

VETERANS ADMINISTRATION
31 Hopkins Plaza
BALTIMORE, MARYLAND 21201

Adjudication Officer
(213)
C 24-649 244
FIRST, Michael
Chief Attorney (27)

Divorce-Foreign Dominican Republic Validity of Same-Remarriage 38USC

103 (c)-Maryland Law.

QUESTION

Whether Veteran's marriage to Delores is valid for the purpose of establishing her as his wife for increased benefits under chapter 34 of Title 38 USC.

FACTS

- 1.- The veteran has one marriage only and that was to Delores celebrated in Baltimore, Maryland on January 6, 1973.
- 2.- Delores had one prior marriage to John F. Kinsley which took place on February 19, 1960, in Baltimore, Maryland.
- 3.- Delores and John, while residents of Maryland, entered into a mutual separation agreement on December 18, 1971, and in December 1972, Delores proceeded to the Dominican Republic and appeared personally before the Court of First Instance, Santo Domingo, Dominican Republic and expressly submitted to the jurisdiction of the Court, John, through power of attorney, entered his appearance and submitted to the jurisdiction of the Court. By its decree of December 18, 1972, the Court after reciting the basis of jurisdiction, and reciting the separation agreement and mutual consent of the parties, and further reciting Law No. 142, dissolved the marriage of Delores and John.
- 4.- Delores returned to Baltimore, Maryland and she and the veteran have remained residents of Baltimore, Maryland.

DISCUSSION

- 1.- Op GC-13-61 holds that when a veteran remarries after a divorce, any claim for benefits predicated on the lateral marital status involves the question of validity of such remarriage and that the legal effectiveness of the prior divorce (in this case, his wife's), necessarily has a direct bearing on the validity of the veteran's remarriage and of his matrimonial partner's status as a wife or widow for VA purposes.
- 2.- Such determination must normally be made in accordance with Section 103 (C) of Title 38, i.e.; in

accordance with the Law of the place where the parties (Veteran and Delores) resided at the time of their marriage or at the time benefits accrued and in this instance that place would be Maryland.

3.- Volume 5 of Martindale-Hubbell points out that the previous strict Laws of divorce of the Dominican Republic have been liberated by Law 142, and at Page 3125 thereof, we quote:

"Law 142 of May 18, 1971 amends previous laws on subject and allows foreigners, even if not resident of country, to obtain divorce by mutual consent provided one spouse is physically present before Court and the other one is represented by a special attorney. In this case, the Court after a short period of time, and previous approval of public ministry, must grant divorce.'

4.- The facts as set forth in the translated decree of divorce and as otherwise developed in this case reflect the jurisdiction and authority of the Dominican Republic Court to grant this divorce and there appears little question that the divorce is valid insofar as the laws of the Dominican Republic are concerned.

5.- However, we know of no instance where Court of Appeals of Maryland has passed on the validity of such a divorce obtained in the Dominican Republic, as indeed, it has never ruled on the validity of Mexican or other similar foreign nation bilateral divorce.

6.- We are unable to find any publicized opinions of the General Counsel on Dominican Republic Divorces, and not unsurprisingly, in view of the recentness of the aforesaid Law 142, we are unable to ascertain the existence of any nisi prius decisions of the Maryland Circuit Courts, either on direct attack or under the Uniform Declaratory Judgment Act (Article 31A of the Annotated Code of Maryland).

7.- However, we believe that a nisi prius Court of Maryland would under the Uniform Declaratory Judgment Act, declare the marriage of the veteran and Delores as valid. We point out that there are at least three such decisions so declaring marriages celebrated in Maryland following a prior Mexican divorce of one of the parties as valid, and the facts and circumstances and jurisdiction of the Mexican Court in these particular case are similar to this case. The General Counsel has heretofore approved opinions validating Mexican divorces and remarriages based on such Lower Court decision in Maryland. See Opinion approved by the General Counsel August 19, 1969 (C 20 126 324) (Circuit Court for Somerset County), and opinion approved by the General Counsel, March 23, 1972 (C 26 147 117) (Circuit Court for Baltimore County), and opinion approved by the General Counsel October 31, 1972 (C 24 897 433 RCHT, L. H.) (Circuit Court #2 of Baltimore City).

8.- In further support we cite that Maryland would probably not permit attack as to validity of the divorce by the former spouse, John, on the matter of Jurisdiction of the Dominican Republic since John did enter his appearance through attorney. See the often cited case of Day Vs Day, 1965, 237 Md. 229, 205 A 2d 798, in which the Court of Appeals of Maryland reiterated the long standing rule that if a party actually participated in the. divorce by personal appearance, or through counsel or through filing of an answer, the party cannot thereafter question the validity of the divorce, even though in fact, the other party who procured it never met the domicile requirements of the granting state.

9.- We believe that if the veteran and Delores, as residents of Baltimore City, were to bring an action under the Uniform Declaratory Judgment Act in the circuit Court of Baltimore City, that it would result in a decree holding their marriage valid.