

Chapter 10 - Registration Of Ministers/Others To Perform Marriages

Overview

Every minister must be “registered” in the state of Virginia in order to perform marriages within the Commonwealth. Any circuit court judge may issue an order authorizing one or more persons resident in the circuit in which the judge sits to celebrate the rites of marriage in the Commonwealth. Any 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 without an order of authorization.

Registration Of A Minister

Registration of a minister is completed through the circuit court in which a minister's license or papers of ordination are produced and an order authorizing such person to celebrate the rites of matrimony is entered.

Virginia Code § 20-23 provides that when a minister of any religious denomination produces before the judge or clerk of the circuit court of any county or city in this Commonwealth,

- Proof of his ordination and of his being in regular communion with the religious society of which he is a reputed member, or
- Proof that he holds a local minister's license and is serving as a regularly appointed pastor in his denomination, or
- Proof that he is commissioned to pastoral ministry.

The judge or the clerk of such court may make an order authorizing such minister to celebrate the rites of matrimony in this Commonwealth. Entering such an order is discretionary. *See Attorney General Opinion to Moncure, dated 11/29/01, (2001, page 121); No requirement that circuit court clerk investigate proof of facially valid ordination or certificate to determine authenticity of given religious society or denomination. Clerk has discretionary authority to make order authorizing minister to celebrate rites of matrimony. Any order made under this section may be rescinded at any time by the court or by the judge thereof.*

See Cramer v. Commonwealth, 214 Va. 561 (1974). 1) Statute authorizing court to authorize ordained ministers to celebrate rite of matrimony is not limited to those to whom ministry is full-time vocation; and 2) church which consists of all “ministers” in fact has no “minister” within contemplation of statute. (See next page).

See In Re: Ginsburg, 236 Va. 165 (1988). Under Va. Code § 20-23 a “minister” is one who is set apart as the head of a religious congregation, society or order according to the ritual, bylaws or discipline of the selecting group. (See next page).

Each circuit court may appoint one or more persons, resident in the circuit in which the judge sits, to celebrate the rites of marriage. The person appointed must give bond in the penalty of \$500 with or without surety. Any judge or justice of a court of record, any judge of a district court or any retired judge or justice of the Commonwealth or 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. See Va. Code § 20-25.

Every person authorized to perform the rites of marriage in Virginia is permitted to perform these rites anywhere within the Commonwealth regardless of the circuit court in which he/she registered. See Attorney General Opinion to Powell, dated 9/29/72 (1972-73, page 258A); *Minister Authorized to Celebrate Rites of Matrimony - One qualified anywhere in State may celebrate marriages in any county or city within the State.*

Exception: Persons appointed between 7/1/03 and 5/1/04 and have not since been reappointed may only perform marriages in the jurisdiction in which the appointing judge sits.

Once registered, most clerks’ office will go over the marriage license with the minister showing him how to complete the license. Each minister should be instructed to return the license within five (5) days of the marriage and other duties imposed upon him as set forth in the Code of Virginia. Penalties, as outlined in Va. Code § 20-24, should also be addressed with the newly registered minister.

- Cramer v. Commonwealth, 214 Va. 561, 202 SE 2d 911 (1974):
 - not limited to those to whom ministry is a full-time vocation;
 - church consisting of all “ministers” in fact has no minister within contemplation of Va. Code § 20-23;
 - “ordination” and “communion with the religious society of which they are a member” is used in the ecclesiastical sense;
 - Virginia Code § 20-26 deals with marriage between member of religious society having no ordained minister; and
 - ministers qualifying for appointment under Va. Code § 20-23 are members of a narrow class “intended for the leader of the various religious faiths and not for members generally

and

- In re: Ginsburg, 236 Va 165 (1988):
 - set apart as head of a religious congregation; and
 - need not be full-time vocation.

Who May Perform Marriage Ceremonies

The following individuals may be authorized to perform the marriage ceremony within the Commonwealth once authorized by a circuit court (or clerk in certain circumstances).

Minister/Pastor/Priest

Minister, Pastor, or Priest of any religious denomination following proof of ordination and of his being in regular communion with the religious society, or proof that he is commissioned to pastoral ministry or holds a local minister's license and is serving as a regularly appointed pastor in his denomination.

