

NEWSLETTER

WWW.THEFIRMFORMEN.COM | SUMMER 2018

Trust the Journey: The Power of Cultivating Patience

No matter where you are in life's journey, there are great moments of truth and wisdom to inspire you. In my last message, I talked about inaction and how doing nothing, very simply, results in nothing. The purpose, of course, was to inspire you to take action and I hope more than anything that I did. But there are two sides of the coin.

While I want to encourage you to stir the waters, make waves, and effect change, I also have to caution you to cultivate patience. Patience isn't a full stop or a surrender. *It does not mean simply waiting.* Patience is a byproduct of experience. When you truly focus on patience, you learn to better control your emotions when faced with adversity. Instead of becoming frustrated or angry with delays or obstacles—instead of letting situations dictate your reactions—you push forward with a clear mind. You'll be content with your hard work knowing that it won't always produce immediate results. You'll begin to trust the journey. Then, patience will become action.

Jason Swango is the Founder & CEO of The Firm For Men, the only family law firm in Virginia representing men exclusively. A fierce advocate of men's and fathers' rights, Jason has been protecting the men of Hampton Roads for over a decade.



The Firm For Men Team Represents at the Tournament
Left to right: Chad Simpson, Ben Hamlet, Jason Swango, Ryan Thum

The Firm For Men Teams Up for the Kyle Milliken 2nd Annual Memorial Golf Tournament

The Firm For Men is proud to have sponsored the Kyle Milliken 2nd Annual Memorial Golf Tournament, held at the beautiful Aeropines Golf Club. Proceeds from the tournament went to the family of Kyle Milliken, a Navy SEAL killed in Somalia in May of 2017. In addition and at the request of Kyle's family, a donation was made to the Navy SEAL Foundation in Kyle's name.

Our own foursome competed in the tournament—attorneys Jason Swango, Ben Hamlet, Ryan Thum, and Chad Simpson. Of course, they all promised to withhold legal disputes over putts, gimmes, and mulligans throughout the tournament.

WHAT OUR CLIENTS ARE SAYING

"Mr. Swango is amazing. He isn't a sugar coating attorney, he told me how it is. I walked into my appointment with a huge load on my shoulders, and he lifted that load and made me feel like a good man. If I could give a 6 star I would. Thank you Jason Swango for everything. Highly recommend to any man having a tough time."

Starting July 1st, Virginia's Custody Law Changes

Will the Revision Be a Win—or a Won't—for Shared Parenting?

The only thing permanent in life is change. If, bracing yourself for a divorce, you educated yourself on family law just a few years ago, you may be surprised at how the legal landscape has changed since then. Just this past May, Governor Ralph Northam signed into law a revision to existing Virginia Code § 20-124.2, affecting child custody. The new law is meant to put shared custody on a par with sole custody.

Custody Legislation Old vs. New

We start by taking a look at the revised wording of § 20-124.2, Court-ordered custody and visitation arrangements:

In determining custody, the court shall give primary consideration to the best interests of the child. The court shall consider and may award joint legal, joint physical, or sole custody, and there shall be no presumption in favor of any form of custody. The court shall assure minor children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either.

With the new law's added text emphasized above, you can see that Virginia courts now have a mandate to consider joint custody. That single sentence was designed to elevate joint legal and joint physical custody to parity with sole custody, starting July 1, 2018.

Expert Opinions on the Custody Law Revision

This change is meant to compel Virginia's Circuit Court judges to recognize the long-established value of joint custody. Only time can tell what effects this change may have on families and on fathers, or if it will be truly considered as put forth in the above text. One thing is for sure though: after divorce, children raised by both parents do better socially, intellectually, and emotionally than those children who are raised by a single parent.

Christian Paasch, chairman of the National Parents Organization in Virginia, has campaigned for several years to achieve this legislative victory. Paasch points out in the Richmond Times-Dispatch that "children in sole custody arrangements are at increased risk of such issues as teen suicide, becoming school dropouts, drug use, and behavioral disorders."

With joint custody, both parents remain very connected to their children, sharing responsibility as equally as practicable. If sharing legal custody, you both are involved in decisions regarding your children's educational, religious and medical concerns. Paasch is a strong advocate for, but hardly a lone voice on, the value of shared parenting. Consider the 2014 paper published in the Journal of the American Psychological Association, "Social Science and Parenting Plans for Young Children: A Consensus Report," which concluded, "... shared parenting should be the norm for parenting plans for children of all ages, including very young children."

Or consider the research titled "Should Infants and Toddlers Have Frequent Overnight Parenting Time With Fathers? The Policy Debate and New Data", published in 2016 by the American Psychological Association. The research offers "... strong support for policies to encourage frequent overnight parenting time for infants and toddlers, because the benefits associated with overnights also held for parents who initially agreed about overnights as well as for those who disagreed and had the overnight parenting plan imposed over 1 parent's objections."



The research on this topic almost universally points to happier, healthier children when both parents, after divorce, continue to provide comfort, nurturing and financial support. Joint custody offers all these scaffolds and will, starting July 1, be the norm in Virginia Circuit Courts.



BIG SPOUSAL SUPPORT CHANGES ON THE HORIZON

Divorce matters including spousal support will soon see crucial changes. If you're just beginning the divorce process, you will undoubtedly be affected; if you're approaching the finish line, you just might get there in the nick of time. Let's explore what these changes could mean to you.

