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HOUSE BILL NO. 2057

Offered January 10, 2007

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A BILL to amend and reenact §§ 16.1-69.48:2, 16.1-69.53, 16.1-77, 16.1-81, 16.1-82, 16.1-83, 16.1-85, 16.1-86, 16.1-88, 16.1-88.01, 16.1-88.02, 16.1-88.03, 16.1-94, and 16.1-101 of the Code of Virginia, relating to pleadings in district court.

Patron—McQuigg

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.48:2, 16.1-69.53, 16.1-77, 16.1-81, 16.1-82, 16.1-83, 16.1-85, 16.1-86, 16.1-88, 16.1-88.01, 16.1-88.02, 16.1-88.03, 16.1-94, and 16.1-101 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.48:2. Fees for services of district court judges and clerks and magistrates in civil cases.

Fees in civil cases for services performed by the judges or clerks of general district courts or magistrates in the event any such services are performed by magistrates in civil cases shall be as provided in this section, and, unless otherwise provided, shall be included in the taxed costs and shall not be refundable, except in case of error or as herein provided.

For all court and magistrate services in each distress, detinue, interrogatory summons, unlawful detainer, civil warrant, ~~notice of motion~~ complaint, garnishment, attachment issued, or other civil proceeding, the fee shall be \$22 for the period between July 1, 2006, and December 31, 2006, and \$27 thereafter unless otherwise provided in this section or if the amount in controversy is \$200 or less, then the fee shall be \$22. No such fee shall be collected (i) in any tax case instituted by any county, city or town or (ii) in any case instituted by a school board for collection of overdue book rental fees. Of the fees collected under this section, \$5 of the fee collected for all court and magistrate services in each distress, detinue, interrogatory summons, unlawful detainer, civil warrant, ~~notice of motion~~ complaint, garnishment, attachment issued, or other civil proceeding in excess of \$200 shall be apportioned to the Courts Technology Fund established under § 17.1-132 for the period between July 1, 2006, and December 31, 2006, and \$10 thereafter. Of any fees collected for these services where the amounts in controversy equal \$200 or less, \$10 from any such fees collected shall be apportioned to the Courts Technology Fund established under § 17.1-132.

The judge or clerk shall collect the foregoing fee at the time of issuing process. Any magistrate or other issuing officer shall collect the foregoing fee at the time of issuing process, and shall remit the entire fee promptly to the court to which such process is returnable, or to its clerk. When no service of process is had on a defendant named in any civil process ~~other than a notice of motion for judgment~~, such process may be reissued once by the court or clerk at the court's direction by changing the return day of such process, for which service by the court or clerk there shall be no charge; however, reissuance of such process shall be within three months after the original return day.

The clerk of any district court may charge a fee for making a copy of any paper of record to go out of his office which is not otherwise specifically provided for. The amount of this fee shall be set in the discretion of the clerk but shall not exceed \$1 for the first two pages and \$.50 for each page thereafter.

The fees prescribed in this section shall be the only fees charged in civil cases for services performed by such judges and clerks, and when the services referred to herein are performed by magistrates such fees shall be the only fees charged by such magistrates for the prescribed services.

§ 16.1-69.53. Definitions; construction of references to period of years.

As used in this article, the following terms shall have the following meanings:

"Court records" shall include case records, financial records and administrative records as defined in this section.

"Case records" shall mean all documents, dockets and indices.

"Documents" shall mean all ~~motions for judgment~~, bills of ~~complaint~~ complaints, answers, bills of particulars, other pleadings, interrogatories, motions in writing, warrants, summonses, petitions, proof of service, witness summonses and subpoenas, documents received in evidence, transcripts, orders, judgments, writs, and any other similar case-related records and papers in the possession of the district courts and filed with the pleadings in the case.

"Financial records" shall mean all papers and records related to the receipt and disbursement of money by the district court.

"Administrative records" shall mean all other court papers and records not otherwise defined.

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59 Whenever a reference to a period of years for the retention of documents is made in this section, it
60 shall be construed to commence on January 2 of the first year following (i) the final adjudication of a
61 civil case or (ii) the final disposition in all other cases, unless otherwise specified herein. In foster care
62 cases, the final disposition date is the date of transfer of custody to a local board of social services or a
63 child welfare agency.

