



COMMONWEALTH of VIRGINIA

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February 25, 2009

Ms. Karen A. Gould
Executive Director and Chief Operating Officer
Virginia State Bar
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

Dear Ms. Gould:

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 ask whether the term “agent,” as used in § 8.01-28, would include a plaintiff’s attorney in a debt collection case and whether, as plaintiff’s agent, he may sign and file an affidavit stating plaintiff’s claim amount.

Response

It is my opinion that the plaintiff’s attorney in a debt collection case is an agent as that term is used in § 8.01-28, and he may sign and file an affidavit stating plaintiff’s claim amount.

Applicable Law and Discussion

Section 8.01-28 provides, in pertinent part, that:

In any action at law on a note or contract, express or implied, for the payment of money, ... if (i) the plaintiff files with his motion for judgment or civil warrant an affidavit made by himself or his agent, stating therein to the best of the affiant’s belief the amount of the plaintiff’s claim, that such amount is justly due, and the time from which plaintiff claims interest, and (ii) a copy of the affidavit together with a copy of any account filed with the motion for judgment or warrant ..., the plaintiff shall be entitled to a judgment on the affidavit and statement of account without further evidence[.]

Section 8.01-28 does not include a reference to an “attorney” and is silent regarding whether an attorney may serve as an agent. Although § 8.01-28 does not expressly authorize an attorney to serve as plaintiff’s agent, it does not prohibit it.

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Absent a statutory definition, the plain and ordinary meaning of the term is controlling.¹ “Agent” means “[o]ne who is authorized to act for or in place of another; a representative.”² Further, “attorney” means “one who is designated to transact business for another; a legal agent.”³ Thus, as a general rule, “an attorney is the agent of his client, and has authority to take all lawful steps for the protection of his client’s interest.”⁴

Although § 8.01-28 does not specifically provide that an attorney may serve as the agent of a plaintiff, the ordinary meanings of the terms “agent” and “attorney”⁵ do not prohibit application of the general principle that an attorney is the agent of his client and may be given authority by his client to file certain documents on the client’s behalf.⁶

Conclusion

Accordingly, it is my opinion that the plaintiff’s attorney in a debt collection case is an agent as that term is used in § 8.01-28, and he may sign and file an affidavit stating plaintiff’s claim amount.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W C Mims', with a stylized flourish at the end.

William C. Mims
Acting Attorney General

2:874; 1:941/08-100

¹ See *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); *Commonwealth v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); *Op. Va. Att’y Gen.*: 2006 at 128, 132; 2003 at 137, 138; *id.* at 104, 106.

² BLACK’S LAW DICTIONARY 68 (8th ed. 2004).

³ *Id.* at 138.

⁴ *Va. Elec. & Power Co. v. Bowers*, 181 Va. 542, 547, 25 S.E.2d 361, 363 (1943).

⁵ See *supra* notes 2 and 3 and accompanying text.

⁶ Of course, the particular attorney-client relationship and the attorney’s knowledge concerning the amount owed are relevant to determine whether an affidavit filed by a plaintiff’s attorney would be acceptable to a court.