

**VIRGINIA:**

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

**CHERI SMITH,**

**Complainant,**

**v.**

**WESLEY C. SMITH,**

**Defendant.**

**Chancery No. 53360**

**DEFENDANT MOTION FOR CONTINUANCE**

**COMES NOW** the Defendant, Wesley C. Smith ("the Husband"), and requests that this court grant him a continuance in the above matter which is set for trial on October 5<sup>th</sup> and 6<sup>th</sup> 2004 and in support of this request represents the following facts:

1. September 13, 2004 at a hearing concerning the Defendants' request to take funds from the escrow account, the court approved a verbal motion by the Defendant's counsel to withdraw, and then set a trial date of October 5<sup>th</sup> and 6<sup>th</sup> over the objections of the Defendant.
2. The Pendente Lite order had the Defendant taking vacation with the child from September 13, 2004 until September 27, 2004, thus reducing the amount of time for the Defendant to prepare to handle the trial, pro se, to only five weeks.
3. The Defendant has ADD and as thus needs more time to prepare than other people.
4. There are significant unresolved issues such as Fifth Amendment claims, inadequate discovery responses by the Plaintiff, unethical conduct by the Plaintiff's counsel, and inadequate preparation by the GAL. These issues require significant additional preparations above those needed for divorce, custody, and equitable distribution.
5. It appears that the court has consistently held claims by the Defendant to a higher

standard of proof than those of the Plaintiff, thus requiring more time to do research.

6. Due to the above reasons the time allotted to the Defendant to prepare after his counsel withdrew in insufficient.

7. The unresolved issues mentioned previously must be resolved, and adequate time allowed afterwards, before it will be possible to conduct a fair and impartial trial. It is at the discretion of a trial court to grant a continuance but the Virginia Court of Appeals has stated: A court must exercise this discretion in a manner that does not prejudice a defendant's right to a fair and impartial trial or deprive him of his constitutional right "to call for evidence in his favor." A defendant's right to call for evidence in his favor guarantees him sufficient time to investigate and evaluate the evidence in preparation for trial. *Lomax v. Commonwealth*, 228 Va. at 172, 319 S.E.2d at 765(1984). Proceeding to hold a trial without first giving the Defendant a chance to collect evidence in his favor from either the Plaintiff, her employer, or her lover(s), would be an abuse of discretion.


8. The rights of our child, not just those of the Defendant require a continuance until after the Plaintiff has provided us the chance to evaluate the relevant evidence.

9. The actions of the Plaintiff have delayed the case moving forward. These include waiting about 9 months from the time of filing for a protective order until filing for divorce, waiting about 7 months from the date of filing for divorce until making interrogatory and document requests of the Defendant, as well as refusing to fully answer the Defendants interrogatories and document requests after 10 months. Her responses have been so inadequate as to omit potential witnesses and provide incorrect contact information for many of the ones she did name. By her actions she is obviously not interested in the case being completed quickly unless it can be to keep the Defendant and our son from having a fair hearing on the facts.

10. A new issue has come up that will require court action to compel evidence that did not exist prior to September 14, 2004 and was not made known to the Defendant until September 29, 2004. The Plaintiff has caused a complaint of physical abuse to be filed with Child Protective Services. The defendant will need more time and a court order compelling CPS to provide documents in order find out if the complaint was filed maliciously by the Plaintiff or one of her friends, or if the complaint was due to her physical abuse of the child, or her emotional abuse of the child. It would be impossible to make an accurate determination of the best needs of the child without first finding out exactly why the complaint was filed and its effect on the child.

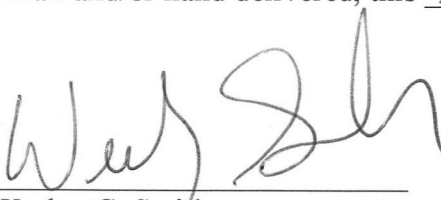
**WHEREFORE** the Defendant requests the court to continue the final trial (not pending motions) until after the court has resolved the pending issues and the Plaintiff complied fully with the Defendant's discovery requests.

**Respectfully submitted,  
WESLEY C. SMITH  
Defendant**

  
\_\_\_\_\_  
Wesley C. Smith  
3215 Ridge View Ct. Ap 104  
Woodbridge, VA 22192  
(703) 220-2637  
Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing motion was served to Loretta Vardy and Ronald Fahy (GAL) via first-class mail and/or hand delivered, this 30 day of September, 2004.

  
\_\_\_\_\_  
Wesley C. Smith.

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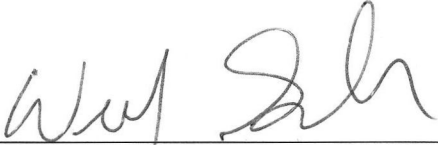
WESLEY C. SMITH,

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PRAECIPE

THE CLERK will kindly place the attached Motion on this Court's docket for Tuesday,  
October 5, 2004 at 10:00 a.m. for hearing or as soon thereafter as this matter may be heard.



Wesley C. Smith  
3215 Ridge View Ct. Ap 104  
Woodbridge, VA 22192  
(703) 220-2637  
Defendant, pro se

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Wesley C. Smith