V I R G I N I A:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,	)	
Plaintiff	)	
	)	
v.	)	**Chancery No. 53360**
	)	
WESLEY C. SMITH,	)	
Defendant	)	

#78 - REPLY - ESCROW FUNDS

A pdf copy of this motion is available at: http://www.liamsdad.org/court

COMES NOW the Defendant, Wesley C. Smith, and requests this Court deny the Plaintiffs Motion For Disbursement as it asks for relief contrary to the Final Divorce Decree, is without legal foundation, the Court is without authority is grant her the relief requested, this is the wrong case for her to seek a release of funds, and granting the motion will make Judge Potter personally liable without immunity, and in support thereof states as follows:

Note in spite of this date certain being set back in January, the Plaintiff waited until March 5th to mail a copy to the Plaintiff, which wasn't received in the mail until March 9th.

Without Legal Foundation

1. The Plaintiff has filed multiple motions to release funds in both this case and in Case CL 71003. All of her previous motions were denied. The Plaintiff's motion doesn't state any Statute, Rule, or case law that would support her request to release funds. The Plaintiff is only asking for the court to take action that the court refused to take previously without stating any reasons why the ruling should change.

2. The Plaintiff does go on about a claimed Administrative Order to Withhold but it is not clear how that has any effect on her motion to release funds. The Administrative Order is based on the Final Divorce Decree and is thus invalid just as the Final Divorce Decree is. The Administrative Order has been appealed to the Pulaski Circuit Court.

Contrary To The Final Divorce Decree

3. The Plaintiff's request release of $104, 500.44 and claims the Final Divorce Decree as the basis for her claim, yet a release of $104, 500.44 to the Plaintiff is not what the Final Divorce Decree specifies.

4. Instead the Final Divorce Decree states that the marital debts are to be paid first then the parties are to be paid afterwards. The Final Divorce Decree states:

"The balance in the escrow account after the payment of marital debt and any other payments ordered by this Court shall be divided equally between the parties. Fifty percent (50%) of the net shall be paid to the Plaintiff and fifty percent (50%) of the net shall be paid to the Defendant." Page 14 item 5

"The Court requires that after the martial debits are paid that the equity or the net proceeds left after settlement should equally be divided by the parties." Page 16 item 15.

5. The Plaintiff has refused to pay the marital debts first as required by the order. The Defendant has made numerous proposals to the Plaintiff to release funds to pay the marital debts but the Plaintiff has refused them all and specifically refused to sign an agreement that the funds released would be used to pay the marital debts.

6. The Plaintiff has also refused to give the Defendant the title to the 1993 Saturn that was awarded to him on page 15 item 7.

7. The Plaintiff is also requesting that she be paid but not the Defendant, again contrary to the Final Divorce Decree.

Wrong Case

8. In the Order of Aug 18, 2006 denying the Plaintiff's motion to disperse funds, this Court recognized that "… the parties hereto have by agreement previously entered into a sale of the marital residence and have escrowed the net proceeds of sale with Mr. Whitbeck,…"

9. On page 2 item 10 of the Final Divorce Decree states "The parties separated on December 31, 2002…" The Escrow Agreement was signed on December 12th 2003, about one year later, and thus is a voluntary post-separation contract between the parties.

10. Due to the Plaintiff harassing Mr. Whitbeck he filed an Interpleader as case CL 71003. On 11/17/2006 the Court granted Mr. Whitbeck's Amended Complaint For Interpleader and ordered that "the Defendants shall file with this Court a written statement as to their position on the disposition of the aforesaid funds;" the order also states "This cause is continued. "

11. It's clear from the order that the Court intended to hear the parties' claims to the escrowed funds as part of that case. The parties did file as ordered.

12. Case CL 71003 is the proper case to hear the parties' claims to the escrowed funds. Instead the

Plaintiff has removed her motion in CL 71003 from the docket and filed instead in Ch 53360 in an attempt to have the court ignore the legally binding post separation Escrow Agreement.