Notes:

- Marriages between persons belonging to any religious society that has no ordained minister may be solemnized by the persons and in the manner prescribed by and practiced in any such society. One person chosen by the society shall be responsible for completing the certification of marriage in the same manner as a minister or other person authorized to perform marriages. Such person chosen by the society for this purpose shall be required to execute a bond in the penalty of \$500, with surety. The Clerk or judge may enter an order authorizing them to perform the rite of marriage. No oath shall be required of a person authorized to celebrate the rites of marriage, nor shall such person be considered an officer of the Commonwealth by virtue of such authorization. Va. Code § 20-26. See also Attorney General Opinion to Bailey, dated 4/10/84 (1983-84, page 230); *clerk authorized by § 20-26 to permit unordained minister to perform rites of matrimony*.
- Virginia Code §§ 20-23 and 20-26 do **not** require the *clerk* to monitor the nature of the marriage ceremony as either religious or civil. The requirement to report whether the marriage is performed as a religious or civil ceremony is required by 12VAC5-550-130, and is certified by the marriage celebrant, *not* the clerk.

It is the practice for some clerks to grant "temporary" authority to perform a marriage for only a specific period of time, especially for ministers coming from another state to perform a single wedding for a family member or friend.

However, there is no statutory authority to do this, nor is there any statute prohibiting such practice. At the termination of appointment, if any, the clerk should refund bond posted.

Court Appointed Person

Upon filing of a petition, and payment of applicable clerk's fees, any circuit court judge (not the clerk) may issue an order authorizing one or more persons, resident in the circuit in which the judge sits, to celebrate the rites of marriage in the Commonwealth. Any person so authorized shall enter into bond in the penalty of \$500 with or without surety as the court may direct.

No oath shall be required of a person authorized to celebrate the rites of marriage, nor shall such person be considered an officer of the Commonwealth by virtue of such authorization.

Note: Clerk may not perform marriages unless appointed by the Court.

See CC-1498 PETITION FOR AUTHORIZATION TO CELEBRATE RITES OF MARRIAGE (PERSONS OTHER THAN MINISTERS) and CC-1499 ORDER FOR AUTHORIZATION TO CELEBRATE RITE OF MARRIAGE (PERSONS OTHER THAN MINISTERS) Va. Code § 20-25.

Also see Civil Manual, Suits & Action Types, G-M.

Judge or Justice of a Court of Record of the Commonwealth and Current Governor, Lt. Governor, Attorney General or Member of General Assembly

Any judge or justice of a court of record, any judge of a district court, any retired judge or justice of the Commonwealth, any active, senior, or retired federal judge or justice who is a resident of the Commonwealth, and any current (i) member of the General Assembly, (ii) Governor of Virginia, (iii) Lieutenant Governor of Virginia, and (iv) Attorney General of Virginia may celebrate the rites of marriage anywhere in the Commonwealth without the necessity of bond or order of authorization. Va. Code § 20-25.

Note: Federal magistrates, by virtue of their office, are not authorized to perform the rites of marriage. See Attorney General Opinion to Horne, dated 6/12/96, (1996, page 114); Judges or justices of foreign courts, or of federal courts within or without Commonwealth, irrespective of active or retired status, may not celebrate rites of marriage in Commonwealth; only active or retired judges or justices of courts of record of this Commonwealth may perform marriage ceremony.

Circuit Court Clerk

The Clerk may perform marriages if he/she has been appointed pursuant to Va. Code § 20-25. Clerks should be cautious and ensure they have been appointed. It is also recommended that if a fee is being charged for performing the marriage ceremony, the Clerk should not perform marriages during office hours.

Who May Not Perform Marriages

The following individuals are not authorized to perform a marriage ceremony within the Commonwealth:

- Any person not registered in the circuit court authorizing them to perform the rites of marriage within the Commonwealth;
- Federal magistrates.

Duties Of The Officiant

Every person who officiates at a marriage ceremony shall certify the facts of marriage and file the record in duplicate with the officer who issued the marriage license within five (5) days after the ceremony. In the event such officiant dies or becomes incapacitated before completing the certificate of marriage, the official who issued the marriage license shall complete the certificate of marriage upon the order of the court to which is submitted proof that the marriage was performed. Va. Code § 32.1-267 (C).

Fees

Any person authorized under Va. Code § 20-25 to celebrate the rites of marriage shall be permitted to charge the parties a fee for the ceremony not to exceed \$75 for each ceremony. Such person and parties may negotiate payment for any additional services agreed to by the celebrant and the parties. Additionally, such person shall be permitted to charge the parties travel expenses to and from the marriage site. If conveyance is by public transportation, reimbursement shall be at the actual cost thereof. If conveyance is by private transportation, reimbursement shall be at the rate specified in the current general appropriations act of the Commonwealth. In either event, the actual cost of the ceremony together with travel expenses shall be given to the parties at least three days prior to the marriage ceremony. Va. Code § 20-27.

