

1973 WL 26681 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 29, 1973

**\*1 Re: Haitian Divorce**

Dear Sir:

Your letter of recent date addressed to the Attorney General has been referred to me for reply.

First I must inform you that this office is not permitted to advise private citizens on personal legal matters, our function being limited to matters dealing with the State and its various departments and agencies. Nevertheless, I will endeavor to inform you generally about the divorce your wife obtained in Haiti while you were both 'living' in South Carolina.

South Carolina has no court decision which establishes a precedent governing the recognition of divorce decrees granted by courts in countries other than the United States. Normally these decrees are attacked on the ground that one or both parties were not domiciled in the divorcing country at the time of the divorce, or that the foreign court did not have personal jurisdiction over the defendant spouse.

The full faith and credit clause of the Constitution does not govern the validity of a divorce decree obtained in a foreign country, the validity of the decrees is governed by the rule of comity, which permits recognition of judgments of courts of foreign countries pursuant to international duty and convenience, with due regard for the rights of American citizens. The test of jurisdiction applied are ordinarily those of the United States rather than the divorcing country, and a divorce obtained in a foreign country will normally not be recognized as valid if neither spouse had a domicile in that country, even though domicile is not required for jurisdiction by its laws.

The facts are somewhat limited in your letter. It is not known if your wife obtained the divorce on ex parte application with constructive service on you or was a bilateral decree based on both of you voluntarily submitting to the jurisdiction of the Haitian court. Normally even though the divorce is valid where rendered in order to accord it recognition in the United States at least one of the spouses must be a good-faith domiciliary when the decree is rendered.

There are other general rules governing foreign divorce decrees, however, they may not apply in your case, and I so assume from the facts related.

South Carolina has adopted the Uniform Divorce Recognition Act, Section 20-131, *et seq.*, Code of Laws of South Carolina (1962), however, as previously indicated there have been no South Carolina decisions in this area. Basically the act provided that where both parties are domiciled in South Carolina at the time a divorce action is commenced in another jurisdiction, any divorce decree from that action will be of no force or effect in South Carolina. The act in addition provides that it shall be considered prima facie evidence of domicile if a party was domiciled in South Carolina within twelve (12) months before the commencement of the divorce and resumed residence within eighteen (18) months after leaving the state, or if at all times during his absence the party maintained a place of residence within the state. A copy of the Uniform Divorce Recognition Act is enclosed for your information.

**\*2** I recommend that you consult with a private attorney with a view to bring an action to determine the validity of the Haitian divorce or possibly to secure a 'valid divorce', if grounds exist, to clarify your marital status.

Yours very truly,

Raymond G. Halford  
Assistant Attorney General

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