13. The court did not create nor require the funds to be deposited in an Escrow Account. Thus the Court has no authority to control the fund other than interpreting the Escrow Agreement

Without Authority To Grant
Escrows Are Irrevocable, Require Strict Compliance

14. The Court must release funds only in strict compliance with the agreement rather than in violation of the agreement as requested by the Plaintiff. The post separation Escrow Agreement set out specific conditions for the release of the escrowed funds and made no reference to or provision for substantial compliance with those conditions.

15. Per established case law, Escrows are irrevocable which neither party can revoke during the escrow period without the consent of the other. See Chaffin v Harpham 166 Ark 578, 266 SW 685; Home-Stake Royalty Corp. V McClish, 187 Oka 352, 103 P2d 72;

16. It is also established case law that the Court has no authority to go beyond the contract among interpleading claimants. Interpleading the funds does not void the Escrow Agreement but only changes who holds the escrowed funds. The Court only has the authority to enforce the Escrow Agreement and may not distribute the funds in a manner contrary to that of the Escrow Agreement.

It has, however been held that where a blank, as escrowee, brings an interpleader suit because of different interpretations of the escrow contract by the respective claimants, **the court has no authority** to go beyond the terms of the contract to determine other matters in dispute among the interpleading claimants. Northern Trust Co v McDowall, 307 Ill App 29, 29 NE2d 865

Virginia adheres to the "plain meaning" rule courts examine the plain language of an agreement, going beyond the written contract only when its meaning is ambiguous. See Pysell v. Keck, 263 Va. 457, 460, 559 S.E.2d 677, 678-79 (2002); Douglas v. Hammett, 28 Va. App. 517, 524-25, 507 S.E.2d 98, 101 (1998); Tiffany v. Tiffany, 1 Va. App. 11, 15-16, 332 S.E.2d 796, 799 (1985). Courts shall not include or ignore words to change the plain meaning of the agreement. Southerland v. Estate of Southerland, 249 Va. 584, 590, 457 S.E.2d 375, 378 (1995). Shenk v. Shenk, 39 Va. App. 161, 173-74, 571 S.E.2d 896, 903 (2002).

17. In KENNETH A. DAVIS v. STEPHEN HOLSTEN, ET AL. Record No. 050215 November 4, 2005

the Virginia Court Of Appeals made clear that **strict compliance is required**.

Rather, we agree with the clear weight of authority that, unless the agreement provides otherwise, substantial performance will not be applied to an escrow agreement and **compliance must be strict**. See, e.g., Commonwealth Land Title Ins. Co., 13 B.R. at 951 (strictly construing term in escrow agreement which required disbursement of any remaining funds in escrow after four years from date of contracting); In re Creative Data Forms, Inc., 41 B.R. at 336-37 (declining to release $100,000 held in escrow account for debtor

because the debtor failed to make some repayments on money it had borrowed); Jones, 293 S.W.2d at 551 (declining to apply substantial performance to release of escrowed funds, when release was conditioned upon sellers of real estate timely providing an abstract of good and marketable title); Love v. White, 363 P.2d 482, 484 (Cal. 1961)(holding: "In this state the terms and conditions of an escrow must be performed. The doctrine of substantial performance does not apply, and no title passes prior to full performance of the terms of the escrow agreement."); Watts v. Mohr, 194 P.2d 758, 761 (Cal. Ct. App. 1948) (refusing to apply substantial performance and to order release of funds from escrow where one party had failed to deliver timely to escrow agent a $6000 note and deed of trust to complete real estate transaction); Taft v. Taft, 26 N.W. 426, 430 (Mich. 1886) (holding: "performance of the condition must be absolute and accurate, and cannot be dispensed with on any otherwise substantial performance."); Hart v. Barron, 204 P.2d 797, 808 (Mont. 1949) (finding part performance did not apply to escrow agreement for sale of land where buyer did not timely pay taxes or obtain a loan, both of which were conditions precedent to escrow agent delivering deed to buyer); Valentine Oil Co. v. Powers, 59 N.W.2d 150, 157 (Neb. 1953) (refusing to order release of funds in escrow and citing inapplicability of substantial performance to escrow agreements where a party to oil and gas escrow agreement failed to continue drilling for oil as required by agreement). KENNETH A. DAVIS v STEPHEN HOLSTEN Record No. 050215 November 4, 2005

