circuit Court for the County of Chesterfield (“Judge Allen” or “Respondent”), entered a two-paragraph, one-page order which provided in its entirety:

Pursuant to Virginia Code § 20-25, and conditioned on the requirement that before acting under the authority granted by this Order he enter into bond in the penalty of Five Hundred Dollars (\$500) without surety, the Court hereby authorizes AUBREY M. DAVIS, JR. to celebrate the rites of marriage in the Commonwealth of Virginia.

The Clerk is directed to forward an attested copy of this Order to Mr. Davis at Post Office Box 130, Chesterfield, Virginia 23832, and to add his name to those listed on the Court's and/or Clerk's website(s) as having been authorized by this Court to act as celebrants.

This Order is attached as **Exhibit A**.

Judge Allen's signed Order was sent to the Office of the Clerk of Circuit Court. A deputy clerk in the Clerk's Office, unable to match the November 12 Order to any existing file, case number, petition or record of

³ Allen currently serves as the Chief Judge of the Circuit Court for the County of Chesterfield.

fee payment, returned the Order to Judge Allen.

On November 13, 2008, Judge Allen sent the same Order back to the Clerk's Office. The Order returned to the Clerk's Office had a handwritten note in the lower left corner, which read in its entirety: "Please work this order (when first sent down it was returned). Thanks, MCA." The Order with the handwritten addition is attached as **Exhibit B**.

A deputy clerk brought the Order to Worthington's attention. Petitioner directed her deputy to send the Order back to Judge Allen. On this second return to Judge Allen, dated November 13, the Order was attached to a routine correspondence sheet that called attention to the lack of a petition and filing fee for Davis. Judge Allen added a handwritten note to the correspondence sheet and again returned the Order to the Clerk's Office. Allen's note asserted that the statute cited in the Order does not require a filing fee or a petition, and requested that the Order be "work[ed]" if there was no statute that did require a fee and petition. This correspondence is attached as **Exhibit C**.

The Clerk's Office returned the Order a third time on November 18, this time with a new correspondence sheet. The Clerk's Office note cited the collection of fees pursuant to Virginia Code § 17.1-275(A) and asked Judge Allen about the apparent change in normal operating procedures

represented by the Order. Again Judge Allen replied by handwritten note and returned the Order. He cited § 20-25 and asserted that § 17.1-275(A) was inapplicable. He again directed the Clerk's Office to work the Order and to make an appointment to speak with him to discuss any additional questions. This correspondence is attached as **Exhibit D**.

Davis has to date failed to perform the prerequisites for being authorized to celebrate the rites of marriage in Virginia. Davis has not posted the \$500 bond required by the Order, and he has not paid the fee that the Clerk of Circuit Court is required to collect from applicants pursuant to Virginia Code § 17.1-275(A)(18). The Clerk of Circuit Court also charges additional fees to all applicants. Davis did not pay these fees, either. Davis did not complete and file a petition seeking authorization, as all applicants are required to do. Davis' matter was not docketed and no case number appeared on the November 12 Order. The Clerk has no record that any hearing was conducted.

Respondent's November 12 Order remains outstanding.

Davis' name has not been added to the list of Marriage Celebrants posted on the Clerk's Office website. The most recent listing of Marriage Celebrants on the Clerk of Circuit Court's web page is attached as **Exhibit D**.

Issue Presented

Whether a Circuit Court order qualifying a marriage celebrant (under § 20-25 of the Virginia Code), conditioned upon his posting a \$500 bond without surety, can also lawfully order the Clerk to list the marriage celebrant on the Clerk's website, where providing Internet access to such information is committed by § 17.1-225 to the Clerk's discretion, and even though the marriage celebrant: (a) paid no fee to the Clerk as required by § 17.1-275(A)(18); (b) filed no written petition with the Clerk seeking his appointment; and (c) has not entered into the \$500 bond without surety.

Argument and Authorities

The Clerk of Circuit Court is an elected constitutional officer of the Commonwealth. Va. Const. Art. VII, § 4. According to the courts and the Attorney General, the Clerk has the authority and responsibility to do only what the General Assembly has prescribed. The Clerk's decisions in performing those responsibilities are entitled to considerable deference. Applying these principles of law to the facts of this case, it is apparent that the November 12 Order is beyond the authority of the circuit court because (1) the Order directs the clerk to perform a task that is expressly committed by statute to the Clerk's, and not the court's, discretion; and (2) the November 12 Order operates outside the system of mandatory fees and

prerequisites, so that the Clerk, in carrying out the Order, would violate mandatory duties expressly prescribed by the General Assembly.

