

BARNES & DIEHL, P.C.
ATTORNEYS & COUNSELORS AT LAW

August 23, 2010

To: Roger W. Mullins, Esquire, Chair

From: Lawrence D. Diehl, Esq., Chairman
The Hon. Marilyn C. Goss
Reeves Mahoney, Esq.
Phillip Coulter, Esq.
Wallace B. Wason, Jr., Esq.
Susan H. Hicks, Esq.
Howard Woodson, Esq.

Re: Boyd-Graves Study Committee on the issue of the filing of Counterclaims in Family Law divorce and related matters.

Dear Roger:

The above committee was formed to examine the problem of the costs of filing of Counterclaims in divorce and related equity matters since the merger of law and equity in 2006. Prior to said merger, the process and identity of the pleadings was uniform and straight forward. The initial pleading would be a Complaint and where a contested responsive pleading was filed, it was usually identified as a Cross-Bill. No filing fees were assessed by the circuit court clerk's for the filing of such a pleading. This practice had been routine for decades without any fee issue problems that have now arisen due the merger of law and equity.

The current problem basically arises as result of the merger of law and equity and the resulting fee implications of the filing of the appropriate responsive pleading to what is now filed as a "Complaint" rather than the former designation as a "Bill of Complaint." The only responsive pleading permitted by Rule 3:9 is a Counterclaim and effective July 1, 2010, this fee has increased to an assessment of approximately \$119.00 for the filing of said pleading.

To avoid the cost of the filing of such a pleading, and the uncertainty of what pleading actually needs to be filed, there has been great inconsistency in the name or nature of responsive pleadings filed to the current initial "Complaint" and the assessment of fees by the circuit court clerk's offices. The problem is further summarized very succinctly in a recent article in the

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"We are the Largest Law Firm in Virginia Devoted to Family Law."

Family Law Newsletter by Kimberly Phillips of Norfolk. A copy of this article is attached for a further review of the problems and inconsistencies now being faced by family law practitioners.

There appears a wide variety of the name being used for responsive pleadings (everything from a Cross-Complaint, to Cross-Bill and others) as well as inconsistencies as to whether a fee should be assessed for these responsive pleadings pursuant to Va. Code Ann. §17.1-275 (26). A copy of Rule 3:9 and this statute are further attached for reference.

This committee was formed to address these inconsistencies and to recommend a solution to fix the problem. It was the consensus of the committee, through e-mail communications, that the solution should be based on providing a specific exception to the assessment of fees for the filing of a Counterclaim as set forth in Va. Code Ann. §17.1-275 (26). A copy of the proposed amendment to resolve the issue and the recommendation of the committee to the Conference is attached to this report.

The recommendations are based on the following. It was the consensus of the committee that Rule 3:9 is clear that the proper pleading to file to a Complaint is a "Counterclaim". The use of pleadings such as "Cross-Complaints" or the now outdated "Cross-Bill" as a means to attempt to avoid the filing fee implications are clearly not supported by the Rules- these types of pleadings are limited to actions against cross-defendants or other third parties which generally do not apply to matters under Title 20 applicable to divorce proceedings. It was the decision of the committee not to attempt to create a new responsive pleading just for divorce cases which would require a Rule change where the long standing use of a Counterclaim filed in response to a Complaint has been a standard part of civil pleadings and has not been a problem in the past generally.

The committee also recognized that any response requiring a Rule change is a tedious process and if the solution to the problem could be achieved by legislation, that would be the preferable method for a solution. If a solution to the fee problem could be done and then an effort to educate the family law bar that the appropriate responsive pleading would be the Counterclaim as set forth in Rule 3:9, that would be a much more practical approach.

