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SENATE BILL NO. 412

Offered January 26, 1998

A BILL to amend and reenact §§ 8.01-407, 16.1-89 and 16.1-265 of the Code of Virginia, relating to subpoenas issued by attorneys.

Patrons—Mims, Edwards and Stolle; Delegates: Davies, Howell and McClure

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-407, 16.1-89 and 16.1-265 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-407. How summons for witness issued, and to whom directed; prior permission of court to summon certain officials and judges; attendance before commissioner of other state.

A. A summons may be issued, directed as prescribed in § 8.01-292, commanding the officer to summon any person to attend on the day and at the place that such attendance is desired, to give evidence before a court, grand jury, arbitrators, magistrate, notary, or any commissioner or other person appointed by a court or acting under its process or authority in a judicial or quasi-judicial capacity.

The summons may be issued, *by the clerk of court* if the attendance ~~be is~~ desired at a court or in a proceeding pending in a court, ~~by the clerk thereof, and the~~. The clerk shall not impose any time restrictions limiting the right to properly request a summons up to and including the date of the proceeding; ~~if~~.

If attendance is desired before a commissioner in chancery or other commissioner of a court, *the summons may be issued* by the clerk of the court in which the matter is pending, or by such commissioner in chancery or other commissioner; ~~if~~.

If attendance is desired before a notary or other officer taking a deposition, *the summons may be issued* by such notary or other officer at the instance of the attorney desiring the attendance of the person sought; ~~if~~.

If attendance is desired before a grand jury, *the summons may be issued* by the attorney for the Commonwealth, or the clerk of the court, at the instance of the attorney for the Commonwealth; ~~and in~~.

Except as otherwise provided in this subsection, if attendance is desired in a civil proceeding pending in a court or at a deposition in connection with such proceeding, a summons may be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. An attorney-issued summons shall be signed by the attorney and shall include the attorney's address. The summons shall be deemed to be a pleading. A copy of the summons shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing summonses issued by a clerk shall apply mutatis mutandis.

An attorney may not issue a summons in any of the following civil proceedings: (i) habeas corpus under Article 3 (§ 8.01-654 et seq.) of Chapter 25 of Title 8.01, (ii) delinquency or abuse and neglect proceedings under Article 3 (§ 16.1-241 et seq.) of Chapter 11 of Title 16.1, (iii) issuance of a protective order pursuant to Article 4 (§ 16.1-246 et seq.) or Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title 16.1 or Chapter 9.1 of Title 19.2, (iv) civil forfeiture proceedings, (v) habitual offender proceedings under Article 9 (§ 46.2-351 et seq.) of Chapter 3 of Title 46.2, (vi) administrative license suspension pursuant to § 46.2-391.2 and (vii) petitions for writs of mandamus or prohibition in connection with criminal proceedings.

In other cases, *if attendance is desired the summons may be issued* by the clerk of the circuit court of the county or city in which the attendance is desired. ~~It~~

A summons shall express on whose behalf, and in what case or about what matter, the witness is to attend. Failure to respond to any such summons shall be punishable by the court in which the proceeding is pending as for contempt.

B. No subpoena shall, without permission of the court first obtained, issue for the attendance of the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice-President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

C. This section shall be deemed to authorize a summons to compel attendance of a citizen of the Commonwealth before commissioners or other persons appointed by authority of another state when the summons requires the attendance of such witness at a place not out of his county or city.

§ 16.1-89. Subpoena duces tecum.

A judge or clerk of a district court may issue a subpoena duces tecum pursuant to the terms of Rule

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60 4:9 of the Rules of the Supreme Court of Virginia except that such subpoena may be directed to a party
61 to the case as well as to a person who is not a party.

62 *A subpoena duces tecum may also be issued by an attorney-at-law who is an active member of the*
63 *Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena duces tecum*
64 *shall be signed by the attorney as if a pleading and shall include the attorney's address. A copy shall be*
65 *mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance*
66 *by the attorney. The law governing subpoenas duces tecum issued by a clerk shall apply mutatis*
67 *mutandis, except that attorneys may not issue subpoenas duces tecum in those cases in which they may*
68 *not issue a summons as provided in § 8.01-407.*

69 *If the time for compliance with a subpoena duces tecum issued by an attorney is less than fourteen*
70 *days after service of the subpoena, the person to whom it is directed may serve upon the party issuing*
71 *the subpoena a written objection setting forth any grounds upon which such production, inspection or*
72 *testing should not be had. If objection is made, the party on whose behalf the subpoena was issued and*
73 *served shall not be entitled to the requested production, inspection or testing, except pursuant to an*
74 *order of the court, but may, upon notice to the person to whom the subpoena was directed, move for an*
75 *order to compel production, inspection or testing. Upon such timely motion, the court may quash,*
76 *modify or sustain the subpoena.*

77 § 16.1-265. Subpoena.

78 Upon application of a party and pursuant to the rules of the Supreme Court of Virginia for the
79 issuance of subpoenas, the clerk of the court shall issue, and the court on its own motion may issue,
80 subpoenas requiring attendance and testimony of witnesses and production of records, documents or
81 other tangible objects at any hearing.

82 *A subpoena may also be issued in a civil proceeding by an attorney-at-law who is an active member*
83 *of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena shall be*
84 *signed by the attorney as if a pleading and shall include the attorney's address. A copy shall be mailed*
85 *or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the*
86 *attorney. The law governing subpoenas issued by a clerk shall apply mutatis mutandis, except that*
87 *attorneys may not issue subpoenas in those cases in which they may not issue a summons as provided in*
88 *§ 8.01-407.*

89 *If the time for compliance with a subpoena issued by an attorney is less than fourteen days after*
90 *service of the subpoena, the person to whom it is directed may serve upon the party issuing the*
91 *subpoena a written objection setting forth any grounds therefor. If objection is made, the party on*
92 *whose behalf the subpoena was issued and served shall not be entitled to compliance, except pursuant*
93 *to an order of the court, but may, upon notice to the person to whom the subpoena was directed, move*
94 *for an order to compel compliance. Upon such timely motion, the court may quash, modify or sustain*
95 *the subpoena.*