A. The Writ of Prohibition and Writ of Mandamus

A petitioner is entitled to receive a writ of prohibition or a writ of mandamus where she establishes (1) a clear right to the relief sought, (2) that there is a legal duty on the part of the respondent to perform the act which the petitioner seeks to compel, and (3) that there is no adequate remedy at law. See Board of Cty. Supervisors of Prince William Cty. v. Hylton Enters., 216 Va. 582, 584, 221 S.E.2d 534, 536 (1976). As set forth below, Worthington has a clear right not to post a marriage celebrant's name on her website by virtue of the statutes vesting her with discretion over the matter. Those statutes also, under the circumstances, create the legal duty on the part of the Circuit Court for the County of Chesterfield to vacate the order. Furthermore, Worthington has no adequate remedy at law as she will suffer irreparable harm if forced to choose between abrogation of her statutory duties and violation of a court order.

The writ of prohibition is an extraordinary remedy employed to redress a grievance growing out of an encroachment of jurisdiction. Elliott v. Great Atlantic Mgmt. Co., 236 Va. 334, 338, 374 S.E.2d 27, 29 (1988). The Writ of Prohibition has been defined by this Court as "a proceeding

between two courts – a superior and an inferior – and is the means whereby the superior exercises its due superintendence over the inferior, and keeps it within the limits and bounds of the jurisdiction prescribed by law.” Mayo v. James, 53 Va., (12 Gratt.) 17, 23 (1855). Like the writ of mandamus, a writ of prohibition is available only where a legal remedy in the lower court is insufficient. In re Johnson, 3 Va. App. 492, 495, 350 S.E.2d 681, 683 (Va. App. 1986) (citing Supervisors of Bedford v. Wingfield, 68 Va. (27 Gratt.) 329 (1876)).

B. The Clerk of Circuit Court is vested with discretion by § 17.1-225 to decide whether to provide Internet access to nonconfidential marriage information

The Clerk of Circuit Court is an elected constitutional officer of the Commonwealth of Virginia. Va. Const. Art. VII, § 4. The office is constitutionally coequal with the Sheriff, Commonwealth's Attorney, Treasurer, and Commissioner of the Revenue. The General Assembly defines by statute the specific framework of the Clerk's authority and responsibility. Where a statute creates a duty, the Clerk must perform it. Here, a statute expressly confers discretion (not a mandate) upon the Clerk of Circuit Court to make certain decisions in providing Internet access to the records and papers in the Clerk's custody. The exercise of this discretion is a duty the Clerk must perform. The November 12 Order at

issue ignores the General Assembly's statutory framework, and instead treats the decision of website posting as one solely for the Court. The Order exceeds the jurisdiction and authority of the Chesterfield County Circuit Court by forcing the Clerk to ignore her statutory duty.

Article VII, § 4 of the Constitution of Virginia creates the office and provides that the clerk's duties "shall be prescribed by general law or special act." "[C]onsiderable deference must be given to the decisions made by a clerk of the circuit court, unless such decisions are contrary to law." 03 Op. Va. Att'y Gen. 59 (2003). Opinions of the Attorney General of Virginia "consistently conclude that, in the absence of a constitutional or statutory provision to the contrary, constitutional officers have exclusive control over the operation of their offices" Id.

General duties of Virginia's constitutional officers are prescribed in Title 15.2 of the Code of Virginia. Each Clerk of Circuit Court "*shall exercise all the powers conferred and perform all the duties imposed upon such officers by general law*" Va. Code Ann. § 15.2-1534 (West 2008) (emphasis added).

In keeping custody of the books and records, the General Assembly has delegated to the Clerk's discretion whether to post certain materials online. "The clerk of the circuit court of any county or city *may provide*

remote access, including Internet access, to all nonconfidential court records maintained by his office and described in § 17.1-242.” Va. Code Ann. § 17.1-225 (West 2008). (emphasis added.) The clerk also has the responsibility of insuring the security of such records that are made remotely accessible. Id. This statute plainly confers to the Clerk of Circuit Court the sole authority to determine when, whether and how nonconfidential court records and papers will be posted online.