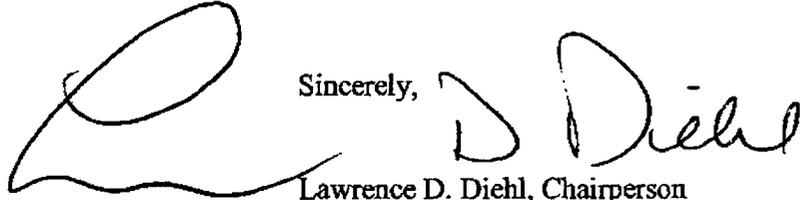
The committee would also note that by requesting a legislative change that would reduce the filing fee requirements for certain actions by eliminating them in divorce cases for responsive pleadings to the Complaint, that this should have no adverse policy or controversial fiscal impact. This is because prior to 2006 no such fee was ever required or expected in the overall fiscal analysis of fee receipts for the Commonwealth. The policy of past decades of not getting fees for such responsive pleadings would be continued if the recommended legislation is passed, rather than a reduction of a prior fee receipt pattern for the Commonwealth. Accordingly, there should be no policy argument against this proposal based upon any fiscal impact.

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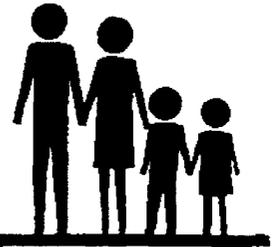
COMMITTEE RECOMMENDATION: Accordingly, the committee unanimously has recommended that the fix to the problem be achieved by amending Va. Code Ann. §17.1-275 (26) by providing for a further exception to the filing fee requirement for a Counterclaim where the responsive claim is in a divorce, annulment or separate maintenance action filed pursuant to Title 20 of the Code. To achieve that, the committee specifically recommends that the language shown on the proposed statutory change and attached to this report be adopted as a recommendation to be submitted to the General Assembly for the 2011 legislative session.

Sincerely, 
Lawrence D. Diehl, Chairperson

/LDD
Attachments

cc: Committee Members

Family Law News



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Editor: Richard E. Crouch
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I have been practicing over 15 years and I always called the responsive claim for divorce a cross-complaint or cross-bill.

But, really, there is no basis in the law for that any more. Yet I see pleading after pleading labeled "cross-claim." Yes, I am talking to you.

Effective January 1, 2006 Equity Practice and Procedure, which was Part Two (Rules 2:1-2:21) of the Rules of the Supreme Court of Virginia, was repealed. Divorce cases are now "civil actions," which are governed under Part Three (Rules 3:1-3:25) of the Rules of the Supreme Court.

Under Rule 3:9, if you are a defendant in a divorce, you only have one option: file a counterclaim. Cross-claims are governed by Rule 3:10 and these claims are reserved specifically for claims a defendant has against *other defendants* growing out of any matter pled in the complaint. A cross-claim, then, has a specific use and meaning. To continue to use cross-claim to designate a counterclaim is not just a matter of taste, it really is an error. It's misleading.

The comment to Rule 3:9 is very clear. It reads as follows: "As a consequence of the creation of the "single cause of action" via statute and rule, in a suit for divorce or for annulling a marriage, a defendant's claim for affirmative relief against the plaintiff, formerly known as a "cross-bill" or a "cross-complaint" should be understood as a counterclaim.

So next time, before you throw a right cross, stop and use the right term.

Filing Fees for Divorce Counterclaims? Not a Horse of a Different Color



By Kimberly Hughes Phillips, Norfolk

In Virginia divorce matters, the 2006 creation of a civil "single cause of action" changed the pleading's nomenclature from "Bill of Complaint" and "Cross-Bill" to "Complaint" and "Counterclaim". This nomenclature change caused what I believe is an unintended consequence for divorce actions and the "new" filing fees.

Prior to 2006, the statute did not require a filing fee for a Cross-Bill. But, after the merger of law and equity, the statute seems to provide for a filing fee requirement for the responsive pleading of counterclaim in a divorce action. All of this without a substantive change in the law; rather this is the courts' response to a mere name change. In other words, the divorce counterclaim is not a "horse of a different color" from the former Cross-Bill; it is the same responsive, affirmative pleading. In the movie, *The Wizard of Oz*, the same horse looked different depending on who was looking at it and how they were looking at the horse.

