

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 25th day of February, 2022, the following order was made and entered:

**Re: Request for Public Comment on Proposed Amendments to the Rules of Practice and Procedure for Family Courts, Rules of Practice and Procedure for Minor Guardianship Proceedings, Rules of Procedure for Administrative Appeals, and Rules of Appellate Procedure**

The West Virginia Constitution grants to the Court broad authority to administer the judicial branch, and specifically states: "The court shall have power to promulgate rules for all cases and proceedings, civil and criminal, for all of the courts of the state relating to writs, warrants, process, practice and procedure, which shall have the force and effect of law." W. Va. Const. Art. VIII § 3. Under this authority, the Court, on its own motion, proposes revisions to the Rules of Practice and Procedure for Family Courts, Rules of Practice and Procedure for Minor Guardianship Proceedings, Rules of Procedure for Administrative Appeals, and Rules of Appellate Procedure. The proposed amendments implement Senate Bill 275 (2021 Regular Session) and Senate Bill 3030 (2021 3<sup>rd</sup> extraordinary session) that establish the Intermediate Court of Appeals of West Virginia.

The proposed amendments are approved for a forty-five-day period of public comment on the proposed amendments. All comments must be filed in writing with the Clerk of the Court no later than April 11, 2022. The Court specifically requests that interested entities submit a single set of comments on behalf of the entity where feasible. Pursuant to a general order, all proposed court rules are placed for public comment for a minimum of thirty days. At the conclusion of the comment period, the Court will carefully consider the comments received and may, in its discretion, revise the proposed rules in light of the comments, seek additional public comment, or approve the rules for use in such manner as the Court may provide.

The proposed amendments are set forth in this order. Proposed additions are indicated by underlining, and proposed deletions are indicated by strikethrough. The Clerk's Notes are provided to alert the reader to the general nature of the changes.

CLERK'S NOTE: The rules will apply to appeals filed from orders entered in the lower tribunal after June 30, 2022.

## Rules of Practice and Procedure for Family Court

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### Rule 2. Terminology.

Unless otherwise indicated: the Code refers to the Code of West Virginia; any reference to a rule without identification of a set of rules, e.g., Rule 6, refers to a rule of the West Virginia Rules of Practice and Procedure for Family Court; any reference to a set of rules, e.g., the Rules of Civil Procedure, refers to the West Virginia rules of that title; supreme court of appeals refers to the Supreme Court of Appeals of West Virginia; intermediate court of appeals refers to the Intermediate Court of Appeals of West Virginia; court refers to the circuit court or the family court; approved or required refers to a form, fee scale, order, or procedure approved or required by the supreme court of appeals; case information statement refers to a case information statement for domestic relations cases; service, served, or service of process, refers to service of process pursuant to the Rules of Civil Procedure; party indicates a self-represented party, a represented party, and/or the attorney for a party, as appropriate to the particular usage; child support enforcement agency refers to the state agency charged with child support enforcement; local child support enforcement office refers to the appropriate local office of the child support enforcement agency; family court final order refers to an appealable order entered by a family court judge; memorandum of law refers to a brief as in W.Va. Code §51-2A-11; and the use of the plural indicates the singular if appropriate, and the use of the singular indicates the plural if appropriate.

CLERK'S NOTE: The amendment adds the Intermediate Court of Appeals (ICA) to the terminology.

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## Rule 22. Orders; general provisions.

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(c) *Family court final orders.* A family court final order shall contain language explicitly informing the parties (1) that it is a final order; (2) that any party aggrieved by the final order may take an appeal either to the ~~circuit court~~ intermediate court of appeals or directly to the supreme court of appeals under West Virginia Code § 51-2A-15; (3) that ~~a petition for an~~ appeal to the ~~circuit court~~ intermediate court of appeals may be filed by either party within **thirty days** after entry of the final order; and (4) that in order to appeal directly to the supreme court of appeals, both parties must file, either jointly or separately, within **fourteen days** after entry of the final order, a joint notice of intent to appeal and waiver of right to appeal to ~~circuit court~~ the intermediate court of appeals.

(d) *Sanctions against attorneys for untimely preparation of orders.* If an attorney assigned to prepare an order or proposed findings fails to prepare the order or findings in a timely manner, or otherwise fails to comply with the provisions of this rule, the court may direct one or more attorneys for other parties to prepare the order or findings; and may require the attorney initially assigned to prepare the order or findings to pay the reasonable attorney fees.

CLERK'S NOTE: The amendments provide that appeals from family court will be filed with the ICA.

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## **APPEALS.**

### **Rule 26. Waiver of appeal to ~~circuit court~~ intermediate court or appeals.**

(a) Filing Notice and Waiver. If, within fourteen days after entry of a family court final order, both of the parties file, either jointly or separately, a notice of intent to appeal directly to the supreme court of appeals and waiver of the right to appeal to the ~~circuit court~~ intermediate court of appeals, either party aggrieved by a final order of a family court judge may file a petition for appeal to the supreme court of appeals. The notice of ~~intent to~~ appeal and waiver shall be in the same or substantially similar form as that contained in Appendix A.

(b) Effect of Notice and Waiver. If only one party files a notice and waiver, any petition for appeal filed shall be treated as a petition for appeal to the ~~circuit court~~ intermediate court of appeals.

### **Rule 27. Stay of proceedings pending appeal.**

(a) Motion for Stay. Any person desiring to file ~~a petition for an~~ appeal from a final order of the family court may file a motion for a stay of proceedings in the family court in which the order was entered. The motion for a stay shall be filed with the circuit clerk and served upon the respondent in accordance with Rule 5 of the Rules of Civil Procedure.

(b) Effect of Stay. Either on its own motion or upon motion by a party, the family court may order a stay of all or part of a final order, for the period of time allowed for filing of ~~a petition for an~~ appeal to the ~~circuit court~~ intermediate court of appeals or for any additional period of time pending disposition of the appeal. Provided, however, that an order granting a motion for stay may not include a stay of an award for the payment of spousal support or child support pending the appeal, except that an award of past-due child support may be stayed pending disposition of the appeal.

