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HOUSE BILL NO. 1378

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend and reenact § 8.01-271.1 of the Code of Virginia, relating to signature defects on pleadings, motions, and other papers.

Patron—Leftwich

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-271.1 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-271.1. Signing of pleadings, motions, and other papers; oral motions; sanctions.

A. Except as otherwise provided in §§ 16.1-260 and 63.2-1901, every pleading, ~~written~~ motion, and or other paper of a party represented by an attorney shall be signed by at least one attorney of record who is an active member in good standing of the Virginia State Bar in his individual name, and the attorney's address shall be stated on the first pleading filed by that attorney in the action. A party who is not represented by an attorney, including a person confined in a state or local correctional facility proceeding pro se, shall sign his pleading, motion, or other paper and state his address. *The signature of a person other than counsel of record who is an active member in good standing of the Virginia State Bar or a pro se litigant is not a valid signature.* A minor who is not represented by an attorney shall sign his pleading, motion, or other paper by his next friend. Either or both parents of such minor may sign on behalf of such minor as his next friend. However, a parent may not sign on behalf of a minor if such signature is otherwise prohibited by subdivision 6 of § 64.2-716. *If a pleading, motion, or other paper is not signed in compliance with this paragraph, it is defective. Such a defect renders the pleading, motion, or other paper voidable.*

B. The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ~~If a pleading, written motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.~~

C. An oral motion made by an attorney or party in any court of the Commonwealth constitutes a representation by him that (i) to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

D. If a pleading, motion, or other paper is signed or made in violation of this ~~rule~~ section, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable ~~attorney's fee~~ attorney fees.

E. *Failure to raise the issue of a signature defect in a pleading, motion, or other paper before the trial court's jurisdiction expires pursuant to Rule 1:1 (a) and Rule 1:1B waives any challenge to that pleading, motion, or other paper based on such a defect.*

F. *Signature defects in appellate filings, including the notice of appeal, shall be raised in the appellate court where the appeal is taken. Failure to timely raise the issue of a defective signature in an appellate pleading, motion, or other paper while the case is pending before the appellate court waives any challenge to that pleading, motion, or other paper based on such a defect.*

G. *If a signature defect is not timely and properly cured after it is brought to the attention of the pleader or movant, the pleading, motion, or other paper is invalid and shall be stricken. A signature defect shall be cured within 21 days after it is brought to the attention of the pleader or movant. If a signature defect is timely and properly cured, the pleading, motion, or other paper shall be valid and relate back to the date it was originally served or filed.*

INTRODUCED

HB1378