Query: Why did we go from no filing fee to a filing fee simply by calling the same pleading by a different name?

Historically, divorce actions were filed on the chancery or equity side of the Circuit Court. The equity side of the court required that an initial cause of action for divorce commenced with the filing of a pleading entitled "Bill of Complaint." The defendant responded in the form of an "Answer," and, if the defendant also had a cause of action for divorce in which the defendant could set out a claim for affirmative relief against the plaintiff, the defendant would file a "Cross-Bill of Complaint." Along with the filing of the Bill of Complaint, the plaintiff was required to pay a filing fee. The defendant, however, was not assessed a fee for the filing of the "Cross-Bill." The statute simply did not provide for such a fee.

After reviewing input from the Boyd-Graves Commission, Virginia eliminated the distinction between the law and equity practices in our court system and created the civil "single cause of action." In so doing, some of the procedural nomenclature merged or changed. The elimination of the distinction between the law and chancery side of the Virginia Courts did not change the substantive posture of filing and responding to a divorce action. Nevertheless, when a clerk's office received a pleading titled, "Counterclaim" it would attempt to pigeon hole such a pleading into the traditional civil law side of filings and thus charge a fee; or the clerk (understanding that there is a distinction between the counterclaim at law and a counterclaim in a divorce) assessed no fee.

During the summer of 2009, research was conducted at my direction to determine how each Clerk's office in the Commonwealth of Virginia handled the issue of a filing fee for a divorce counterclaim. One hundred and nineteen (119) Circuit Court Clerk's offices in the Commonwealth were contacted and asked the following questions: (1) Is there a filing fee for a counterclaim filed in a divorce action? If they responded affirmatively, the following questions were asked (2) How much is the filing fee, and (3) Do you waive the filing fee if the pleading is called a "Cross-Bill," a "Cross Complaint," or some other name? This research produced some very interesting results.

Astonishingly, forty-one Circuit Court Clerk's offices, roughly one third of all of the Circuit Court Clerk's offices in the Commonwealth, charge a filing fee for a counterclaim filed in a divorce action. Of the forty-one Clerk's offices charging a filing fee, seven responded that *if* the pleading was called by an incorrect name, such as a "cross-bill" or a "cross-complaint," there would be no fee. Some of the more interesting responses from the seven clerk's offices that waived the filing fee if the pleading was incorrectly titled are as following: "If you call it a cross-complaint there is no charge;" "There is no such thing as a cross-bill;" "I put it in the computer and it says there is a \$79 charge. There's no charge for a cross-bill. Just call it that;" "If you call it a counterclaim, there will be an \$84 charge. If you call it a cross-complaint, there is no charge. The name changed from a cross-bill to a cross-complaint when the courts merged. The charge is waived if it is called a cross-complaint."

The clerk's offices that do not charge a filing fee for divorce counterclaims also provided interesting insight. Several such offices stated that: "We don't charge you because you are not claiming any money." Exactly! This is not a counterclaim at law which seeks money damages. It is an affirmative pleading in a divorce action just like its earlier counterpart, the cross-bill. This post merger divorce counterclaim is not a "horse of a different color" and

many of the Commonwealth's Clerk's office understand this very concept. What is a divorce practitioner to do when faced with this information? Should he or she title the pleading incorrectly to save their client the fee? Or should he title the pleading correctly and have the client suffer what appears to be one of the unintended consequences of the civil "single cause of action" merger?

Virginia Code Annotated §17.1-275(A)(26) states, "A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees: In all divorce and separate maintenance proceedings, and all civil actions that do not include one or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be \$60... The fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged for the filing of a cross-claim or setoff in any pending suit..." Virginia Supreme Court Rule 3:9(a) states that, "a defendant may, at that defendant's option, plead as a counterclaim any cause of action that the defendant has against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the complaint, whether or not it is for liquidated damages, whether it is in tort or contract, and whether or not the amount demanded in the counterclaim is greater than the amount demanded in the complaint."