(c) *Application in ~~Circuit Court~~ Intermediate Court of Appeals*. If the family court should refuse to grant a stay, or if the relief afforded is not acceptable, the party desiring to file the ~~petition for~~ appeal in the ~~circuit court~~ intermediate court of appeals may file a motion for a stay of the proceedings in the ~~circuit court~~ intermediate court of appeals. The motion for a stay shall be filed with the ~~circuit~~ clerk of court for the intermediate court of appeals and served upon the respondent

in accordance with Rule 5 of the Rules of Civil Procedure. The ~~circuit court~~ intermediate court of appeals may order a stay of all or part of a final order, for the period of time allowed for filing of a ~~petition for an~~ appeal to the ~~circuit court~~ intermediate court of appeals, or for any additional period of time pending disposition of the appeal. Provided, however, that an order granting a motion for stay may not include a stay of an award for the payment of spousal support or child support pending the appeal, except that an award of past-due child support may be stayed pending disposition of the appeal.

(d) *Effect of Order Refusing Petition for Appeal.* If the ~~circuit court~~ intermediate court of appeals enters an order refusing the ~~petition for~~ appeal, any stay of the family court final order is vacated. A person desiring an additional stay must make an application for stay in the supreme court of appeals as provided in ~~Rule 28 of the~~ Rules of Appellate Procedure.

#### **Rule 28. ~~Petition for a~~Appeal to ~~circuit court~~ intermediate court of appeals.**

Appeals to the intermediate court of appeals are filed in accordance with Rule 5 of the Rules of Appellate Procedure.

~~(a) *Time for petition.* A party aggrieved by a final order of a family court may file a petition for appeal to the circuit court no later than thirty days after the family court final order was entered in the circuit clerk's office.~~

~~—— (b) *Filing with clerk.* An original and two copies of the petition for appeal shall be filed in the office of the circuit clerk where the final order being appealed was entered. The circuit clerk shall note clearly on each copy the date on which the petition for appeal was filed.~~

~~—— (d) *Form of petition.* The petition for appeal shall be prepared in the same or substantially similar form as that set forth in Appendix A of these rules. The party filing the petition for appeal may file a memorandum of law in support of the petition for appeal at the time the petition is filed. Except by permission of the circuit court, the petition for appeal, together with the memorandum of law in support, if any, shall not exceed fifty pages, inclusive of any addendum.~~

~~—— (e) *Service of petition.* The petition for appeal and memorandum of law, if any, shall be served in accordance with Rule 5 of the Rules of Civil Procedure.~~

~~—— (f) *Response to petition.* The respondent may file an original and two copies of a response to the petition for appeal with the circuit clerk within fifteen days after the filing of the petition for appeal. Except by permission of the circuit court, the response shall not exceed fifty pages,~~

~~inclusive of any addendum.~~

~~—— (g) *Cross petition for appeal.* Within fifteen days after the filing of the petition for appeal, the respondent may file a cross petition for appeal. The cross petition may be filed in addition to any response. The cross petition for appeal shall be prepared in the same or substantially similar form as that set forth in Appendix A of these rules. The party filing the cross petition for appeal may file a memorandum of law in support of the cross petition for appeal at the time the cross petition is filed. Except by permission of the circuit court, the cross petition for appeal, together with the memorandum of law in support, if any, shall not exceed fifty pages, inclusive of any addendum.~~

~~—— (h) *Reply to response.* No reply to a response to a petition for appeal shall be filed.~~

## **Rule 29. Insufficient record for appeal.**

If essential portions of the recording of proceedings before a family court are inaudible or unavailable, the ~~circuit court~~ intermediate court of appeals may recommit the case to the family court. The family court may then take evidence; and/or may accept from any party a proposed statement of the pertinent facts. Such statements shall include the maker's certification that the facts are accurately presented to the best of that person's knowledge and belief, and shall be served on all parties. Any party may object to a proposed statement of facts by filing written objections with the family court within ten days of the date of service of the statements upon them.

## **Rule 30. Motions to Dismiss the Appeal.**

(a) *By party.* At any time following the filing of an ~~an petition for~~ appeal, either party to an appeal may move the ~~circuit court~~ intermediate court of appeals to dismiss an appeal on any of the following grounds: (1) a joint agreement of the parties to the dismissal; (2) failure to properly perfect the appeal; (3) failure to obey an order of the family court or circuit court or intermediate court of appeals; (4) lack of an appealable order; or (5) lack of jurisdiction. Such motion shall be filed with the ~~circuit clerk~~ Clerk of Court, Supreme Court of Appeals ~~and served in accordance with Rule 5 of the Rules of Civil Procedure.~~

(b) *Hearing.* No oral argument shall be held on a motion to dismiss unless requested by the ~~circuit court~~ intermediate court of appeals.