In the law governing performance of escrow agreements there is no doctrine of substantial compliance to be found; **compliance must be full and to the letter, or else it constitutes merely noncompliance** Jones V Gregg, 226 Ark 595, 293 SW 2d 545;

The question involved is one of performance of the escrow agreement, not of the ability of the parties to perform the agreement, since such ability, without full performance, cannot amount to a compliance. young v claredon twp. 132 us 340, 33 L ed 356 10 S Ct 107;

18. Releasing funds per court order entered in case Chancery 53360 is not a condition set by the Escrow Agreement allowing release of funds. The Plaintiff is asking the court to release funds in violation of the Escrow Agreement, that the court recognized in the Aug 18th 2006 order.

Judge Personally Liable With No Immunity

19. An escrow agent, in this case, Judge Potter and/or the Circuit Court, is liable for all damages resulting from releasing funds without strict compliance. This is particularly applicable to this case as since the Court had no jurisdiction in Ch 53360, there is no judicial immunity of any kind.

An escrow agent is held to strict compliance with the terms of the escrow agreement, and is liable for all damages resulting from any deviation malta v phoenix title & trust co 76 Ariz 116, 259 P2d 554.

A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938)

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, **judicial immunity is lost**. Rankin v. Howard, (1980) 633 F.2d 844, cert den. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.

The U.S. Supreme Court, in Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner volatile of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is **subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United**

States."

Lack Of Subject Matter Jurisdiction And Personal Jurisdiction Due To Failure To Serve Process

20. The Defendant incorporates by reference all statements in #58 – Motion To Dismiss Due To Lack Of Service that clearly pointed out that the Court did not have subject matter jurisdiction nor personal jurisdiction due to the Plaintiffs failure to serve the Defendant with process.

21. PROCESS is the **combination** of the Bill Of Complaint and the subpoena in chancery "**served as a single paper**". See Bendele v. Commonwealth, 29 Va. App. 395, 398, 512 S.E.2d 827, 829 (1999) and LIFESTAR v VEGOSEN, CAV Record No. 031376 (2004). The Plaintiff failed to serve the Defendant with PROCESS.

22. The Plaintiff has tried to claim that the Defendant's knowledge of the suit is sufficient but that argument is contradicted by Rule, Statute, and case law:

Upon the commencement of a suit in equity defendants may appear voluntarily and file responsive pleadings and may appear voluntarily and waive process**, but in cases of divorce or annulment of marriage only in accordance with the provisions of the controlling statutes**. § vscr-2:4

In this class of cases, the question of the jurisdiction of the court usually resolves itself into one of whether or not there has been "due process," whether **the process has been served in the time and manner required by law**, or service has been waived. Of course, the defendant must be properly brought before the court, else there will be no jurisdiction over him and a judgment against him will be void. Shelton v. Sydnor, 126 Va. 625, 630, 102 S.E. 83, 85 (1920).

It is the "process" which must reach the defendant to vest the court with jurisdiction**. Without service of the "process," the court acquires no jurisdiction.** LIFESTAR v VEGOSEN, CAV Record No. 031376 (2004).

Under its clear terms, Code 8.01-288 is designed to cure defects in the manner in which "process" is served. **It cannot cure defects in the "process" itself.** Since Lifestar never received "process," Code 8.01-288 does not apply. The trial court erred in concluding otherwise. LIFESTAR v VEGOSEN

§ 20-99.2 - Service in divorce and annulment cases states: "A. In any suit for divorce or annulment or affirmation of a marriage, process may be served in any manner authorized under § 8.01-296."