Prior to the merger in 2006, Va. Code Ann. §17.1-275(A)(26) did not permit a filing fee for a defendant's claim for affirmative relief against plaintiff. In fact, this statute expressly stated that no fee shall be charged for the filing of a cross-bill in any pending suit in chancery matters.

The notes section of Rule 3:9 indicates that the defendant's claim for affirmative relief against the plaintiff was formerly called a "cross-bill" and after the merger of the law and equity courts, said affirmative relief should now be known as a counterclaim. This current statute allows the fee for filing a counterclaim or a claim impleading a third party defendant. In a divorce action, there is no third party defendant. Actions for alienation of affection have long been abandoned. Further, there is no cross-claim or set off in a divorce action either. This post-merger fee statute is not well reasoned and lends to a great deal of confusion for attorneys and clerks alike.

Many of the Clerk's offices reported that they derived their fee information from the Virginia Supreme Court civil fee schedule or fee calculator on the Court's website located at <http://webdev.courts.state.va.us/cgi-bin/DJIT/ef_djs_ccfees_calc.cgi>. In reviewing this site in light of the divorce counterclaim fee issue, the problem is obvious. The site asks what type of civil suit are you filing, and the only counterclaim choice that is somewhat relevant is the choice for claims of between \$0 and \$50,000. In further examining the website's calculator, there is a separate action for a divorce. But, there are three choices for a complaint seeking money damages that depends on the amount the plaintiff is seeking. In other words, this website recognizes that a divorce action, although titled a complaint, is different from other civil complaint filings. However, it does not recognize that a divorce counterclaim is different from a counterclaim which seeks a monetary award.

Not surprisingly, many of the Clerk's offices do not understand the distinction between a counterclaim filed in a traditional law action which seeks a monetary award and a divorce counterclaim which is essentially requesting equitable relief. Moreover, based upon the post merger statute, the legislature did not understand the distinction either. While it is not

necessary to specifically provide a list of Clerk's offices along with their responses, it does appear to be important to address this issue. In my discussions with other divorce attorneys, not one attorney told me it was reasonable to be charging a filing fee for a divorce counterclaim. In fact, many were amazed that some clerk's offices were assessing a fee. So, the question remains, how did this "horse not of a different color," a cross-bill to a counterclaim, become a pleading which required a filing fee?

In order to have a consistent understanding of this issue by Circuit Court Clerks' Offices, the Virginia State Legislature, and Virginia practitioners, it doesn't seem unreasonable to recommend that the Virginia Supreme Court address this problem by communicating to the Virginia General Assembly guidelines relating to this once well-understood distinction. Frankly, the General Assembly should consider reviewing and amending Va. Code Ann. §17.1-275(A)(26)(2009), which presently requires the filing fee, in order to eliminate confusion, and thus eliminate the filing fee for a divorce counterclaim.

2010 FAMILY LAW LEGISLATIVE UPDATE

By Carl J. Witmeyer, II, Ashland



There were several Bills presented by the House and Senate regarding Family Law issues for the 2010 General Assembly. Some of the Bills presented were as follows:

- HB 14 Domestic Relations cases: witness refusal to answer question on ground that it may self-incriminate.
- HB 40 Disabled parent; subject to prosecution for desertion or nonsupport of another child
- HB 66 Child and spousal support; court to appoint vocational expert to conduct testing and interviews.
- SB 526 Mandatory dispute resolution; parties in cases involving custody, visitation, etc., must attend.
- SB 728 Child support orders; eliminates ability of DSS to order 2.5 percent cash medical support payments

Out of the Bills presented, SB526 was passed by indefinitely in the Courts of Justice Committee. It would have required any parties involved in any custody, visitation or child support case, pending before any court, to be referred to and attend a dispute resolution orientation session.

Bill HB 14 was also passed by indefinitely in Courts of Justice. It provided that in actions filed on or after July 1, 2020, for spousal support cases, child custody cases or

er's demurrer against a patron's personal injury complaint was overruled, as the facts alleged therein were sufficient to create a duty owed to the patron, a business invitee, by the manager, as the property owner's agent, to

maintain the premises in a reasonably safe condition. *Milburn v. J.C. Penney Props.*, — Va. Cir. —, 2007 Va. Cir. LEXIS 42 (Fairfax County Mar. 30, 2007).