### **Rule 31. Granting or refusing the appeal.**

- ~~(a) Review by circuit court. As soon as practical after the last day a response to a petition for appeal is filed, if any, the circuit court shall enter an order granting or refusing the petition for appeal.~~
- ~~(b) Refusal order. If a petition for appeal is refused, the circuit court shall enter an order refusing the petition for appeal within 60 days from the last day a response to the petition for appeal could have been filed. A refusal order shall explicitly inform the parties that it is a final order disposing of the appeal. Motions for reconsideration of a refusal order, or renewal of a petition for appeal that has been refused, are not permitted.~~
- ~~(c) Granting order. If a petition for appeal is granted, the circuit court shall enter an order granting the petition for appeal. If oral argument was requested in writing by either of the parties, or if the circuit court desires oral argument, the granting order shall set forth a date and time for oral argument. The clerk of the circuit court shall immediately serve the granting order upon the parties by mailing a copy to counsel of record for each party via first class mail, or if there is no counsel of record, to the party at the last known address for that party. Service shall be complete upon mailing.~~

### **Rule 32. Extensions of time.**

~~The circuit court may, for good cause shown in a written motion, extend the time prescribed by these rules for doing any act related to the appeal before it, or may permit an act to be done after the expiration of such time. Provided, however, that any extension of time granted by the circuit court intermediate court of appeals may not exceed a period of ten days.~~

### **Rule 33. Oral argument.**

- ~~(a) Scheduling argument. If requested in writing by either party, or if the circuit court wishes to hold argument without request, the circuit court shall set forth a date and time for oral argument in the granting order as required by rule 31 (c).~~
- ~~(b) Argument. Counsel for appellant, or appellant unrepresented by counsel, shall be entitled to open and close the argument, and shall be allotted twenty minutes to open and ten minutes to close. Counsel for appellee, or appellee unrepresented by counsel, shall be allotted twenty minutes. A party is not obliged to use all of the time allotted,~~

~~and the circuit court may terminate argument whenever in its judgment further argument is unnecessary. The family court judge shall not be required to attend oral argument. Oral argument proceedings shall not be open to the public.~~

#### *Rule 34 Final decisions*

- ~~1. **Entry of final decision.**—The circuit court shall enter a final decision order within 60 days from the last day a response to the petition for appeal could have been filed, or shall enter an order stating just cause why a final decision has not been timely entered. The circuit clerk shall notify the family court judge of the entry of a final decision.~~
- ~~2. **Contents of final decision.**—A final decision may refuse the petition for appeal, may affirm or reverse the family court final order, or may affirm or reverse in part. A circuit court's final decision may be appealed to the Supreme Court of Appeals in the manner set forth in the Rules of Appellate Procedure. A remand order entered pursuant to Rule 35(a) is not a final decision for purposes of appeal.~~

#### *Rule 35. Remand to family court judge.*

- ~~1. **Remand orders.**—An order remanding a case to a family court judge shall be entered within 60 days from the last day a response to the petition for appeal could have been filed. A remand order shall particularly identify any inadequacies in the evidentiary record; and shall indicate the specific actions to be taken by the family court judge upon remand, including the particular evidence to be taken. At the time a case is remanded the circuit court shall enter such temporary orders as the circumstances require. All remand orders shall direct the circuit clerk to provide a copy to the family court judge.~~
- ~~2. **Proceedings on remand.**—All proceedings in cases remanded to a family court judge shall be concluded within 30 days of the date of the remand order.~~

#### *Rule 36. Motions*

- ~~1. **Content of motions; response; reply.**—Unless another form is elsewhere prescribed by these rules, a motion for an order or other relief from the circuit court shall be made by filing a written motion for such order or relief with the circuit clerk, with service upon the other party in accordance with Rule 5 of the Rules of Civil Procedure. The motion shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by a memorandum of law, affidavits or other papers, they shall be served along with the motion. A party may file a response to a motion. A reply to a response to a motion may not be filed.~~



~~2. **Determination of motions for procedural orders.** Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders may be acted upon by the circuit court at any time, without awaiting a response. Any party adversely affected by such action may request reconsideration, vacation, or modification of such action.~~

~~3. **Hearing.** No oral argument shall be held on such motion, unless requested and scheduled by the circuit court.~~

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# Rules of Practice and Procedure for Minor Guardianship Proceedings

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## **Rule 16. Appeals.**

- (a) Family Court Cases. Appeals from final orders in family court shall be made in accordance with ~~Rules 26 through 36 of the Rules of Practice and Procedure for Family Court.~~
- (b) Circuit Court Cases. Appeals from final orders in circuit court shall be made in accordance with ~~Rules 72 and 73 of the Rules of Civil Procedure and Rule 5 of the Rules of Appellate Procedure.~~

CLERK'S NOTE: The rules will apply to appeals filed from orders entered in the lower tribunal after June 30, 2022.

# West Virginia Rules of Procedure for Administrative Appeals [Abrogated]

## **Rule 1. Scope of rules and definitions.**

~~(a) Scope of Rules.—These rules govern the procedures in all circuit courts for judicial review of final orders or decisions from an agency in contested cases that are governed by the Administrative Procedures Act, W. Va. Code § 29A-5 et. seq. These rules do not apply to extraordinary remedies such as certiorari which are governed by Rule 71B(a) of the West Virginia Rules of Civil Procedure.~~

~~(b) Rules Not to Affect Jurisdiction.—These rules shall not be construed to extend or limit the jurisdiction of the circuit courts as established by law.~~

~~(c) Definitions.—~~

~~“Appeal” —The procedure by which a case is brought from a state agency to a circuit court.~~

~~“Certificate of Service.” —The statement signed by a party or counsel for a party describing the date and manner of serving a particular pleading on the opposing party or counsel for the opposing party.~~

~~“Circuit Court.” —Any circuit court established by law in the State of West Virginia~~

~~“Contested case.” —A proceeding before a state agency in which the legal rights, duties, interests or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing, but does not include cases in which an agency issues a license, permit or certificate after an examination to test the knowledge or ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination and shall not include state agency rule making or applications for extraordinary remedies.~~

~~“Petition.” —The original pleading seeking an appeal in circuit court from a final order or decision of a state agency in a contested case.~~

~~“Petitioner.” —The party who takes the appeal.~~

~~“Respondent.” —The party against whom the appeal is taken and other necessary parties.~~

~~“State Agency.” —Any state government board, commission, department, office or officer authorized by law to adjudicate contested cases, except those in the legislative or judicial branches.~~

~~(d) Effective date. —These rules shall be applicable to appeals of state agency final order or decisions filed in circuit court on or after January 1, 2008.~~

## **Rule 2. Commencement of appeal.**

~~(a) Petition. —An appeal from a state agency final order or decision in a contested case is commenced by filing a Petition for judicial review in the office of the circuit clerk of the circuit court in which venue lies by law. Only issues set forth in the petition or fairly comprised therein will be considered by the circuit court on review.~~

~~(b) Time for Petition. —No Petition shall be filed from a state agency decision or final order in a contested case after the time period allowed by law. The petition shall be filed in the office of the circuit clerk of the circuit court in which venue lies by law, within 30 days after the petitioner receives notice of the final order or decision from the agency, unless otherwise provided by law.~~

~~(c) Form of Petition. —The Petition shall state the following in the order indicated:~~

~~1. Title as it was before the agency to the extent possible. The title shall include the names of the~~

agency and the parties to the proceeding regardless of whether the title of the agency proceeding included the names of the parties, and the administrative case number.

