

Judge Martin will give a short presentation on June 15, 2012, at 1:00 p.m. in Courtroom No. 3 on changes to divorce practice in the Circuit Court of Norfolk effective July 2, 2012. These subjects will be discussed:

1. Revisions to Local Rule 1.
2. New *Code* §20-111.1(E) (House Bill 282).
3. New *Code* §20-107.3(L) (House Bill 635).
4. Submitting final decrees on depositions or affidavits under revised *Code* §20-106 (House Bill 126).
5. Common errors in final decrees.

## LOCAL RULE 1

### PROCEDURES IN DIVORCE, AFFIRMATION, AND ANNULMENT SUITS (Revised effective July 1, 2012)

#### A. Purpose

This rule is intended to reduce the expense and delay of obtaining uncontested divorces, to allow all custody issues to be resolved in one hearing and to afford them the dignity many parties believe they warrant, and to provide an appropriate forum for those cases in which property interests are in dispute.

#### B. Suits to Which Applicable

1. Applicability. This rule applies to suits for divorce, affirmation, annulment, and equitable distribution under *Code of Virginia* §20-107.3(J).
2. Definition of Uncontested Suits for Divorce. A suit for divorce is uncontested when (a) the defendant has filed a waiver pursuant to *Code of Virginia* §20-99.1:1 or an answer admitting all allegations of the complaint, (b) the defendant is in default under Rule 3:19, or (c) the parties have entered into a marital agreement complying with *Code of Virginia* §20-155 that resolves all issues.

#### C. Procedure and Scheduling

1. Trial by the Court. Except as provided in *Code of Virginia* §20-106, the Court will hear all suits to which this rule applies *ore tenus*; provided that the Court may refer equitable distribution issues to a Commissioner in Chancery on its own motion or for good cause shown.
2. Uncontested Suits for Divorce to be heard *ore tenus*. Such suits may be set for trial on the docket on any day acceptable to the Clerk, after proper notice to the defendant, if necessary; provided, that in such suits where the defendant need not be given notice of the hearing, the suit may be tried any time convenient for counsel and the Court without being put on the docket. Counsel will present to the Court before the trial begins a proposed final decree of divorce, form VS-4, and, if there is one, the separation agreement.
3. Other Suits. The trial shall be set by scheduling order under Local Rule 2; provided that a scheduling order is not necessary for an uncontested suit for annulment or affirmation.

#### D. Special Provisions

1. Suits in which Custody is contested. No trial or hearing (except interim *pendente lite*) shall be held until a qualified guardian *ad litem* has been appointed and the parties have attended a program on the effect of divorce on children as required by *Code of Virginia* §20-103(A) and one dispute resolution evaluation session as provided by *Code of Virginia* §20-124.4.

2. Pendente Lite Custody Hearings. The Court finds that the best interests of the child, the parents, and the Commonwealth are served when the child's custody is determined at one hearing. A *pendente lite* custody hearing should not be scheduled unless there are circumstances posing a serious threat to the child's physical, mental, emotional, or moral well-being. At any such hearing, counsel for the moving party should be prepared to proffer to the Court evidence of the serious threat posed by the existing custody arrangement. If the Court finds the proffer insufficient the hearing will be over.

3. Suits in which Child Support is sought. Counsel for each party present at the trial shall present a completed child support guidelines worksheet.

4. Suits involving Equitable Distribution. Fifteen days before trial or hearing, each counsel (as defined in Rule 2(G)(1)(b)) shall deliver to opposing counsel and file with the Clerk, on a form approved by the Court, an inventory of the assets and debts of which his client seeks equitable distribution. The Court ordinarily will not receive evidence about any asset or debt not so identified unless it would cause no surprise or prejudice to the opposing party and the failure to identify the asset or debt was through inadvertence.

#### **E. Final Decrees**

Except as the Court may otherwise direct in a particular suit, final decrees shall conform to this section.

1. Parties making an Appearance. No award or reservation of spousal support or equitable distribution may be made to the plaintiff or to a defendant who makes an appearance unless requested in the appropriate pleading or an amendment thereto.

2. Defendant makes no Appearance. Spousal support and equitable distribution shall be reserved to a defendant served by order of publication who makes no appearance. Spousal support and equitable distribution shall be denied to a defendant served personally or by substituted service who makes no appearance.

3. Transfer pursuant to Code of Virginia §20-79(c). Except as hereinafter provided, final decrees of divorce that provide for child custody, visitation, or support, or spousal support, or any reservation of any of these matters, shall contain a transfer clause pursuant to *Code of Virginia* §20-79(c). The Juvenile and Domestic Relations District Court to which the transfer is made shall be that of the city or county of residence of the children or the recipient of support. No such provision shall be included in a final decree of divorce if either (a) at the time the decree is presented to the Court both parties are non-residents of Virginia, or (b) child or spousal support is reserved only because the defendant has been served by order of publication.