Rule 3:9. Counterclaims.

(a) *Scope.* — A defendant may, at that defendant's option, plead as a counterclaim any cause of action that the defendant has against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the complaint, whether or not it is for liquidated damages, whether it is in tort or contract, and whether or not the amount demanded in the counterclaim is greater than the amount demanded in the complaint.

(b) *Time for initiation.* — (i) A counterclaim shall, subject to the provisions of Rule 1:9, be filed within 21 days after service of the summons and complaint upon the defendant asserting the counterclaim, or if service of the summons has been timely waived on request under Code §8.01-286.1, within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth.

(ii) If a demurrer, plea, motion to dismiss, or motion for a bill of particulars is filed within the period provided in subsection (b)(i) of this Rule, the defendant may file any counterclaim at any time up to 21 days after the entry of the court's order ruling upon all such motions, demurrers and other pleas, or within such shorter or longer time as the court may prescribe.

(c) *Response to counterclaim.* — The plaintiff shall file pleadings in response to such counterclaim within 21 days after it is served.

(d) *Separate trials.* — The court in its discretion may order a separate trial of any cause of action asserted in a counterclaim.

Comment. — As a consequence of the creation of the "single cause of action" via statute and rule, in a suit for divorce or for annulling a marriage, a defendant's claim for affirmative

relief against the plaintiff, formerly known as a "cross-bill" or a "cross-complaint," should be understood as a counterclaim.

The amendment, effective May 1, 2006, adopted February 28, 2006, added ", or if service of the summons has been timely waived on request under Code § 8.01-286.1, within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth" at the end of subdivision (b).

The amendment effective July 1, 2008, adopted April 9, 2008, designated the existing provisions of subdivision (b) as sub-subdivision

(i) and inserted sub-subdivision (ii).

Michie's Jurisprudence. — For related discussion, see 1A M.J. Accounts and Accounting, § 10; 1B M.J. Appeal and Error, § 297; 3C M.J. Commercial Law, § 33; 6A M.J. Divorce and Alimony, § 38; 7A M.J. Equity, §§ 77, 97, 103, 110, 114 - 117; 13A M.J. Motions for Judgment, § 22; 14B M.J. Process, § 5; 16 M.J. Removal of Causes, § 2; 16 M.J. Setoff, Recoupment and Counterclaim, §§ 1-4, 6, 8, 11, 17, 19, 21, 26, 45; 19 M.J. Trial, § 5

for such process, shall be deposited in the treasury of the city wherein such office is situated for use in the general operation of city government. (1998, c. 872; 2007, c. 813.)

Editor's note. — Acts 2007, c. 813, cl. 2, provides: "That the provisions of this act shall not affect the powers of any locality with respect to any ordinance, resolution or bylaw validly adopted and not repealed or rescinded prior to July 1, 2007."

The 2007 amendments. — The 2007 amendment by c. 813, in the first sentence, substituted "the City of Norfolk" for "any city

having a population in excess of 265,000 as reported in the U.S. Census of 1980 and having an office of the high constable" and "the office of the high constable" for "such office"; and substituted "the City of Norfolk" for "cities having a population in excess of 265,000 as reported in the U.S. Census of 1980" in the second sentence.

§ 17.1-275. Fees collected by clerks of circuit courts; generally. —

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, \$16 for an instrument or document consisting of 10 or fewer pages or sheets; \$30 for an instrument or document consisting of 11 to 30 pages or sheets; and \$50 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of \$15 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. One dollar and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, \$20 for estates not exceeding \$50,000, \$25 for estates not exceeding \$100,000 and \$30 for estates exceeding \$100,000. No fee shall be charged for estates of \$5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, \$10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, \$10.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, \$3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be \$15 in cases not exceeding \$500 and \$25 in all other cases.

