

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF PRINCE WILLIAM**

WHITBECK & ASSOCIATES, P.C.

Plaintiff.

v.

Case No. CL71003

WESLEY C. SMITH,

and

CHERI SMITH,

Defendants,

**NOTICE AND MOTION**

**PLEASE TAKE NOTICE** that on Friday, January <sup>19</sup>~~12~~, 2007, at 10:00 a.m. or as soon as possible thereafter, the Co-defendant, Cheri Smith shall present the following Motion to the Court.

**MOTION**

COMES now the Co-Defendant, Cheri Smith, by counsel, and moves this Court to order the Clerk of the Court to disburse the portion of the marital funds to her which are now held by him and were formerly held in escrow by John Whitbeck, Esquire, in accordance with the terms of the Final Divorce Order (copy attached) ( pp. 14-18 and attached chart) for Chancery Case No. 53360, entered by this Court on June 9, 2006.

In support of her motion for the distribution of the funds, Ms. Smith states:

1. As a result of an Order entered by this Court on November 17, 2006, the above mentioned funds were deposited by Mr. Whitbeck with the Clerk of the Circuit Court for the County of Prince William.
2. The money escrowed with the Clerk of the Court represents the balance of the Smiths' marital funds which had been held by John Whitbeck, Esquire, in his trust account.
3. The distribution of all marital property was decided by this Court during the Smith's divorce case and set forth in the Final Divorce Order, Chancery Case Number 53360, entered by this court on June 9, 2006.

4. There exists no reason why the portion of the money awarded to her in the Final Divorce Decree should not be distributed as ordered.
5. The Guardian *ad litem*, Ronald Fahy, Esquire, has been paid his fee per the Court's Order from the marital assets held by Mr. Whitbeck. This payment was issued by Mr. Whitbeck, per the agreement of the parties. Therefore, the amount of one thousand, three hundred and nineteen dollars and fifty cents (\$1,319.50) was deducted from the escrow funds prior to their deposit with the Clerk of the Court and is not at issue at this time.
6. The amount of one hundred and four thousand five hundred dollars and forty-four cents (\$104,500.44) which represents the combined amount of the marital debt which the court has ordered Ms. Cheri Smith to pay from the marital assets which amount to thirty thousand two hundred and sixty-seven dollars (\$30,267.00) and her portion of the distribution of the marital assets which is seventy-four thousand, two hundred and thirty-three dollars and forty-four cents (\$74, 233.44).

Wherefore, the co-defendant, Cheri Smith, requests that the Court enter an order instructing the Clerk of the Circuit Court for Prince William County to issue a check in the amount of one hundred and four thousand five hundred dollars and forty-four cents (\$104,500.44) which represents the portion of the funds held by the Clerk of the Court distributed to her in the Final Divorce Decree entered by this Court on June 9, 2006.

I ASK FOR THIS:

Cheri Smith  
By Counsel

Loretta Vardy  
Loretta Vardy, Esquire  
VSB No. 26225  
12388 Silent Wolf Drive  
Manassas, VA 20112  
Phone: 703-791-6078  
Fax: 703-791-7957  
Counsel for Cheri Smith

CERTIFICATION OF NOTICE

This is to certify that on the 5th day of January 2007, , a true copy of the foregoing Notice and Motion was mailed postage prepaid to the following:

Wesley Smith  
5347 Landrum Rd APT 1  
Dublin, VA 24084  
Co-defendant

John C. Whitbeck, Jr. VBS # 47525  
Whitbeck & Associates, P.C.  
116-E Edwards Ferry Road  
Leesburg, VA 20176  
(703) 777-1795  
(703) 777-9079 facsimile  
Counsel for the Plaintiff

Ronald Fahy, Esq.  
9236 Mosby Street  
Manassas, VA 20110  
*Guardian Ad Litem*