64 § 16.1-77. Civil jurisdiction of general district courts.

65 Except as provided in Article 5 (§ 16.1-122.1 et seq.) of this chapter, each general district court shall
66 have, within the limits of the territory it serves, civil jurisdiction as follows:

67 (1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or
68 other money, or to damages for breach of contract or for injury done to property, real or personal, or for
69 any injury to the person that would be recoverable by action at law or suit in equity, when the amount
70 of such claim does not exceed \$4,500 exclusive of interest and any attorney's fees contracted for in the
71 instrument, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any
72 such claim when the amount thereof exceeds \$4,500 but does not exceed \$15,000, exclusive of interest
73 and any attorney's fees contracted for in the instrument. However, this \$15,000 limit shall not apply with
74 respect to distress warrants under the provisions of § 55-230, cases involving liquidated damages for
75 violations of vehicle weight limits pursuant to § 46.2-1135, nor cases involving forfeiture of a bond
76 pursuant to § 19.2-143.

77 (2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not
78 exceed \$15,000 exclusive of interest and any attorney's fees contracted for in the instrument.

79 (3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.)
80 of Chapter 3 of Title 8.01, and in Chapter 13 (§ 55-217 et seq.) of Title 55, and the maximum
81 jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim or
82 cross-claim in an action for damages sustained or rent proved to be owing where the premises were used
83 by the occupant primarily for business, commercial or agricultural purposes. Any counter-claim or
84 cross-claim shall arise out of the same use of the property for business, commercial or agricultural
85 purposes.

86 (4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil
87 action or proceeding conferred upon any general district court judge or magistrate under or by virtue of
88 any provisions of the Code of Virginia.

89 (5) Jurisdiction to try and decide suits in interpleader involving personal property where the amount
90 of money or value of the property is not more than the maximum jurisdictional limits of the general
91 district court. The action shall be brought in accordance with the procedures for interpleader as set forth
92 in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions
93 in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading
94 shall be either by ~~motion for judgment~~ *complaint* or by warrant in debt. The initial pleading shall briefly
95 set forth the circumstances of the claim and shall name as defendant all parties in interest who are not
96 parties plaintiff.

97 (6) Jurisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of
98 Information Act (§ 2.2-3700 et seq.), for writs of mandamus or for injunctions.

99 (7) Concurrent jurisdiction with the circuit courts having jurisdiction in such territory to adjudicate
100 habitual offenders pursuant to the provisions of Article 9 (§ 46.2-355.1 et seq.) of Chapter 3 of Title
101 46.2.

102 (8) Jurisdiction to try and decide cases alleging a civil violation described in § 18.2-76.

103 § 16.1-81. Actions brought by complaint.

104 A civil action in a general district court may be brought by ~~motion for judgment~~ *filing a complaint*.
105 Such ~~motion~~ *pleading* shall be in writing, signed by the plaintiff or his attorney, and shall contain a
106 caption setting forth the name of the court and the title of the action, which shall include the names of
107 all parties and the address of each defendant. It shall state the facts on which the plaintiff relies, and
108 shall be sufficient if it clearly informs the defendant or defendants of the true nature of the claim
109 asserted. The ~~motion~~ *complaint* shall notify the defendant or defendants of the day on which such
110 ~~motion~~ *complaint* shall be ~~made~~ *first appear on the court's docket*, which day shall not be more than sixty
111 60 days from the date of service of the ~~motion~~ *complaint*.

112 § 16.1-82. Service of complaint; return thereon and delivery to the court; how disposed of.

113 The plaintiff shall file with the clerk of the court an original ~~motion for judgment~~ *complaint* and as
114 many copies as there are defendants upon whom it is to be served, with the proper fees. The original
115 ~~motion~~ *complaint* and copies thereof shall then be delivered to the sheriff or other person for service.
116 Service of such ~~motion~~ *pleading* shall be as provided in Chapter 8 (§ 8.01-285 et seq.) of Title 8.01, but
117 the ~~motion~~ *pleading* must be served not less than five days before the return day. Returns shall be made
118 on the original ~~motion for judgment~~ *complaint* and shall show when, where, how and upon whom service
119 was made. The ~~motion or motions~~ *complaint or complaints* with the returns thereon shall be returned by
120 the sheriff or other persons making service to the court within three days of the date service is made.