Opinions of the Attorney General clarify the framework. The Attorney General of Virginia has concluded, for example, in deciding that circuit court clerks do not have an obligation to provide a deputy clerk in the courtroom during civil proceedings, that: “In setting forth the duties and responsibilities of the clerks of courts of record . . . *the General Assembly has not required such clerks to perform duties that may be prescribed by a judge.*” 03 Op. Va. Att’y Gen. 059 (2003). (emphasis added.) For the same reason, circuit court clerks do not have a duty to prepare criminal orders. 05 Op Va. Att’y Gen. 054 (2005). Similarly, a circuit court clerk, as custodian of the records maintained in an automated case management system, has the discretion to decide who has access to such a system. 02 Op Va. Att’y Gen. 026 (2002).

A circuit court clerk, therefore, does not have any legal duty to publish a website or to post on that website specific information prescribed by a circuit court judge. This case is clearer than where the statutes are silent. Instead, the Clerk here has been expressly conferred the power to decide whether and when to post nonconfidential information on the Internet. Va. Code Ann. § 17.1-225 (West 2008).

Moreover, when the General Assembly wants to give wide discretion to a court to direct various actions of a clerk of court, it knows how to do so and has done so in the past. For example, Virginia Code § 16.1-69.40 requires clerks of courts not of record to “develop, implement and administer procedures necessary for the efficient operation of the clerk’s office . . . and discharge such other duties as may be prescribed by the judge.” The General Assembly has not granted judges such broad authority over the clerk of courts of record. Absent such a decision by the General Assembly, such wide-ranging authority does not exist, especially where the authority is instead granted to the Clerk.

The Supreme Court of Oklahoma considered similar questions in Petuskey v. Cannon, such as whether a court could direct the clerk in the collection of fees and in the hiring of deputy clerks. 742 P.2d 1117 (Okla. 1987). In Oklahoma, the district court clerk is an elected position

established by the state's constitution. Id. at 1120. At issue was the proper division of authority between clerk and court, where the court had entered administrative orders giving the court authority regarding the appointment of deputies, the duties and work hours of deputies, and the procedure regarding bonds. The Petuskey court held that the clerk "is an arm of the court, whose duties are ministerial, except for the discretionary duties provided by statute." Id. at 1121. The court determined that a "court cannot, merely by reason of the general relation which exists between the court and its clerk, control actions the clerk takes pursuant to a statute giving a court clerk personal authority to exercise according to his own judgment." Id. For example, where a statute gave the clerk the authority to appoint deputies, and to fix their salaries, such decisions were beyond the court's authority. Id. at 1121-22. See also Crooks v. Maynard, Idaho, 732 P.2d 281 (Idaho 1987) (holding that the court's power over the clerk is limited where a statute specifically gives the clerk the power to hire deputy clerks).

The General Assembly has specifically obligated Worthington to decide whether and when to post records of the Clerk's office on the Internet. It follows that a circuit court is without jurisdiction to assume this duty or to force the Clerk to abrogate this duty. By ordering Petitioner to

post a particular name on the Clerk's own website, Respondent is purporting to exercise jurisdiction where none exists. Because there is no adequate remedy in the lower Court, a writ of prohibition or writ of mandamus is proper.

- C. The November 12 Order offends the statutory framework because it directs the Clerk to treat as authorized an applicant who has not paid the fee mandated by § 17.1-275(A), filed a petition or posted bond without surety

Petitioner's legal rights are made clearer here by the fact that the November 12 Order purports to operate as though the Clerk had no statutory duties. The Order directs the Clerk to post Davis' name on the website, even though he (1) has not paid the mandatory fee, (2) has not filed a petition, and (3) has not posted bond without surety. In effect, the Order forces the Clerk to choose between the Order and the statutes. This impossible position shows that the Order exceeds the Court's jurisdiction.

First, Virginia Code § 17.1-275(A) provides that "[a] clerk of a circuit court *shall*, for services performed by virtue of his office, *charge* the following fees" (emphasis added.) At subsection (18) is the following: "[f]or *all* services rendered by the clerk in *any* court proceeding for which no specific fee is provided by law, the clerk shall charge ten dollars, to be paid by the party filing said papers at the time of filing" (emphasis added).

The statutory duty could not be clearer: the Clerk must charge Davis ten dollars at the time of filing. To recognize Davis as a marriage celebrant without payment of such fee would violate this statute and treat Davis differently from all other applicants for the designation. The Clerk is placed in an impossible legal position. She must either violate the Court's November 12 Order or violate § 17.1-275(A)(18). To place Davis on the website as an authorized marriage celebrant would violate § 17.1-275(A)(18); to demand and then await Davis' fee payment risks violating the Order.