2. The kind of proceeding and nature of the ruling by the state agency.

3. A concise statement of the facts of the case.

4. The assignments of error relied upon on appeal and the manner in which they were decided by the state agency.

5. Points and authorities relied upon, a discussion of law, and the relief prayed for.

6. A copy of the decision, order, rule or ruling from which judicial review is sought.

(d) ~~Docketing Statement.~~—The Petition shall be accompanied by a completed Docketing Statement in the form contained at Appendix A to these Rules.

(e) ~~Service of Petition.~~—The petitioner shall serve a copy of the Petition and the Docketing Statement upon the state agency and all other parties and counsel of record who participated in the proceeding before the state agency by registered or certified mail. The certificate of service shall show proof of service on the agency whose final decision, order, rule or ruling is involved (unless the agency is the petitioner), even if the agency is not a party. No summons shall be issued or served in connection with the Petition and Docketing Statement. Service upon a prosecuting attorney or the Attorney General alone is not a substitute for service upon the agency.

(f) ~~Proof of Service.~~—A Petition and accompanying Docketing Statement filed in circuit court shall include proof of service in the form of a Certificate of Service, as defined in these Rules. If the Petitioner obtains a Return Receipt or other delivery confirmation in connection with service of the Petition by registered or certified mail, such Return Receipt or other delivery confirmation shall be filed with the office of the circuit clerk of the circuit court affixed to the certificate of service. If the Return Receipt or other delivery confirmation is not available at the time of the filing of the Petition and accompanying Docketing Statement, it shall be filed with the circuit court promptly thereafter.

(g) ~~Response to Petition.~~—No response or answer to a Petition is required to be filed unless so ordered by the circuit court. When the circuit court does not order the filing of a responsive pleading, the declarations contained in the petition for judicial review shall be taken as denied. If a party respondent desires, a response may be filed within fifteen (15) days of service of the petition.

(h) ~~Appeal Bond.~~—Unless otherwise provided by law, no appeal bond shall be required to effect an appeal of a state agency decision or final order in a contested case.

### **Rule 3. Stay of decision pending appeal.**

(a) ~~Application for Stay.~~—The filing of a Petition shall not stay enforcement of a state agency final order or decision. Any person desiring to obtain a stay of enforcement may file a written motion directly with the state agency or may file a written motion with the circuit court after the Petition has been filed.

(b) ~~Form of Application for Stay.~~—An application for stay shall be made by written motion stating the reasons for the relief requested and the grounds for the underlying appeal. A copy of the written motion shall be served upon the state agency and all other parties and counsel of record who participated in the proceeding before the state agency.

(c) ~~Service of Application for Stay.~~—Service of a motion for stay shall be made by delivering or mailing a copy to the state agency and all other parties and counsel of record. Proof of service, in the form of a Certificate of Service, shall be filed with the circuit court affixed to the motion for

stay.

~~(d) Response to Application for Stay. — The Respondent may file a written response to a motion for stay within seven (7) days of receipt of the motion.~~

~~(e) Hearing on Application for Stay. — In the event a party files a motion to stay the action of the administrative agency, unless otherwise directed by statute, the circuit court may hold a hearing within fifteen (15) days of the filing of the motion for stay, or may decide the motion without hearing.~~

#### **~~Rule 4. Designation and Filing of Record.~~**

~~(a) Upon filing of the Petition, the petitioner shall designate those parts of the record deemed material to the questions presented in the appeal, including the relevant proceedings to be transcribed, and serve notice of such designation upon all parties below. If the petitioner has not designated the entire record, the respondent(s) shall have fifteen (15) days to file a cross-designation of additional portions of the record for review. In lieu thereof, the parties may, by written stipulation, jointly designate the parts of the record to be prepared for appeal.~~

~~(b) Within fifteen days after receipt of a copy of the petition and the complete designation of the record by the agency, or within such further time as the court may allow, the agency shall transmit to such circuit court the original or a certified copy of the entire record of the proceeding under review. If the transcripts are not yet complete, the agency has fifteen (15) days after receipt of the transcripts to transmit the record to the circuit court. The agency shall provide notice to all parties that the record has been transmitted to the circuit court.~~

~~(c) The record shall include a copy of the final opinion, order or decision being appealed. Unless otherwise provided by designation or stipulation of the parties, the record shall also include a transcript of all testimony and all papers, motions, documents, exhibits, evidence and records as were before the agency, all agency staff memoranda submitted in connection with the case, all orders or regulations promulgated in the proceeding by the agency and a statement of matters officially noted. The papers shall be arranged, as nearly as possible, in the order of the filing and entry thereof, with a table of contents or index.~~

~~(d) The reasonable expense of preparing such record shall be taxed as a part of the costs of the appeal, unless otherwise provided by law. Upon order of the court, the petitioner shall provide security for costs satisfactory to the court. If both parties appeal, the costs shall be shared equally. Unless otherwise prohibited by statute, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs involved.~~

~~(e) The provisions of this Rule are not exhaustive, and the parties should refer to the particular agency's procedural rules for more specific requirements.~~