§ 8.01-288. Process received in time good though neither served nor accepted. **Except for process commencing actions for divorce** or annulment of marriage or other actions wherein **service of process is specifically prescribed by statute**, process which has reached the person to whom it is directed within the time prescribed by law, if any, shall be sufficient although not served or accepted as provided in this chapter.

VA § 8.01-328.1 A. A court may exercise personal jurisdiction over a person… 9. Having maintained within this Commonwealth a matrimonial domicile at the time of separation of the parties upon which grounds for divorce or separate maintenance is based… Jurisdiction in subdivision 9 is **valid only upon proof of service of process pursuant to § 8.01-296**…

23. Compliance with the Code sections at issue here, relating to procedures for instituting a divorce case, is mandatory and jurisdictional. The Plaintiff did not comply with them, therefore, **this court did not acquire jurisdiction of any kind, neither personal nor subject-matter jurisdiction.**

…if a statute provides for constructive service, **the terms of the statute authorizing it must be strictly followed or the service will be invalid**…" Khatchi v. Landmark Rest. Assoc., 237 Va. 139, 142, 375 S.E.2d 743, 745 (1989) (citations omitted).

"**A court acquires no jurisdiction over the person of a defendant until process is served in the manner provided by statute, and a judgment entered by a court which lacks jurisdiction over a defendant is void as against that defendant**." Slaughter v. Commonwealth, 222 Va. 787, 791, 284 S.E.2d 824, 826 (1981).

Actual jurisdiction is a lawful exercise of potential jurisdiction and requires jurisdiction over the person of all the necessary parties as well as jurisdiction over the subject matter. **If either is lacking, the court is without actual jurisdiction of the cause**. Garrity v. Va. Department of Social Services, 11 Va. App. 39 (1990).

24. Subject-matter Jurisdiction in a divorce case is by statute, failure to comply with the statutes results in a failure of subject-matter jurisdiction.

"**Jurisdiction in a divorce suit is purely statutory**, Watkins v. Watkins, 220 Va. 1051, 1054, 265 S.E.2d 750, 752 (1980), and does not encompass broad equitable powers not conferred by statute." 2 Va. App. at 19, 340 S.E.2d at 580.

"**When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way**." Grigg v. Commonwealth, 224 Va. 356, 364, 297 S.E.2d 799, 803 (1982). See also Commonwealth v. Brown, 259 Va. 697, 704-05, 529 S.E.2d 96, 100 (2000).

Final Divorce Decree Void - No Grounds For Divorce When Mother Filed For Divorce

25. The Court granted the divorce based on one-year separation and set the date of separation as Dec 2002, page 2 item 10, which was only 6 months prior to the June 2003 filing for divorce. Given that the parties were not separated for one year prior to filing for divorce, the court was without authority to grant divorce based on one-year separation. The Court as part of its sexist gender bias refused the admitted grounds of adultery by the Plaintiff, thus the court was without any jurisdiction. See <u>#62 – Motion To Strike Count III Of Amended Bill Of Complaint</u>

"The act relied upon for divorce must be alleged and **proved to have occurred prior to the bringing of the suit** . . . ." Beckner v. Beckner, 204 Va. 580, 583, 132 S.E.2d 715, 717-18 (1963). see also Johnson v. Johnson, 213 Va. 204, 210, 191 S.E.2d 206, 210 (1972).

We hold that the court erred by entering the final divorce decree because the grounds for divorce alleged in the bill of complaint **did not exist when the bill was filed and, thus, the court lacked jurisdiction to entertain the suit at the time it was filed**. JONES v JONES, MAY 30, 2000, Record No. 2580-99-3

Code 20-91(A)(9)(a) provides that a "no-fault" divorce may be granted only after an application has been filed properly alleging that the parties have lived separate and apart for the requisite time. See Moore v. Moore, 218

Va. 790, 796, 240 S.E.2d 535, 538 (1978) **The ground for divorce alleged is a statutory element and jurisdictional prerequisite to filing the suit for divorce** under Code 20-91(A)(9)(a). The grounds must be properly alleged and proven.