Again, the Petuskey case is instructive. The Supreme Court of Oklahoma held that where the clerk was obligated to charge a fee for the initial filing of any bond, the judge could not order a procedure that avoided the mandatory fee payment, even though no statute obligated the judge to collect the fee. The judge "must cause the bond to be filed with the Clerk of the Court." 742 P.2d at 1122. To act otherwise was to exceed the court's authority. Id. Thus, where a statute requires a clerk to collect a fee, the court must perform his duties so as to allow the clerk to properly collect such fees.

Second, Davis never filed a petition seeking designation as a marriage celebrant. Such a petition is required of all such applicants. The

petition creates a record, which allows the public and any future litigants or interested parties to ascertain Court decisions. The petition is not mere formality; it is the first step in creating a functional and transparent record of public proceedings.

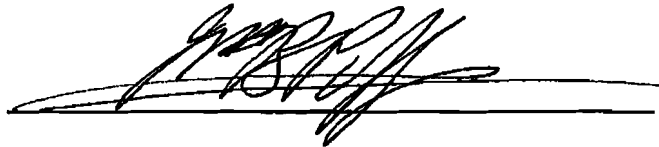
Third, Davis has not posted the bond upon which his authorization depends. Virginia Code § 20-25, the authority for November 12 Order, expressly requires that a marriage celebrant “shall, before acting, enter into the bond in the penalty of \$500, with or without surety” Until Davis posts the bond, he has not fulfilled the prerequisites for performing the rites of marriage. For this reason alone, the Clerk may in her discretion decide that listing his name as a marriage celebrant would be imprudent.

The Clerk’s Office “is an integral part of the administrative operations of the circuit court.” 03 Op. Va. Att’y Gen. 59 (2003). The Clerk is responsible for a myriad of statutory duties that belong to the Clerk alone. The Circuit Courts of the Commonwealth do not have the jurisdiction to operate outside this framework, nor do they have the jurisdiction to force the Clerks of Circuit Court to either abrogate this framework or risk contempt. For these reasons, Petitioner has no other adequate remedy at law, and a writ of prohibition and writ of mandamus should issue.

Conclusion

For the reasons set forth above, the Court should issue a writ of mandamus and a writ of prohibition directing the Respondent to vacate the Order, dated November 12, 2008, and prohibiting any further proceedings in the matter, including enforcement of the Order, that exceed the jurisdiction of the Circuit Court for the County of Chesterfield.

Respectfully submitted,
JUDY L. WORTHINGTON, CLERK OF
CIRCUIT COURT FOR THE COUNTY
OF CHESTERFIELD, VIRGINIA,

A handwritten signature in black ink, appearing to read 'W. B. Poff', is written over a horizontal line.

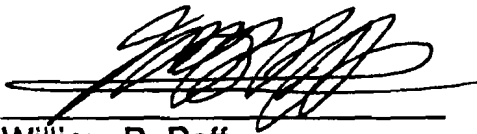
William B. Poff (VSB #03477)
Frank K. Friedman (VSB #25079)
Isak J. Howell (VSB #75011)
WOODS ROGERS PLC
Wachovia Tower, Suite 1400
Post Office Box 14125
Roanoke, Virginia 24038-4125
(540) 983-7600
(540) 983-7711 (Facsimile)

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2008, I caused a true copy of the foregoing Memorandum in Support of Verified Petition For Writ of Mandamus and Prohibition to be served on:

The Honorable Michael C. Allen
Chief Judge of the Circuit Court for the County of Chesterfield
P.O. Box 57
Chesterfield, Va. 23832



William B. Poff
Counsel for Petitioner

VIRGINIA:

**IN THE CIRCUIT COURT
FOR THE COUNTY OF CHESTERFIELD**

In re: Authorization of AUBREY M. DAVIS, JR.
to Celebrate Rites of Marriage in Virginia

)
)
)
)

No: _____

ORDER

Pursuant to Virginia Code §20-25, and conditioned on the requirement that before acting under the authority granted by this Order he enter into bond in the penalty of Five Hundred Dollars (\$500.00) without surety, the Court hereby authorizes AUBREY M. DAVIS, JR. to celebrate the rites of marriage in the Commonwealth of Virginia.

The Clerk is directed to forward an attested copy of this Order to Mr. Davis at Post Office Box 130, Chesterfield, Virginia 23832, and to add his name to those listed on the Court's and/or Clerk's website(s) as having been authorized by this Court to act as celebrants.