~~(f) Unless required to do so by statute, the parties may mutually waive the filing of a transcript or otherwise limit the record on appeal.~~

#### **~~Rule 5. Briefs.~~**

~~(a) Within thirty (30) days after the record is filed with the circuit court, the Petitioner may file a brief.~~

~~(b) The Respondent may file a brief within thirty (30) days after receipt of the Petitioner's brief.~~

~~(c) The Petitioner may file a reply brief within fifteen (15) days after receipt of the Respondent's brief.~~

**Rule 6. ~~Hearing and Disposition.~~**

~~(a) The circuit court shall only consider evidence which was made part of the record in the proceeding before the administrative agency, unless there are alleged irregularities in the procedure before the agency, not shown on the record.~~

~~(b) The circuit court may, on its own motion, or motion of any party, issue a schedule providing for submission of briefs as provided herein by any party, and may hold oral argument, or may issue a ruling on the petition and response, if any, without oral argument.~~

~~(c) In the event a party alleges irregularities in the procedure before the agency, the circuit court may hold a hearing and consider other testimony and evidence solely on that issue. A request for oral argument or an evidentiary hearing on matters not in the record below shall be made by the Petitioner along with the filing of the petition. Respondent may request and/or respond to Petitioner's request for oral argument or an evidentiary hearing at the time of filing response to the petition. The court shall rule on the request within thirty (30) days of the petition, and the granting thereof is at the court's discretion.~~

~~(d) Unless otherwise provided by statute, a final judgment shall be entered in an administrative appeal within six (6) months of the filing of the appeal. The court's ruling may affirm, reverse, vacate or modify the order or decision of the agency, or remand the case with instructions to the administrative tribunal for further proceedings.~~

~~(e) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals, in accordance with West Virginia Code § 29A-6-1.~~

CLERK'S NOTE: The rules will apply to appeals filed from orders entered in the lower tribunal after June 30, 2022.

## Rules of Appellate Procedure

### Definitions.

- (1) "Appeal"—The procedure by which a case is brought from a lower tribunal to the Intermediate Court or the Supreme Court.
- (2) "Brief"—A document filed by the parties to an action before the Intermediate Court of the Supreme Court under Rule 10 that sets forth the arguments and issues that the parties wish the Intermediate Court or the Supreme Court to consider.
- (3) "Certificate of Service"—The statement signed by counsel or unrepresented party describing the date and manner of serving a particular filing on another party.
- (4) "Clerk"—The official appointed by the Supreme Court under Article VIII, Section 3 of the West Virginia Constitution as Clerk of the Intermediate Court and the Supreme Court.
- (5) "Docketing"—Assignment of a case number and placement of an action on the Intermediate Court or the Supreme Court's docket by the Clerk upon the receipt of timely and proper filing of an action.
- (6) "Lower Tribunal"—The circuit court, family court, or administrative agency from which an appeal is taken or an original jurisdiction proceeding is prosecuted.
- (7) "Mandate"—An order issued by the Intermediate Court or the Supreme Court entering the decision or opinion as final.
- (8) "Mature"—Unless otherwise provided by order, a case is mature for consideration by the Intermediate Court or the Supreme Court when the deadline for all briefs to be filed has passed.
- (9) "Notice of Appeal"—The mandatory notice filed to inform the Court and the other parties that a petitioner intends to perfect an appeal from a final judgment of a circuit court, in the form prescribed by these rules.
- (10) "Party"—Where a party is represented by counsel, the term party applies to counsel; where a party is not represented by counsel, the term party applies to the self-represented litigant.
- (11) "Perfected"—An appeal is perfected upon the proper and timely filing of the petitioner's brief and appendix. An original jurisdiction action is perfected upon the timely and proper filing of the petition and appendix, if an appendix is required.
- (12) "Petitioner"—A party who takes an appeal or prosecutes an original proceeding in the Supreme Court of Appeals.
- (13) "Respondent"—A party against whom an appeal is taken or an original jurisdiction proceeding is prosecuted in the Supreme Court of Appeals.
- (14) "Submitted"—At the conclusion of oral arguments, a case is submitted for final consideration by the Court.
- (15) "Summary Response"—A document filed in lieu of a brief by the respondent to an action before the Court under Rule 10 or Rule 16, which is deemed to be a waiver of oral argument.

Rule of Construction. (1) Words in the singular number include the plural, and in the plural include the singular. (2) Words of the masculine gender include the feminine and the neuter. (3) The word "person" shall include corporations, societies, associations, and partnerships, if not restricted by the context. (4) References to "the Supreme Court" means the Supreme Court of Appeals of West Virginia. (5) References to "the Intermediate Court" means the Intermediate Court of Appeals of West Virginia. (6) References to "the Rules" or "these Rules" mean the Rules of Appellate Procedure.

## Part I. Applicability of Rules

### **Rule 1. Scope of rules; jurisdiction; terms of court.**

**(a) *Scope of rules.*** These rules shall govern procedure: ~~(1) in appeals and certified questions from lower courts and other tribunals to the Supreme Court of Appeals of West Virginia; (2) in proceedings in the Supreme Court of Appeals for review of orders of administrative agencies, boards, commissions, and officers of the State of West Virginia; and (3) in applications for writs or other relief, over which the Supreme Court of Appeals has jurisdiction.~~ (1) in appeals from orders and decisions of lower courts, administrative agencies, administrative law judges, the Health Care Authority, the Office of Judges, and the Worker's Compensation Board of Review to the Intermediate Court of Appeals of West Virginia; (2) in appeals from orders and decisions of lower courts, other tribunals, boards, commissions, and officers of the State of West Virginia to the Supreme Court of Appeals of West Virginia; and (3) in applications for certified questions, writs, or other relief over which the Supreme Court has jurisdiction.