4. Transfer pursuant to Code of Virginia §20-107.3(L). If neither party lives in the City of Norfolk when the final decree is submitted, and the final decree contains an award of equitable distribution or affirms, ratifies, and incorporates a marital agreement that has

provisions concerning the parties' assets or debts, the final decree shall, if the judge so orders, transfer to the Circuit Court where one of the parties then lives, the authority to make additional orders pursuant to *Code of Virginia* §20-107.3(K) or to carry out or enforce the marital agreement.

5. Submission of Final Decree. The final decree shall be submitted within thirty days of the Court's ruling on the issues.

**F. Waiver or Modification**

The Court may waive or modify the terms of this rule in a particular case to prevent undue hardship, to preserve the substantive rights of the parties, or to attain the ends of justice.

**G. Effective Date**

This rule as amended is effective July 1, 2001; additional amendments to this rule have been adopted effective September 1, 2003, January 1, 2004, July 1, 2005, January 1, 2006, and July 1, 2012.

# VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

## CHAPTER 493

*An Act to amend and reenact § 20-111.1 of the Code of Virginia, relating to divorce; revocation of death benefits; notice.*

[H 282]

Approved April 4, 2012

**Be it enacted by the General Assembly of Virginia:**

**1. That § 20-111.1 of the Code of Virginia is amended and reenacted as follows:**

§ 20-111.1. Revocation of death benefits by divorce or annulment.

A. ~~Upon~~ *Except as otherwise provided under federal law or law of this Commonwealth, upon the entry of a decree of annulment or divorce from the bond of matrimony on and after July 1, 1993, any revocable beneficiary designation contained in a then existing written contract owned by one party that provides for the payment of any death benefit to the other party is revoked. A death benefit prevented from passing to a former spouse by this section shall be paid as if the former spouse had predeceased the decedent. The payor of any death benefit shall be discharged from all liability upon payment in accordance with the terms of the contract providing for the death benefit, unless the payor receives written notice of a revocation under this section prior to payment.*

B. The term "death benefit" includes any payments under a life insurance contract, annuity, retirement arrangement, compensation agreement or other contract designating a beneficiary of any right, property or money in the form of a death benefit.

C. This section shall not apply (i) to the extent a decree of annulment or divorce from the bond of matrimony, or a written agreement of the parties provides for a contrary result as to specific death benefits, or (ii) to any trust or any death benefit payable to or under any trust.

D. If this section is preempted by federal law with respect to the payment of any death benefit, a former spouse who, not for value, receives the payment of any death benefit that the former spouse is not entitled to under this section is personally liable for the amount of the payment to the person who would have been entitled to it were this section not preempted.

E. *Every decree of annulment or divorce from the bond of matrimony entered on or after July 1, 2012, shall contain the following notice in conspicuous, bold print:*

*Beneficiary designations for any death benefit, as defined in subsection B of § 20-111.1 of the Code of Virginia, made payable to a former spouse may or may not be automatically revoked by operation of law upon the entry of a final decree of annulment or divorce. If a party intends to revoke any beneficiary designation made payable to a former spouse following the annulment or divorce, the party is responsible for following any and all instructions to change such beneficiary designation given by the provider of the death benefit. Otherwise, existing beneficiary designations may remain in full force and effect after the entry of a final decree of annulment or divorce.*

**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK**

\_\_\_\_\_

Plaintiff

v.

CIVIL NO.: CL \_\_\_\_ - \_\_\_\_

\_\_\_\_\_

Defendant.

**DECREE PURSUANT TO CODE OF VIRGINIA §20-107.3(L)**

It appearing to the Court that neither party to this cause now resides in the City of Norfolk, it is therefore ADJUDGED, ORDERED and DECREED that the authority to make additional orders pursuant to *Code of Virginia* §20-107.3(K) and to carry out and enforce any stipulation, contract, or agreement between the parties that was affirmed, ratified, and incorporated by reference into the final decree of divorce pursuant to *Code of Virginia* §20-109.1 is hereby transferred to the Circuit Court of the City/County of \_\_\_\_\_.

Endorsements are waived pursuant to Rule 1:13.

**ENTER:**

\_\_\_\_\_

**Judge**

in a lump sum or over a period of time. However, the court shall only direct that payment be made as such recovery is payable, whether by settlement, jury award, court award, or otherwise. "Marital share" means that part of the total personal injury or workers' compensation recovery attributable to lost wages or medical expenses to the extent not covered by health insurance accruing during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent.

I. Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties pursuant to §§ 20-109 and 20-109.1. Agreements, otherwise valid as contracts, entered into between spouses prior to the marriage shall be recognized and enforceable.

J. A court of proper jurisdiction under § 20-96 may exercise the powers conferred by this section after a court of a foreign jurisdiction has decreed a dissolution of a marriage or a divorce from the bond of matrimony, if (i) one of the parties was domiciled in this Commonwealth when the foreign proceedings were commenced, (ii) the foreign court did not have personal jurisdiction over the party domiciled in the Commonwealth, (iii) the proceeding is initiated within two years of receipt of notice of the foreign decree by the party domiciled in the Commonwealth, and (iv) the court obtains personal jurisdiction over the parties pursuant to subdivision A 9 of § 8.01-328.1, or in any other manner permitted by law.

K. The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section, including the authority to:

1. Order a date certain for transfer or division of any jointly owned property under subsection C or payment of any monetary award under subsection D;

2. Punish as contempt of court any willful failure of a party to comply with the provisions of any order made by the court under this section;

3. Appoint a special commissioner to transfer any property under subsection C where a party refuses to comply with the order of the court to transfer such property; and

4. Modify any order entered in a case filed on or after July 1, 1982, intended to affect or divide any pension, profit-sharing or deferred compensation plan or retirement benefits pursuant to the United States Internal Revenue Code or other applicable federal laws, only for the purpose of establishing or maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to effectuate the expressed intent of the order.

*L. If it appears upon or after the entry of a final decree of divorce from the bond of matrimony that neither party resides in the city or county of the circuit court that entered the decree, the court may, on the motion of any party or on its own motion, transfer to the circuit court for the city or county where either party resides the authority to make additional orders pursuant to subsection K or to carry out or enforce any stipulation, contract, or agreement between the parties that has been affirmed, ratified, and incorporated by reference pursuant to § 20-109.1.*

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

 DRAFT

\_\_\_\_\_,  
Plaintiff

v. Civil No.: CL\_\_\_\_-\_\_\_\_\_

\_\_\_\_\_,  
Defendant

**FINAL DIVORCE DECREE ERRATA SHEET**

You have submitted a final decree of divorce on depositions or affidavits pursuant to *Code of Virginia* ("Code") §20-106. The Court has reviewed the proposed final decree and found it insufficient in these particulars:

- 1. The information required by *Code* §20-106(B)( ) is missing.
- 2. The complaint or final decree refers to a separation agreement, but no separation agreement has been filed.
- 3. If the defendant was personally served and he/she has filed a responsive pleading or made an appearance and is contesting an issue in the case.
- 4. A divorce is being sought on a ground other than *Code* §20-91(a)(9).
- 5. The parties had not been separated for the requisite period of  twelve months/ six months on the date the complaint was filed. As grounds for divorce must exist when the complaint was filed, *Harrell v. Harrell*, 272 Va. 652, 636 S.E.2d 391 (2006), the complaint has been dismissed. A dismissal order is enclosed.
- 6. The final decree reserves or grants spousal support to a party, but that relief was not requested in the pleadings. *Harrell v. Harrell, supra; Boyd v. Boyd*, 2 Va. App. 16, 340 S.E.2d 578 (1986).
- 7. The final decree reserves equitable distribution to the plaintiff but that relief was not requested in the complaint. Norfolk Circuit Court Rule 1(E)(1).



- 8. The defendant was served by order of publication or posting, or the equivalent, and  spousal support/ equitable distribution was/were not reserved to him/her. Norfolk Circuit Court Rule 1(E)(2).
- 9. The final decree reserves  spousal support/ equitable distribution to the defendant, but the court has *in personam* jurisdiction over him/her and he/she has not requested that relief. Norfolk Circuit Court Rule 1(E)(1), (2).
- 10. The final decree does not contain a transfer provision pursuant to *Code* §20-79(c), or if it does contain such a provision it does not name the court to which the transfer is to be made. Norfolk Circuit Court Rule 1(E)(3).
- 11. The final decree makes a support award but it does not contain the provisions required by *Code* §20-79.3.
- 12. The final decree does not contain the revocation of death benefits notice required by *Code* §20-111.1(E), or if it does contain the notice it is not in conspicuous bold print.
- 13. The final decree contains a name change provision, which must be done by separate order. *Code* §20-121.4.
- 14. It appears from the papers filed that the parties may reside at the same address. An *ore tenus* hearing should be scheduled so the court may determine if they have been separated for the requisite period.
- 15. Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

If you have questions, please call \_\_\_\_\_ at 757-664-459\_\_\_\_\_.