The ~~motion for judgment~~ *complaint* shall be heard and disposed of by the court in the same manner as if it were a civil warrant. Except as otherwise provided herein, procedure upon such ~~motion for judgment~~ *complaint* shall conform as nearly as practicable to the procedure in ~~motions for judgment~~ *complaints* prescribed by Rules of Court for civil actions in courts of record.

§ 16.1-83. Consent of parties required for trial within five days of service.

No trial of a warrant or ~~motion for judgment~~ *complaint* under this title may be had within five days after service thereof except with the consent of the parties. Proceedings to enforce the rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) shall be conducted within the time limitations specified in § 2.2-3713.

§ 16.1-85. What term "warrant" to include.

Whenever the word "warrant" is used in any section of the Code or act of assembly relating to civil proceedings, it shall, unless the context or use indicates a different meaning, be construed to mean "warrant or ~~motion for judgment~~ *complaint*."

§ 16.1-86. When action deemed brought.

A civil action on a warrant in a district court shall be deemed brought when the memorandum required by § 8.01-290 is filed with the clerk, magistrate, or other officer authorized to issue warrants and the required fee is paid. The officer issuing the warrant shall note on the memorandum the date and time it is received by him with the required fee.

A civil action on a ~~motion for judgment~~ *complaint* as authorized in § 16.1-81 shall be deemed brought on the day on which the ~~motion~~ *complaint* is filed with the court.

Whenever any other pleading in any civil action is filed in a district court, the clerk or his designee shall stamp or mark the date received and time of filing on the face of such pleading.

§ 16.1-88. Procedure when plaintiff sues on sworn claim.

If a civil action in a general district court is upon a contract, express or implied, for the payment of money, or unlawful detainer pursuant to § 55-225 or § 55-248.31 for the payment of money or possession of the premises, or both, or is brought by the Commonwealth or any political subdivision or agency thereof for the collection of taxes or to enforce any other obligation for the payment of money, an affidavit and a copy of the account if there be one and, in actions pursuant to § 55-225 or § 55-248.31, proof of required notice may be made and served on the defendant in accordance with § 8.01-296 with the warrant or ~~motion for judgment~~ *complaint* as provided in § 8.01-28 for actions at law, whereupon the provisions of § 8.01-28 shall be applicable to the further proceedings therein. The affidavit and the account if there is one and proof of appropriate notice may be attached to the warrant or ~~motion~~ *complaint*, in which event the combined papers shall be served as a single paper.

§ 16.1-88.01. Counterclaims.

In any proceeding before any general district court a defendant may, at his option, at any time before trial, plead in writing as a counterclaim, any cause of action at law for a money judgment in personam, or any matter which would entitle him to relief in equity in the nature of damages, that he has against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the warrant or ~~notice of motion for judgment~~ *complaint*, whether or not it is for liquidated damages, whether or not it is in tort or contract, and whether or not the amount demanded exceeds the amount claimed by the plaintiff in the warrant or ~~notice of motion for judgment~~ *complaint*; however, no such counterclaim shall be filed or heard when the amount claimed therein exceeds the amount within the jurisdiction of such court.

Upon the request of either party, bills of particulars and grounds of defense may be ordered to ensure a fair trial on the merits of the issue presented. The court may, in its discretion, hear the counterclaim together with the original case, or may order and hold a separate hearing of any cause of action asserted in a counterclaim. In either event, the court shall render such final judgment on the whole case as the law and the evidence require.

§ 16.1-88.02. Cross-claims.

Subject to the jurisdictional limitations prescribed by law, in any proceeding before a general district court a defendant may, at his option, at any time before trial, plead in writing as a cross-claim any cause of action that he has against one or more defendants growing out of any matter pleaded in the plaintiff's warrant or ~~notice of motion for judgment~~ *complaint*. The court may order and hold a separate hearing upon any cause of action asserted in a cross-claim.

§ 16.1-88.03. Pleadings and other papers by certain parties not represented by attorneys.