**(b) *Jurisdiction of the Intermediate Court of Appeals.*** The Intermediate Court has no original jurisdiction. The Intermediate Court has appellate jurisdiction of the following:

(1) Final judgments or orders of a circuit court in civil cases, entered after June 30, 2022. The Supreme Court may, on its own motion or by motion of a party, obtain jurisdiction over any civil case filed in the Intermediate Court;

(2) Final judgments or orders of a family court, entered after June 30, 2022, except for final judgments or orders issued by a family court in any domestic violence proceeding under West Virginia Code § 48-27-101, et seq., which appeals shall first be made to a circuit court;

(3) Final judgments or orders of a circuit court concerning guardianship or conservatorship matters, entered after June 30, 2022, under West Virginia Code § 44A-1-1, et seq.;

(4) Final judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022;



(5) Final orders or decisions of the Health Care Authority issued prior to June 30, 2022, in a certificate of need review, but transferred to the jurisdiction of the Intermediate Court upon termination of the Office of Judges pursuant to West Virginia Code § 16-2D-16a;

(6) Final orders or decisions issued by the Office of Judges after June 30, 2022, and prior to its termination, under West Virginia Code §§ 16-2D-16 and 23-5-8a; and

(7) Final orders or decisions of the Workers' Compensation Board of Review under West Virginia Code § 23-5-1, et seq., entered after June 30, 2022.

(c) Purpose of rules. These rules are intended to provide a complete, expeditious, and effective method of review in all cases where a party is permitted by law to seek an appeal, review of an order or decision, ~~or~~ original jurisdiction writ, or other relief in conformity with Article VIII of the West Virginia Constitution.

~~(e)~~ (d) Rules Not to Affect Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the Intermediate Court or the Supreme Court of Appeals as established by law.

~~(d)~~ (e) Effective Date. These rules shall be applicable to all certified questions and appeals arising from rulings, orders or judgments entered on or after December 1, 2010, and to original jurisdiction proceedings in the Supreme Court of Appeals filed on or after December 1, 2010. In cases arising from orders entered prior to the effective date, the Court may on its own motion direct the parties to comply with the revised rules in whole or in part by entering an appropriate order. These rules apply to all appeals in the Intermediate Court of appeals arising from orders or decisions entered after June 30, 2022, and to all appeals and other actions in the Supreme Court of Appeals arising from opinions, orders, and decisions of the Intermediate Court entered on or after July 1, 2022. These rules apply to all other appeals, certified questions, and original jurisdiction proceedings in the Supreme Court. In cases in the Supreme Court arising from orders entered prior to these effective dates, the Supreme Court may by order on its own motion direct the parties to comply with these rules in whole or in part.

~~(e)~~ (f) Terms of court. By Article VIII, Section 3 of the West Virginia Constitution, the Supreme Court holds two regular terms of court annually, with the times of those terms fixed by law under West Virginia Code § 51-1-5, and such special terms as may be designated by order of the Supreme Court under West Virginia Code § 51-1-6. The Intermediate Court shall hold two regular terms of court annually with the times of those terms to be consistent with the regular terms of the Supreme Court. The Intermediate Court may hold such special terms as are designated by order of that court.

## **Rule 2. Suspension of rules.**

In the interest of expediting ~~decision~~ a ruling, or for other good cause shown, the Intermediate Court or the Supreme Court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. These rules shall be construed to allow the Intermediate Court or the Supreme Court to do substantial justice.

## **Part II. Attorneys and ~~Un~~Self-represented Parties**

### **Rule 3. Attorneys.**

**(a) *Counsel of record.*** If more than one attorney is identified as counsel for a party on a document filed in connection with a case pending in ~~this~~ the Intermediate Court or the Supreme Court, the cover page of the document must clearly identify one attorney who is designated counsel of record for the represented party or parties. Unless otherwise ordered, counsel of record is required to be present at any oral argument scheduled by the Intermediate Court or the Supreme Court. Unless otherwise ordered, service of documents upon counsel of record is deemed sufficient service upon other counsel listed on a brief or other paper filed on behalf of a party.

**(b) *Substitution of counsel of record.*** If, during the pendency of an action in ~~this~~ the Intermediate Court or the Supreme Court, the identity of counsel of record for a party changes, substituted counsel of record must file a notice of appearance with the court in which the action is pending, with copies to all other counsel of record or unrepresented parties, setting forth the circumstances requiring a substitution of counsel. Substitution of counsel less than ten days prior to a scheduled argument is permitted only by leave of court before which oral argument is scheduled and will be permitted only in extraordinary circumstances.

**(c) *Appearance by attorneys not admitted to practice in West Virginia.*** Attorneys from other jurisdictions who are not members in good standing of the West Virginia State Bar may not appear in a proceeding in ~~this~~ the Intermediate Court or the Supreme Court without first being admitted pro hac vice. ~~Because an action in this Court is a separate proceeding, pro~~ Pro hac vice admission ~~is necessary~~, including payment of the requisite fee under Rule 8 of the Rules of Admission to the Practice of Law, is necessary in each separate tribunal even if

counsel has previously been admitted pro hac vice in the same case in lower another tribunal. A prospective filing may be lodged with the Clerk prior to the time that leave to practice pro hac vice has been granted only if a complete motion for admission pro hac vice is filed in the court where the action is sought to be filed at the same time the prospective filing is lodged.

**(d) *Withdrawal of counsel.***

- (1) In order to withdraw as counsel in an action pending in ~~this~~ the Intermediate Court or the Supreme Court in which counsel has previously appeared, counsel must provide the court where the action is pending with documentation that counsel has fully complied with the requirements of Trial Court Rule 4.03. Counsel is not relieved of the obligation to comply with all applicable deadlines and obligations in the case until such time as the court where the action is pending enters an order permitting counsel to withdraw.
- (2) When counsel is directed by a client to file an appeal in a criminal case, habeas corpus case, or an abuse and neglect case, counsel will not be permitted to withdraw solely on the basis that counsel lacks a good faith belief that an appeal is reasonable and warranted under the circumstances. Good faith may at times be defined by the legal obligation of counsel to file a brief referring to any point in the record that might arguably support the appeal in instances where a client insists on appeal after being advised that the appeal is wholly frivolous. Rule 10(c)(10) of these rules sets forth the requirements that must be observed when counsel in a criminal, habeas corpus, or abuse and neglect case lacks a good faith belief that an appeal is reasonable and warranted.