Entered this 12TH day of NOVEMBER, 2008



Judge

EXHIBIT

A

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE COUNTY OF CHESTERFIELD

In re: Authorization of AUBREY M. DAVIS, JR.
to Celebrate Rites of Marriage in Virginia

)
)
)
)
No: _____

ORDER

Pursuant to Virginia Code §20-25, and conditioned on the requirement that before acting under the authority granted by this Order he enter into bond in the penalty of Five Hundred Dollars (\$500.00) without surety, the Court hereby authorizes AUBREY M. DAVIS, JR. to celebrate the rites of marriage in the Commonwealth of Virginia.

The Clerk is directed to forward an attested copy of this Order to Mr. Davis at Post Office Box 130, Chesterfield, Virginia 23832, and to add his name to those listed on the Court's and/or Clerk's website(s) as having been authorized by this Court to act as celebrants.

Entered this 12th day of NOVEMBER, 2008



Judge

PLEASE WORK THIS ORDER
(WHEN FIRST SENT DOWN IT
WAS RETURNED). THANK,

M
H

EXHIBIT

B

Circuit Court of Chesterfield County

POST OFFICE BOX 125 • CHESTERFIELD, VIRGINIA 23632-0125

JUDY L. WESTON
CLERK OF CIRCUIT COURT

(804) 748-1247



CORRESPONDENCE INSTRUCTIONS

The Attached Papers Are Referred

To: Judge Allen

From: Chris

Date: 11/13/08

Case #: No case number

Order celebrate rites of marriage

for the purpose indicated by the check mark

Please see comment area below

RUSH - Immediate action desired

For your review

For your review - please advise

For your signature/approval

Please review with your staff

COMMENTS: I am returning this order to you again because we do not have a case file (i.e. petition) nor have we received a filing fee.

PLEASE RETURN FILE WITH THIS SHEET ATTACHED

THE STATUTE PURSUANT TO WHICH THIS ~~ORDER~~^{AUTHORIZATION} IS MADE DOES NOT REQUIRE THE FILING OF A PETITION, NOR DOES IT PROVIDE FOR THE COLLECTION OF A FILING FEE. IF YOU ARE AWARE OF ANY OTHER STATUTE WHICH DOES SO I WOULD APPRECIATE YOUR BRINGING IT TO MY ATTENTION. OTHERWISE PLEASE WORK THE ORDER.

MA
11-17-08



JUDY L. WORTHINGTON
CLERK OF CIRCUIT COURT

Circuit Court of Chesterfield County

POST OFFICE BOX 128 • CHESTERFIELD, VIRGINIA 23832-0128

(804) 748-1241



CORRESPONDENCE INSTRUCTIONS

The Attached Papers Are Referred

To: Judge Allen

From: Chris

Date: 11/18/08

Case #: No case number

Order to celebrate rites of marriage
for the purpose indicated by the check mark

Please see comment area below

COMMENTS: The Clerk's Office has always collected fees pursuant to Va Code Sec. 17.1-275(A). Are we to assume that your order is valid without: 1) an initial pleading being filed; and 2) payment of clerk's fees? I am also unclear why the procedures have suddenly changed, and specifically for Mr. Davis. Are we to assume that, in the future, we should refer everyone to your office who wishes an appointment as marriage celebrant and that you or your staff will prepare the order on their behalf as well? Since Judge Hauler was assigned responsibility for matrimonial matters after Judge Powell's departure, are we also to assume that you are now taking responsibility for



CHRIS: THE AUTHORIZATION OF MR. DAVIS TO PERFORM RITES OF MARRIAGE IS PURSUANT TO §20-25, NOT §17.1-275(A), WHICH IS INAPPLICABLE. AGAIN, §20-25 DOES NOT REQUIRE THE FILING OF A PETITION, NOR DOES IT PROVIDE FOR THE COLLECTION OF A FILING FEE. AGAIN, THE COURT DIRECTS YOU TO MAKE THE ORDER. IF YOU WISH TO DISCUSS THE ADDITIONAL QUESTIONS IN THIS CORRESPONDENCE PLEASE CALL ME. I'LL BE HAPPY TO TALK WITH YOU.

