

**VIRGINIA:**

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

CHERI SMITH  
PLAINTIFF

v.

WESLEY SMITH  
DEFENDANT

)  
)  
) IN CHANCERY NO. 53360  
)  
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)

**NOTICE**

**PLEASE TAKE NOTICE** that on Friday October 8, 2004, at 10:00 a.m., or as soon thereafter as this matter may be heard by Judge Alston, the Plaintiff by Counsel will move this Court to hear the following Motion.

**MOTION**

**COMES NOW** the Plaintiff, Ms. Smith by counsel, and moves this Court pursuant to § 20-103 of the VA. Code 1950 as amended, for entry of an Order which dispenses with a Commissioner's Hearing and sets a date for a Final Divorce Hearing on all issues pertaining to the above styled case. In support of her MOTION the Complainant states as follows:

1. That on March 3, 2004, George De Pollo was named by this court to be the commissioner in this case;
2. That on April 16, 2004, an Order was entered by this Court to set a Commissioner's hearing within ninety days;
3. That on April 16, 2004, the Defendant was *Pro Se*.
4. That in mid-May 2004, Mr. Boge was retained as counsel for the Defendant;
5. That in discussions with Mr. Boge and Mr. Fahy, the Guardian *ad litem* for the minor child Liam Smith, it had become apparent that a Commissioner's hearing was not the best manner to proceed in this case;

6. That on August 13, 2004, the parties were before this Court on the Defendant's Motion to Release a Portion of the Marital Funds which are currently being held in escrow by Mr. John Whitbeck, Jr., Esq., the Defendant's former counsel;
7. That during the hearing on August 13, 2004, the parties agreed and Judge Alston so ordered that the Court would dispense with the Commissioner's hearing and set a two day hearing date;
8. That on August 13, 2004, the Court set a two day final hearing date for October 5<sup>th</sup> and 6<sup>th</sup>, 2004;
9. That on October 5, 2004, the parties appeared before Judge Hamblin for said final hearing;
10. That Judge Hamblin refused to hear evidence concerning the grounds for divorce;
11. That Judge Hamblin stated as grounds for his refusal the lack of a written order negating the written order, dated March 3, 2004 which named George De Pollo as the Commissioner for this case and the one dated April 6, 2004, which stipulated that the Commissioner's hearing was to take place within ninety days;
12. That Judge Hamblin's refusal to proceed with the final hearing as set by Judge Alston, created a hardship for the Plaintiff for the following reasons:
  - A. One witness flew to Virginia for the hearing despite the fact that he must be in Chicago on October 6, 2004 for business reasons ~~were~~ <sup>is</sup>;
  - B. Another witness plans on moving from the state in the near future;
  - C. Two witnesses from the Fairfax County Public Schools were required to be absent from their places of employment;
  - D. Two other witnesses who suffer from severe arthritis were required to be present;

**WHEREFORE**, the Complainant requests the following relief:

1. That the Court set a date for a two day final hearing to settle the above styled matter;
2. That the Court enter an Order reversing the Court's earlier Orders, dated March 3, 2004 and April 6, 2004 with respect to the appointment of a Commissioner in Chancery and the scheduling of a Commissioner's hearing;

3. That the Court enter an Order specifying that there will be no Commissioner's hearing in the above styled matter;
4. That the final hearing in this case be heard before Judge Alston;
5. That the Court enter an Order for such further relief as the nature of the case and the goals of equity require.

Respectfully submitted ,

CHERI SMITH

By Counsel

*Loretta Vardy*

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