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HOUSE BILL NO. 39

Offered January 14, 2004

Prefiled December 2, 2003

A BILL to amend and reenact §§ 16.1-93 and 16.1-94.01 of the Code of Virginia, relating to costs in courts not of record.

Patron—Orrock

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-93 and 16.1-94.01 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-93. Principles applicable to trial of cases.

Every action or other proceeding in a court not of record shall be tried according to the principles of law and equity, and when the same conflict the principles of equity shall prevail. No warrant, motion or other pleading shall be dismissed by reason of a mere defect, irregularity or omission in the proceedings or in the form of the pleadings when the same may be corrected by an order of the court. The court may direct such proceedings and enter such orders as may be necessary to correct any such defects, irregularities and omissions, and to bring about a trial of the merits of the controversy and promote substantial justice to all parties. The court may make such provisions as to costs, *including the costs a pro se litigant incurs due to his absence from his employment resulting from his pro se representation which costs shall be documented by affidavit and shall not exceed the lesser of 25 percent of actual damages awarded or \$100*, and continuances as may be just.

§ 16.1-94.01. When and how payment or discharge entered on judgment.

A. When payment or satisfaction of any judgment rendered in a court not of record is made, the judgment creditor shall by himself, or his agent or attorney, give written notice of such payment or satisfaction, within ~~thirty~~ 30 days of receipt, to the clerk of the court in which the judgment was rendered. Such notice shall include the docket number, the names of the parties, the date and amount of the judgment, and the date of the payment or satisfaction. The clerk of the court shall then mark the judgment satisfied.

B. If the judgment creditor fails to comply with subsection A, the judgment debtor, his heirs or personal representatives, may, on motion, after ~~ten~~ 10 days' notice thereof to the judgment creditor, or his assignee, his personal representative, or his agent or attorney, apply to the court in which the judgment was rendered to have the judgment marked satisfied. Upon proof that the judgment has been paid, discharged or otherwise satisfied, the clerk shall mark the judgment satisfied. If the judgment creditor or his legal representatives cannot be reasonably located, the notice may be published and posted as an order of publication is required to be published and posted under §§ 8.01-316 and 8.01-317.

C. The cost of such proceedings, including reasonable attorney's fees ~~and~~, the cost of publication, *and the costs a pro se litigant incurs due to his absence from his employment resulting from his pro se representation which costs shall be documented by affidavit and shall not exceed the lesser of 25 percent of actual damages awarded or \$100*, may be ordered to be paid by the judgment creditor.

INTRODUCED

HB39