26. In order to have jurisdiction the court must find that either party had a clam under Code 20-91 at the time the Plaintiff filed the suit (June 2003), as the Court's ruling did not specify a ground for divorce that existed in June of 2003 the Court was without jurisdiction to issue any order as such the order is null and void and unenforceable.

Final Divorce Decree Void - Myriad of Due Process violations

27. As if the above wasn't sufficient to demonstrate a lack of jurisdiction the court seemed bent on making sure it lost jurisdiction, if it ever had it, by violating the Due Process Rights of the Father, by such actions as allowing the Mother to skip the notice requirements and enforcing them against the father, refusing to enforce the fathers subpoena's for documents, ruling promptly on the mothers motions even doing so ex parte without an emergency, while refusing to rule on the fathers motions for 6 months or more at a time. The court even allowed hearsay evidence to be submitted by the GAL then encouraged the GAL to leave and skip the custody portion of the trial. The Court refused to let the father make proffers for an appeal. At every turn the court seemed determined to rule for the mother and against the father no matter what evidence was presented. From start to finish the "trial" was nothing less than a Kangaroo Court with the outcome having been predetermined the moment Judge Potter took the case.

28. The Courts gender biased efforts went so far as to rule the marriage broke up over money even though both parties stated for the record that was not the case and by ruling adultery by the mother was not proven in spite of her admitting to adultery in court and the father submitting photo's, email, etc to corroborate her affair. This intentional erroneous ruling lead directly to the order being void due to the above mentioned no grounds for divorce existed when the mother filed for divorce.

29. In all courts, whether in courts of general jurisdiction or in courts of limited jurisdiction, the judge deprives the court of jurisdiction if the judge does not comply with the law. The actions of Judge Potter (and others) have deprived the Court of jurisdiction by their misconduct.

The Supreme Court of Virginia has held "it is essential to the validity of a judgment or decree, that the court rendering it shall have jurisdiction of both the subject matter and parties. But this is not all, for both of these essentials may exist and still the judgment or decree may be void, **because the character of the judgment was not such as the court had the power to render, or because the mode of procedure employed by the**

court was such as it might not lawfully adopt. "Evans v. Smyth-Wythe Airport Commission, 255 Va. 69, 73, 495 S.E.2d 825, 828 (1998)

Thus, **since the trial court utilized an unlawful mode of procedure, it lacked the requisite jurisdiction** to enter the final order under these circumstances. In light of this, the order of the court was rendered "a complete nullity" which may be impeached at "any time," and "in any manner," irrespective of whether the issue had been properly raised and/or preserved by the parties. Singh v. Mooney, 261 Va. at 52, 541 S.E.2d at 551.

The Court in Yates Vs. Village of Hoffman Estates, Illinois, 209 F.Supp. 757 (N.D. Ill. 1962) held that, "Not every action by any judge is in exercise of his judicial function. It is not a judicial function for a Judge to commit an intentional tort even though the tort occurs in the Courthouse. When a judge acts as a Trespasser of the Law, when a judge does not follow the law, the judge loses subject matter jurisdiction & The Judge's orders are void, of no legal force or effect."

The United States Supreme Court has stated that "No State legislator or executive or judicial officer can war against the Constitution without violating his Undertaking to support it". Cooper Vs. Aaron. 358 U.S. 1 78 S.Ct. 1401 (1958). **If a judge does not fully Comply with the Constitution, then his orders are void**, in re Sawyer, 124 U.S. 200 (1888), he/she is Without jurisdiction, & he/she has engaged in an act or acts TREASON.

Jurisdictional Issues Cannot Be Waived

However, the Commonwealth correctly explains, **jurisdictional issues by definition cannot be waived, even with acquiescence**. Nelson v. Warden of the Keen Mountain Corr. Ctr., 262 Va. 276, 281, 552 S.E.2d 73, 75 (2001)

We said that "[s]ubject matter jurisdiction is granted by constitution or statute," that "[i]t cannot be waived," that "any judgment rendered without it is void ab initio," and th**at "lack of subject matter jurisdiction `may be raised at any time in any manner, before any court,** or by the court itself.'" Id. (quoting Humphreys v. Commonwealth, 186 Va. 765, 772, 43 S.E.2d 890, 893 (1947)).