A. Any corporation, partnership, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership or business trust, when the amount claimed in any civil action pursuant to subdivision (1) or (3) of § 16.1-77 does not exceed the jurisdictional amounts authorized in such subsections, exclusive of interest, may prepare, execute, file, and have served on other parties in any proceeding in a general district court a warrant in debt, ~~motion for judgment~~ *complaint*, warrant in

182 detinue, distress warrant, summons for unlawful detainer, counterclaim, crossclaim, suggestion for
183 summons in garnishment, garnishment summons, writ of possession, writ of fieri facias, interpleader and
184 civil appeal notice without the intervention of an attorney. Such papers may be signed by a corporate
185 officer, a manager of a limited liability company, a general partner of any form of partnership or a
186 trustee of any business trust, or such corporate officer, with the approval of the board of directors, or
187 manager, general partner or trustee may authorize in writing an employee, a person licensed under the
188 provisions of § 54.1-2106.1, a property manager, or a managing agent of a landlord as defined in
189 § 55-248.4 to sign such papers as the agent of the business entity. However, this section shall not apply
190 to an action under subdivision (1) or (3) of § 16.1-77 which was assigned to a corporation, partnership,
191 limited liability company, limited partnership, professional corporation, professional limited liability
192 company, registered limited liability partnership, registered limited liability limited partnership or
193 business trust, or individual solely for the purpose of enforcing an obligation owed or right inuring to
194 another.

195 B. Nothing in this section shall allow a nonlawyer to file a bill of particulars or grounds of defense
196 or to argue motions, issue a subpoena, rule to show cause, or capias; file or interrogate at debtor
197 interrogatories; or to file, issue or argue any other paper, pleading or proceeding not set forth in
198 subsection A.

199 C. The provisions of § 8.01-271.1 shall apply to any pleading, motion or other paper filed or made
200 pursuant to this section.

201 D. Parties not represented by counsel, and who have made an appearance in the case, shall promptly
202 notify in writing the clerk of court wherein the litigation is pending, and any adverse party, of any
203 change in the party's address necessary for accurate mailing or service of any pleadings or notices. In
204 the absence of such notification, a mailing to or service upon a party at the most recent address
205 contained in the court file of the case shall be deemed effective service or other notice.

206 § 16.1-94. Judgment to be noted on papers; formal orders may be entered.

207 Whenever a judgment is rendered in a court not of record the judgment shall be entered on the
208 warrant, ~~motion for judgment~~ complaint, counterclaim, cross-claim or other pleading and signed by the
209 judge, or the signature of the judge may be affixed by a facsimile stamp, in which event the judge shall
210 initial a notation of the judgment made on the warrant or other paper. If the action is on a note, bond or
211 other written obligation, the date and amount of the judgment rendered shall be noted thereon, to which
212 notation the judge or clerk shall affix his name or his initials. Nothing in this section shall be construed
213 to prevent the judge from entering a formal order in any case in which he deems such order to be
214 appropriate, including but not limited to settlement and installment orders endorsed by counsel, or to
215 affect the validity of any formal order so entered. If such action is on a lease for the recovery of rent or
216 possession of property this section shall not operate to require marking of such lease unless the judge
217 deems such marking necessary.

218 § 16.1-101. Proceedings against officer failing to make or making improper return.

219 If an officer fail to make due return of any execution issued from a court not of record, he may, on
220 motion of the plaintiff and after ten days' notice, be fined from time to time by the judge of such court
221 in an amount not less than five nor more than twenty dollars for each offense. And if an officer make
222 such return upon an execution issued from a court not of record as would, on a motion against the
223 officer, authorize judgment to be entered against him for all or any part of the amount of such execution
224 if the execution had issued from a court of record, the creditor on whose behalf such execution issued,
225 or his personal representative, may, on a motion before the judge of such court after like notice obtain
226 such judgment against the officer, his sureties and others as could be given by a court of record if the
227 execution had issued therefrom. Section 16.1-106 with respect to appeals in civil actions shall apply to
228 such judgment. Notwithstanding the provisions of this section any such officer may be proceeded against
229 as provided in Chapter 16 (§ 15.2-1600 et seq.) of Title 15.2, or a ~~motion for judgment~~ complaint may
230 be brought as authorized in § 8.01-227.