Modification of Spousal Support & Retirement of Payor

A new law effective July 1, 2018 impacts spousal support modifications. Senate Bill 614 amended Virginia Code §20-109 and changes the current law significantly. Under the new law, retirement at age 67 is now considered a material change to amend spousal support. Additionally, on a motion for modification based on retirement, the court may consider support factors, and shall consider six new factors. Subsection §20-109.1(F) reads:

1. Whether the retirement was contemplated by the court and specifically considered by the court when the spousal support was awarded
2. Whether the retirement is mandatory or voluntary, and the terms and conditions related to such retirement
3. Whether the retirement would result in a change in the income of the payor or the payee spouse
4. The age and health of the parties
5. The duration and amount of support already paid
6. The assets or property interest of each of the parties during the period from the date of the support order and up to the date of the hearing on modification or termination

SB540 amended Virginia Code §20-107.1(F) to require "any order of support granting or reserving any request for spousal support shall state whether the retirement of either party was contemplated by the court and specifically considered by the court in making its award, and if so, the order shall state the facts the court contemplated and specifically considered as to the retirement of the party."

Alimony No Longer a Tax Deduction

The Tax Cuts and Jobs Act (TCJA), Public Law number 115-97, has amended the Internal Revenue Code of 1986. Locked within the Act's broadly sweeping reforms is a provision bound to hit divorcing Virginia men in the wallets, and not in a good way. Beginning in 2019, the tax deduction for spousal support disappears (*R.I.P. after 75 years*). If your divorce begins January 1, 2019, whichever spouse pays spousal support to the other will no longer be able to deduct it, and the receiving spouse will no longer have to pay taxes on it as income. So, how big of a difference could this amendment really make for you? Let's look at an example:

Suppose you pay \$2,500 a month in spousal support, federally taxed at 33 percent. Current law (deducting the payment) saves you \$9,900 annually. Your ex-wife has a lower income (why you're paying spousal support), so when she receives \$30,000 a year from you, she pays only 15 percent federal tax, or \$4,500. Between the two of you, you saved \$5,400 in federal taxes. That tax benefit is now disappearing. Spousal support in agreements or final decrees entered after December 31, 2018 shall no longer be deductible for the payor, and shall be tax-free for the recipient.

THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

If you're a servicemember, the primary protection you have is the Servicemembers Civil Relief Act, which allows you to get a 90-day stay of proceedings while you serve overseas or on deployment. You can file for divorce, be deployed, and stay the divorce for up to three months while serving our country. In some instances you can also apply for an additional stay.

How The SCRA Works

The SCRA protects you, but if your spouse is not in the military, it offers her no protection from civil proceedings. This means you can use it to defer or delay a civil action, but she cannot. Do not look upon this as some shield of invincibility, however. The SCRA requires you to notify the court before an appearance that you are on deployment or will be deployed on the scheduled court date.

Some legal gaps exist in SCRA that could lead to problems for you. If, for example, you appear in court on a motion to divorce, but do not later notify the court of deployment and fail to appear several months later (for child support, spousal support, visitation or similar post-divorce issues), the court will likely rule against you. The first appearance indicated your ability to comprehend and follow the legal proceedings; your lack of appearance in the related, later matter indicates indifference to the outcome.

Abusing the SCRA

SCRA does not protect your wife, but she can use the aforementioned legal gaps in the SCRA against you. The American Bar Association (ABA) cautions that a wife can comply with existing law by filing a motion after her husband has already made an appearance in court and is then deployed. Even if she knows you are out of the country, your wife or ex-wife can have a notice of a future hearing sent to your last Virginia address. That is perfectly legal. She "notifies" you of a court date for changes to child support, request for wage garnishment, modifications to child custody or visitation, or another matter. When in court, she can answer honestly that she served you notice of the hearing to your last known address. You knew nothing of the hearing, so neither did your attorney, who could have argued in court that you were deployed and unable to answer in person.

From the Virginia judge's perspective, you failed to answer to a motion after being duly served. Your wife complied with the law, and you apparently did not. The judge could rule against you. If you are contemplating divorce while deployed, work closely with a Virginia family law attorney to ensure your rights are fully protected.



MEET THE ATTORNEY:

CHAD SIMPSON

Attorney Chad Simpson is a U.S. Navy veteran, an avid runner (ever heard of Running Elvis?!), and one heck of a devoted family law attorney. After earning a Bachelor of Arts in History and Political Science from the University of Central Arkansas, he proudly served in the United States Navy from 1992 to 2001, where he helped hundreds of sailors as a Legal Yeoman. While serving, he earned his graduate degree in Military Strategy and Policy from Old Dominion University. After fulfilling his military commitments, he attended Regent School of Law and graduated May 2005, finally fulfilling his life-long dream of becoming an attorney.

When he's not working, Attorney Simpson enjoys running (often while wearing a costume), reading, and spending time with his wife and two dogs.



EMPLOYEE OF THE QUARTER RYAN THUM

Tireless, passionate, sharp as a tack— these are just a few words you'll hear when it comes to Attorney Ryan Thum, our Employee of the Quarter!

Ryan immerses himself in every one of his cases, always providing world-class service and zealous representation. Thank you, Ryan, for being such an important part of our team.

CONTACT US

Proudly serving all of Hampton Roads

Phone: (757) 227-5315 • Email: legal@swangolaw.com