No party can "waive a subject matter jurisdictional requirement." Morrison v. Bestler, 239 Va. 166, 170, 387 S.E.2d 753, 756 (1990)

"objections to subject-matter jurisdiction may be raised at any time and are not waivable," Owusu v. Commonwealth, 11 Va. App. 671, 672, 401 S.E.2d 431, 431 (1991)

Null And Void Orders - void and unenforceable prior to reversal

30. A void order may be challenged in any court, at any time, and even by third parties. A void order has

no legal force or effect. As one court stated, **a void order is equivalent to a blank piece of paper.**

This principle of law was stated by the U.S. Supreme Court as:
"Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply **VOID, AND THIS IS EVEN PRIOR TO REVERSAL**." [Emphasis added]. Vallely v. Northern Fire and Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920). See also Old Wayne Mut. I. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); Williamson v. Berry, 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); Rose v. Himely, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

It is clear and well established law that **a void order can be challenged in any court. Old** Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907) ("jurisdiction of any court exercising authority over a subject `may be inquired into in every other court **when the proceedings in the former are relied upon and**

brought before the latter by a party claiming the benefit of such proceedings,' ..."'); In re Marriage of Macino, 236 Ill.App.3d 886 (2nd Dist. 1992) ("if the order is void, it may be attacked at any time in any proceeding, "); Evans v. Corporate Services, 207 Ill.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990) ("a void judgment, order or decree may be attacked at any time or in any court, either directly or collaterally"); Oak Park Nat. Bank v. Peoples Gas Light & Coke Co., 46 Ill.App.2d 385, 197 N.E.2d 73, 77 (1st Dist. 1964) ("that judgment is void and may be attacked at any time in the same or any other court, by the parties or by any other person who is affected thereby."). [Emphasis added].

a void order is an order issued without jurisdiction by a judge and is void ab initio and does not have to be declared void by a judge to be void. Only an inspection of the record of the case showing that the judge was without jurisdiction or **violated a person's due process rights**, or where fraud was involved in the attempted procurement of jurisdiction, is sufficient for an order to be void. Potenz Corp. v. Petrozzini, 170 Ill. App. 3d 617, 525 N.E. 2d 173, 175 (1988). In instances herein, the law has stated that the **orders are void ab initio and not voidable because they are already void.**

There is a misconception by some attorneys and judges that only a judge may declare an order void, but this is not the law: (1) there is no statute nor case law that supports this position, and (2) should there be any case law that allegedly supported this argument, that case would be directly contrary to the law established by the U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920) as well as other state courts, e.g. by the Illinois Supreme Court in People v. Miller. Supra. A party may have **a court vacate a void order, but the void order is still void ab initio**, whether vacated or not; a piece of paper does not determine whether an order is void, it just memorializes it, makes it legally binding and voids out all previous orders returning the case to the date prior to action leading to void ab initio.

In 1991, the U.S. Supreme Court stated that, "Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, to permit the appellate court to ignore it. …[Would be an] unlawful action by the appellate court itself." Freytag v. Commissioner, 501 U.S. 868 (1991); Miller, supra. Following the same principle, **it would be an unlawful action for a court to rely on an order issued by a judge who did not have subject-matter jurisdiction and therefore the order he issued was Void ab initio**.

WHEREFORE defendant Wesley Smith requests the Court deny the Plaintiff's Motion For Disbursement, declare the Final Divorce Decree as null and void and order that the Court will hold the escrow funds until the parties strictly comply with the terms of the Escrow Agreement and submit a signed agreement for release of funds.

Respectfully Submitted,
Wesley C. Smith

/s/_____
Wesley C. Smith, Defendant
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703-348-7766

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), this 13th day of March 2007.

/s/_____
Wesley C. Smith