**(e) *Admission ceremony.*** Prospective attorneys who are eligible for admission must appear in person before the Supreme Court at a regularly scheduled admission ceremony as required by Rule 7(b) of the Rules for Admission to the Practice of Law. Upon a showing of extraordinary circumstances (e.g. military service) set forth in writing to the Clerk, the Supreme Court may permit a prospective attorney—who is eligible for admission to practice but is unable to attend a regularly scheduled admission ceremony—to appear for admission at such time and manner as the Supreme Court may decide. Admission ceremonies may be set by the Supreme Court on any day the Supreme Court is in session, or on such other day during the term as the Supreme Court may provide.

**Rule 4. ~~Un~~Self-represented parties.**

**(a) ~~Un~~Self-represented parties.** A party who elects to proceed without counsel must comply with the Rules of Appellate Procedure to the fullest extent possible. While the submission of

handwritten papers is not encouraged, ~~un~~self-represented parties may serve and file handwritten documents, which should be neatly prepared in cursive script or hand printing in ink. Pages of handwritten documents must be numbered consecutively in the center of the bottom margin of each page. If illegible or unreasonably long, handwritten documents may be rejected for filing by the Clerk.

**(b)** ~~*Pro se appearance Filings by a represented party.*~~ When a~~A~~ party is represented by counsel in ~~to~~ an action before ~~this~~ the Intermediate Court or the Supreme Court ~~who is represented by counsel may not,~~ counsel must file any pro se ~~all documents in that action with the Court or~~ and ~~make an oral argument in that action before,~~ if the Court oral argument is scheduled, unless ~~specifically permitted to do so by order~~ otherwise directed by order.

## Part III. Appeals

### **Rule 5. Appeals from family courts, circuit courts and, administrative agencies, Health Care Authority, and the Intermediate Court of Appeals.**

**(a) Applicability.** This rule governs all appeals from a final order of a family court, an appealable order of a circuit court final judgments, a final judgment of an administrative agency, a final order of the Health Care Authority in certificate of need review proceedings, a final decision of the Intermediate Court, or any other appealable order in a civil or criminal case judgment as set forth in West Virginia Code § 58-5-1, except: (1) appeals from orders in abuse and neglect proceedings under West Virginia Code § ~~49-6-149-4-601~~, et seq., which are governed by Rule 11; (2) certain appeals from final family court orders directly to the Supreme Court in proceedings in the family courts, which are governed by Rule 13; (3) appeals in workers' compensation proceedings under West Virginia Code § 23-5-1 et seq., which are governed by Rule 12; appeals from orders in administrative proceedings arising under the Human Rights Act, which are governed by Rule 15; and (4) certified questions from the circuit court, which are governed by Rule 17.

**(b) Docketing the appeal.** Within thirty days of entry of the judgment being appealed, the party appealing shall file the notice of appeal, including and the attachments required in the notice of appeal form contained in Appendix A (Supreme Court) or Appendix B (Intermediate Court) of these Rules. The notice of appeal, including attachments, shall be filed in the Office of the Clerk of the Supreme Court as required by Rule 38. The petitioner must ~~file the number of copies required by~~ comply with Rule 38. In addition to serving the notice of appeal in accordance with Rule 37, the party appealing a final order of a circuit court shall serve the notice of appeal, including attachments, on all parties to the action in circuit court, on the clerk of the circuit court from which the appeal is taken—which shall be made a part of the record in the circuit court—and on each court reporter from whom a transcript is requested. ~~Upon motion filed in accordance with Rule 39, the Court may extend the time period for filing a notice of appeal for good cause shown.~~

**(c) Parties to the appeal.** All parties to the proceeding in the court from which the appeal is taken shall be deemed parties in ~~this~~ the Intermediate Court or the Supreme Court, unless the appealing party shall indicate on the notice of appeal that one or more of the parties below—who has been provided a copy of the notice of appeal—has no interest in the outcome of the matter. A party mistakenly designated as no longer interested may remain a party in ~~this Court~~ the appeal by notifying the Clerk of this Court, with notice given to the other parties, that the party has an interest in the appeal. Such notice shall be filed with the Clerk within twenty days of the filing of the notice of appeal.

**(d) *Scheduling order.*** As soon as practicable after the proper filing of the notice of appeal, the Intermediate Court or the Supreme Court will issue a scheduling order. As appropriate to the circumstances, the scheduling order will contain the dates on which the petitioner's brief, the response brief, the reply brief, and the designated record or appendix shall be filed; will set forth the date for the list required in the absence of an agreement on the contents of the record under Rule 7(e) of these Rules; will set forth whether a transcript will be prepared, the extent of any transcript, and the date the transcript is due; will set forth deadlines for filing motions; and may set forth such other matters as deemed beneficial or necessary. The scheduling order will set forth the official caption of the case on appeal that should be used on the cover page of all documents filed with the Intermediate Court or the Supreme Court.

**(e) *Failure to comply with scheduling order.*** If a party fails to comply with a scheduling order, the Intermediate Court or the Supreme Court may impose sanctions, or dismiss the appeal, or both.