Registration Of The Minister

The following procedures are recommended when registering a minister to perform marriages:

Step 1 Minister appears, with proof of ordination or minister's license, before the judge or clerk to register.

Comments: Proof is defined in Va. Code § 20-23 as follows:

- Proof of his ordination and of his being in regular communion with the religious society of which he is a reputed member, or
- Proof that he holds a local minister's license and is serving as a regularly appointed pastor in his denomination.
- Proof that he is commissioned to pastoral ministry.

NOTE: Some clerks may require a valid photo identification card (e.g., a valid Virginia driver's license) for identification. Some clerks make a copy of the license to retain with their records.

Step 2 Applicant completes an Affidavit.
(optional)

No oath shall be required of a minister authorized to celebrate the rites of matrimony, nor shall such minister be considered an officer of the Commonwealth by virtue of such authorization.

Comments: See end of this chapter for a sample Affidavit for authorizing minister to perform marriage ceremony pursuant to Va. Code § 20-23

Step 3 Clerk completes the MINISTERS AUTHORITY TO MARRY IN VIRGINIA form.
(optional)

Comments: Form should include:

- name of minister;
- address of minister;
- associated church name; and
- signature of minister

See end of this Chapter for sample.

Step 4 Receipt for money received, if applicable.

Comments: No fee is specifically authorized for this kind of request. Whether a fee will be assessed depends upon local policy or custom and may be authorized by that court. If a fee is charged, the Education Committee recommends the following:

Appointment by Clerk (neither law or chancery action) - Up to \$26:

- \$10 receipted to account code 315.
- Up to \$4 (Law Library receipted to account code 219 (\$4 if do not charge to CHMF).
- \$2 (CHMF) receipted to account code 229.
- \$10 Legal Aid \$9 receipted to account code 123/\$1 to account code 147
Va. Code § 17.1-275 A(18)

Step 5 Record and index order in the Civil Order Book (Judge) or Clerk's Order Book (Clerk). See end of this Chapter for sample order.

Penalties

If any person knowingly performs the ceremony of marriage without lawful license or officiates in celebrating the rites of marriage without being authorized by law to do so, he shall be confined in jail not exceeding one year, and fined not exceeding \$500. Va. Code § 20-28. If the couple, or one of them, believes the person performing the ceremony was qualified, the marriage is valid even if officiant was not qualified. It is suggested that if the Clerk becomes aware of a person not qualified, an attempt should be made to contact that person and request that they not perform additional marriages until they become properly qualified. Va. Code § 20-31.

Rescission Of Order

Any order authorizing ministers or other persons to perform marriages may be rescinded at any time by the Court. The clerk does not have the authority to rescind such an order. Va. Code §§ 20-23 and 20-25.

Appeal Of Denial Of Registration

There are no statutory provisions providing for the appeal of the decision to deny an individual the authority to perform marriages within the Commonwealth of Virginia. If an individual has been denied, a mandamus action would typically be filed with the court.

Attorney General Opinions

<u>NAME</u>	<u>DATE</u>	<u>SUBJECT</u>
McQuigg	05/18/10	Authority vested in a person authorized to perform the rites of matrimony in Virginia does not extend to ceremonies conducted outside the territorial boundaries of the Commonwealth
Semonian	9/10/02	No requirement that minister appear personally before clerk, although clerk may compel such appearance as condition for issuing order
Moncure	11/29/01	Clerk has discretionary authority to make order authorizing minister to celebrate rites of matrimony
Bailey	4/10/84	Appoint member of Jehovah's Witnesses to perform rites of marriage
Morton	4/19/83	Marriage by minister not authorized
Stovall	3/31/78	Marriage performed by non-resident, non-bonded minister; validity of marriage

Forms And Orders

Affidavit Authorizing Minister to Perform Marriages

VIRGINIA: IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF _____

IN RE: Affidavit Authorizing Minister to Perform Marriage Ceremony Under § 20-23

I am an ordained minister (proof of ordination attached)

I am in regular communion with the religious society of which I am a member.

I am a minister of the following religious denomination:

I have been set apart as the head or leader of a religious congregation, society or order

I have been commissioned to pastoral ministry.

I have been elected or selected as minister in accordance with ritual; bylaws or discipline of my church, religious denomination or society

I currently hold or have held the following leadership position in my religious denomination:

Name and location of church/religious organization or society of which I am a member:

Printed Name of Requesting Person Signature of Requesting Person