8. For making out a copy of any paper, record, or electronic record to go out of the office, which is not otherwise specifically provided for herein, a fee of \$0.50 for each page or, if an electronic record, each image. From such fees, the clerk shall reimburse the locality the costs of making out the copies and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing body shall budget and appropriate such

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funds to be used to support the cost of copies pursuant to this subdivision. For purposes of this section, the costs of making out the copies shall include lease and maintenance agreements for the equipment used to make out the copies, but shall not include salaries or related benefits. The costs of copies shall otherwise be determined in accordance with § 2.2-3704. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge \$2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional \$0.50.

10. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund.

11. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251, which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund as provided in § 17.1-275.8.

12. Upon the defendant's being required to successfully complete traffic school or a driver improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as if he had been convicted.

13. In all civil actions that include one or more claims for the award of monetary damages the clerk's fee chargeable to the plaintiff shall be \$60 in cases seeking recovery not exceeding \$50,000, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132; \$110 in cases seeking recovery not exceeding \$100,000, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132; and \$160 in cases seeking recovery exceeding \$100,000, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132. A fee of \$25 shall be paid by the plaintiff at the time of instituting a condemnation case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

13a. For the filing of any petition seeking court approval of a settlement where no action has yet been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the time of filing the petition.

14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering judgment, \$12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as prescribed in subdivision A 17.

15. For qualifying notaries public, including the making out of the bond and any copies thereof, administering the necessary oaths, and entering the order, \$10.

16. For each habeas corpus proceeding, the clerk shall receive \$10 for all services required thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

17. For docketing and indexing a judgment from any other court of this Commonwealth, for docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment pursuant to § 8.01-452, a fee of \$5; and for issuing an abstract of any recorded judgment, when proper to do so, a fee of \$5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee of \$20.

18. For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the entry of a decree of divorce from the bond of matrimony.

19., 20. [Repealed.]

21. For making the endorsements on a forthcoming bond and recording the matters relating to such bond pursuant to the provisions of § 8.01-529, \$1.

22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, \$10.

23. For preparation and issuance of a subpoena duces tecum, \$5.

24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name, \$20; however, this subdivision shall not be applicable in cases where the change of name is incident to a divorce.

25. For providing court records or documents on microfilm, per frame, \$0.50.

26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be \$60, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132 to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged for the filing of a cross-claim or setoff in any pending suit. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit cards in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect from the person presenting such credit card a reasonable convenience fee not to exceed four percent of the amount paid.

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit card issuer that payment will not be made for any reason, the clerk shall collect, if allowed by the court, a fee of \$20 or 10 percent of the amount to be paid, whichever is greater, in accordance with § 19.2-353.3.

29. For all services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, or 17.1-275.4, in an adoption proceeding, a fee of \$20, in addition to the fee imposed under § 63.2-1246, to be paid by the petitioner or petitioners. For each petition for adoption filed pursuant to § 63.2-1201, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, an additional \$50 filing fee as required under § 63.2-1201 shall be deposited in the Putative Father Registry Fund pursuant to § 63.2-1249.

30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ 33.1-124, 33.1-125 and 33.1-129, a fee of \$5 to be paid by the petitioner; and for the recordation of a

(1) or (2) the filing of a counterclaim or any responsive pleading in ^{any} divorce, ^{Annulment of} separate maintenance proceeding.

PROPOSED AMENDMENT TO VA. CODE ANN. §17.1-275(26)
RELATING TO COUNTERCLAIMS IN DIVORCE ACTIONS

Section 17.1-275(26) is hereby amended as follows:

(26) In all divorce and separate maintenance proceedings, and all civil actions that do not include one or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be \$60, \$10 of which shall be apportioned to the Courts Technology Fund established under §17.1-132 to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged for *(1) the filing of a cross-claim or setoff in any pending suit, or (2) the filing of a counterclaim or any other responsive pleading in any divorce, annulment or separate maintenance proceeding.* In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.