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VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Plaintiff,

v.

WESLEY C. SMITH,

Defendant.

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Chancery No. 53360

DEFENDANT PETITION FOR RULE TO SHOW CAUSE

COMES NOW the Defendant, Wesley C. Smith, pro se, and under oath, requests this Honorable Court issue a Rule against the Plaintiff, Cheri Smith, requiring her to appear and show cause why she should not be held in contempt, for her failure to abide by the terms of the Pendente Lite Order entered October 2, 2003, and states as follows:

1. The Plaintiff has violated at least two provisions of the Pendente Lite order, including wasting marital assets and failing to provide the Defendant with school notices in a timely fashion.
2. The Plaintiff has consistently provided notices to the Defendant late if at all, sometimes waiting until after the events mentioned in the notice have already taken place. This impairs the Defendants ability to be involved in our sons schooling.
3. The Defendant has made repeated requests for the Plaintiff to comply and has even offered to be flexible in how they are received, and in spite of a previous rule and the judge clarifying that she must provide the notices to the Defendant.
4. The order required stated that the Plaintiff could list the house for sale and that the parties should preserve marital assets. The Plaintiff has sold the house but has not preserved

marital assets and has wasted the entire value of a marital car and has been wasting the money received from the sale of the house by holding it in an account receiving no interest while other debts with claims on the money is accumulating debt at rates as high as 27%.

5. In December 2003 at the Plaintiff's insistence, with her threatening a rule to show cause if the Defendant did not agree to sell the house for \$20,000 less than the signed contract stated, the house was sold for a profit of about \$182,000. Note the value would be \$172,000 if the Defendant had just given in to the Plaintiff's demands instead of negotiation with the agent.

6. The Plaintiff refused to share the proceeds 50/50 until equitable distribution, so the money was placed in an escrow account.

7. The Plaintiff has refused numerous requests by the Defendant to use a portion of the money, resulting in the Defendant having to pay interests on debts instead of paying them off. Some of the debts are at 27% interests.

8. The escrow account does not earn any interest at all, thus on an inflation adjusted basis its actually losing value.

9. The increase in the homes value during the almost one year the money has been in escrow is significant. From 2003 to 2003 the value of the house, as determined by Prince William County, increased \$41,000, 2003-2002 was \$30,000.

10. Even before she threatened divorce the Plaintiff refused to take advantage of low interest rates to refinance the house, had she done so the house payments would have been several hundred dollars a month less. Even at the higher rate house payments for the entire year would have been substantially less than the amount the house appreciated, so selling it to let the cash lose value is wasting our largest marital asset. Given that we both have apartments and the rent payments are not individually much less than the house payment, the Plaintiff has

effectively thrown away \$40,000 in appreciation of the house when it would have only taken about \$4,000 to make house payments for the entire year above the rent of the Defendant. We easily could have gotten a home equity loan to cover that and been much better off.

11. Given the Plaintiffs refusal to actually use the money from the sale of the house it appears her motivation for selling was more to get the Defendant out of the house to take away any perceived advantage of his being able to raise our child in the child's own home instead of an apartment.

12. The Defendant in need of money to pay child support and in anticipation of getting his share of the house funds has entered into several short term loans at low rates. The Plaintiff's refusal to share the house funds has forced the Defendant to default on these loans, impairing his credit rating and ability to keep a security clearance and his job. The Plaintiff refused to allow the Defendant any access to the escrow funds in spite of being advised of the impact that could have on the Defendants job.

13. On February 23, 2004 the Plaintiff advised the Defendant that the family car she has claimed as her "personal property" was not licensed and might be towed soon. The very same day the Defendant informed her that he would sign any paperwork needed for her to get the license current to avoid having it towed. The Plaintiffs response was to say the car had already been towed. In spite of the Defendants offer to sign any papers necessary the Plaintiff refused to take any effort to retrieve the vehicle and let it be sold with no funds paid to either of us. Thus the Plaintiff wasted the entire value of the vehicle.

WHEREFORE Mr. Smith requests this Court issue a Rule against the Plaintiff, Cheri Smith, requiring her to appear and show cause why she should not be held in contempt of the Order that the court impose an appropriate sanction pursuant to Va. Code Ann. 20-115 and other