PLEASE RETURN FILE WITH THIS SHEET ATTACHED

*11/18
11-19-08*



Circuit Court Clerk

Marriage Licenses/Marriage Celebrants

- ❏ Circuit Clerk Court Home
- ❏ Important Announcement
- ❏ General Information
- ❏ Marriage Licenses/Marriage Celebrants
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Who May Marry in Virginia

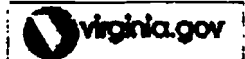
The minimum age for marriage in Virginia is 16 years for both bride and groom. If either party is under 18, consent to the marriage must be given in person by the father, mother or legal guardian of the minor. The parent or legal guardian must present his or her driver's license or comparable photo I.D. and the minor must present a full-length birth certificate. Virginia law prohibits marriage by parties under 16 except under certain circumstances. Please [contact the Clerk's Office](#) for further information.

Obtaining a Marriage License

- Marriage licenses are issued from 8:00 a.m. to 3:30 p.m., Monday through Friday.
- Licenses are issued regardless of the applicants' county of residence as long as the marriage will take place in Virginia.
- The marriage license fee is \$32.50. Payment may be made by cash, check or money order (payable to the Chesterfield Circuit Court Clerk). Debit and credit cards are not accepted for the payment of such fees.



Contact Information
and Operating Hours



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- Both parties, bride and groom, must be present and must present a photo I.D.
- A self-addressed, stamped envelope should be presented for the return of a certified copy of the license.
- Blood tests are not required.
- The marriage license is valid for 60 days. If the marriage does not take place within 60 days from the date the license was issued, a new license must be issued and additional fees must be tendered. There is no provision for a refund.
- If either the bride or groom is divorced, a certified copy of the final divorce decree should be provided. This can be obtained from the court where the divorce was obtained.
- **The Clerk's Office is pleased to provide an automated system by which you can apply on-line for your marriage license - the first of its kind in the Commonwealth! After on-line submission of the application, both parties must still appear in the Clerk's Office to claim the license within ten (10) days. [Click here to submit your application.](#)**

After the Wedding

The marriage celebrant returns the executed marriage license to the Clerk's Office for permanent retention. Upon receipt, a certified copy of the marriage license is mailed to the couple.

Obtaining a Copy of a Marriage License

- Certified copies are \$2.50 each and are available by written request or in the Clerk's Office during regular business hours. Payment may be made by cash, check or money order (payable to the Circuit Court Clerk). Debit and credit cards are not accepted for the payment of such fees.
- For marriage licenses issued between July 1, 1997 and June 30, 2001, Virginia law requires that the Clerk's Office obtain written permission from the bride or groom before providing a copy to any party. Written permission is required even if the person requesting the copy is the bride or groom. Written requests for certified copies of a marriage license should include the following: groom's name, bride's maiden name, date of marriage, a self-addressed stamped envelope, a check or money order for \$2.50 made payable to the Chesterfield Circuit Court Clerk, and the notarized signature of the bride and/or groom. If the bride or groom's signature is not notarized, he or she should send a copy of a photo ID (preferably a driver's license) so that the Clerk's Office may confirm identification before providing the requested

copies.

- For copies of licenses issued prior to July 1, 1987 or after June 30, 2001, access is not limited to only the bride and groom. Written requests for certified copies should include the following: groom's name, bride's maiden name, date of marriage, a self-addressed stamped envelope, and a check or money order for \$2.50 made payable to the Chesterfield Circuit Court Clerk.

To Change the Bride's Name After Marriage

Contact the Social Security Administration in order to obtain a new social security card. The bride will be required to present a certified copy of the marriage license with the application for a new social security card. Application forms are available in the Clerk's Office.

Marriage Celebrants

The following individuals have been authorized by the Chesterfield Circuit Court to perform civil marriage ceremonies:

Hon. Judy L. Worthington	(804) 748-1241
Ernest P. Gates, Jr.	(804) 320-9100
Ann Hogan	(804) 630-5253
Donald E. Hines	(804) 748-2333
Peggy Ann Matzen	(804) 777-9006
L. Dennis Collins	(804) 748-1221
Gwen M. Taylor	(804) 307-9737

Ministers must be registered through the Circuit Court in order to perform marriages in Virginia. See below.

Minister Authorization to Perform Marriages

The Clerk's Office may authorize certain ministers to perform marriage ceremonies, provided that the minister meets the requirements of § 20-23 of the Code of Virginia, 1950, as amended. Out-of-state ministers may be authorized for a one-time ceremony, provided the ceremony will take place in Chesterfield.

If Code requirements are not clearly met, the minister will need to obtain approval from the Court. This will require that a Petition and filing fee in the amount of \$29.00 be submitted. The minister will also need to set a hearing with the Court.

Before visiting the Clerk's Office to request authorization, please contact the office by phone at 804-748-1241 to confirm the process to follow.

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