**(f) *Perfecting the appeal-timing.*** Unless otherwise provided by law, an appeal must be perfected within four months of the date the judgment being appealed was entered, ~~in the office of the circuit clerk; provided, however, that the circuit court from which the appeal is taken or the Supreme Court may, for good cause shown, by order entered of record, extend such period, not to exceed a total extension of two months, if a complete notice of appeal was timely and properly filed by the party seeking the appeal. If a motion for leave to extend the time for perfecting an appeal is filed with the circuit court, a copy of the motion must be filed with the Clerk of the Supreme Court, and the order of the circuit court ruling on the motion must also be provided to the Clerk of the Supreme Court. A motion that is filed with this Court to extend time to perfect an appeal must comply with Rule 29 and must state with particularity the reasons why an extension is necessary. In order to permit adequate time to perfect the appeal following the completion of transcripts, the Court may, on its own motion, extend the time period for appeal in a scheduling order.~~ Upon motion filed on or before the deadline for perfecting an appeal, the Intermediate Court or the Supreme Court may grant leave to the petitioner to perfect an appeal where a notice of appeal has not been filed and a scheduling order has not been entered. Such relief will only be granted in extraordinary circumstances, and if the motion is granted, the Intermediate Court or the Supreme Court may, in ~~its~~ their discretion, deny oral argument or impose other sanctions for failure to comply with the Rules.

**(g) *Perfecting the appeal-method.*** An appeal is perfected by timely and properly filing, in the Office of the Clerk of the Supreme Court, ~~an original and the number of copies required by Rule 38 of:~~ (1) the petitioner's brief prepared in accordance with Rule 10 and (2) the appendix record prepared in accordance with Rule 7, unless the Court has specifically

provided by order that an appendix record is not required. Failure by the petitioner to perfect an appeal will result in the case being dismissed from the docket ~~of the Court~~.

**(h) *Consideration of the appeal.*** After the response brief or summary response has been filed in accordance with Rule 10, and any reply brief deemed necessary has been filed (or the time for filing a reply has expired), the appeal will be deemed to be mature, and the Intermediate Court or the Supreme Court will fully consider the written arguments of all parties to the appeal. Thereafter, the Intermediate Court or the Supreme Court will: (1) decide the case on the merits without oral argument; ~~or~~ (2) set the case for oral argument and then decide the case on the merits; or (3) issue an appropriate order after considering any written and oral arguments made by the parties ~~(e.g. the appeal is premature because it is an appeal from an interlocutory ruling, or the appeal is dismissed because the case has been settled).~~

**(i) Extensions.** A party may file a motion in accordance with Rule 39 of these Rules for an extension of time to file a notice of appeal or to perfect an appeal.

(1) Notices of appeal. The Intermediate Court or the Supreme Court may extend the time period for filing a notice of appeal for good cause shown.

(2) Time to perfect appeal. Extensions of time to perfect an appeal may be granted by the circuit court from which an appeal is taken or by the Intermediate Court or Supreme Court, whichever appellate court has appellate jurisdiction. An extension may be granted for good cause shown, by order entered of record, for a period not to exceed a total extension of two months, if a complete notice of appeal was timely and properly filed by the party seeking the appeal. If a motion for leave to extend the time for perfecting an appeal is filed with the circuit court, a copy of the motion must be filed with the Clerk, and the order of the circuit court ruling on the motion must also be provided to the Clerk. A motion that is filed with the Intermediate Court or the Supreme Court to extend the time to perfect an appeal must comply with Rule 29 and must state with particularity the reasons why an extension is necessary. In order to permit adequate time to perfect the appeal following the completion of transcripts, the Intermediate Court or the Supreme Court may, on their own motion, extend the time period for appeal in a scheduling order.

## **Rule 6. Record on appeal.**

**(a) *Contents of the record.*** The record on appeal consists of the ~~papers~~ documents and exhibits filed in the proceedings in the lower tribunal, the official transcript or recording of proceedings, if any, and the docket entries of the lower tribunal. The record in original jurisdiction proceedings filed under Rule 16 of these Rules consists of documents and

exhibits, transcripts or recordings, or other items necessary for the Supreme Court to properly consider the issues presented.

**(b) *Scope of the record on appeal.*** Parties on appeal are discouraged from including the entire record of the case in the lower tribunal in an appendix record or a designated record. The record on appeal should be selectively abridged by the parties in order to permit the Intermediate Court or the Supreme Court to easily refer to relevant parts of the record and to save the parties the expense of reproducing the entire record. The Intermediate Court or the Supreme Court, ~~upon its own motion~~, may consider portions of the record other than those provided by the parties. Although the entire record is available to the Intermediate Court or the Supreme Court should it ~~believe that~~ additional portions ~~are~~ be important to a full understanding of the issues, citations to portions of the record not included in the record on appeal are greatly disfavored. Anything not filed with the lower tribunal shall not be included in the record on appeal unless the Intermediate Court or the Supreme Court grants a motion for leave to supplement the record on appeal for good cause shown.

**(c) *Responsibility to provide the record on appeal.*** Unless otherwise provided by statute or rule, the record on appeal is not automatically transmitted to the Intermediate Court or the Supreme Court. All parties to the case are responsible for determining the contents of the appendix, and the petitioner is responsible for preparing and filing the appendix as set forth in Rule 7. If a designated record is permitted, all parties to the case are responsible for determining the contents of the designated record, and the circuit clerk is responsible for preparing and transmitting the record as set forth in Rule 8.

**(d) *Method of providing the record.*** An appendix is required unless the Intermediate Court or the Supreme Court grants permission by order to proceed on a designated record. If a party believes that the appendix method would be impractical or inadequate for appellate review, the party shall file a motion with the Intermediate Court or the Supreme Court on or before the date established for such motions in the scheduling order, requesting ~~the Court to~~ an order directing the circuit clerk to transmit designated papers or exhibits to the Intermediate Court or the Supreme Court. The motion shall designate the papers and exhibits in question, and shall show good cause why providing a copy in an appendix would be impractical or inadequate for appellate review. If the motion to proceed on a designated record is granted, in whole or in part, the circuit clerk shall transmit the designated record as set forth in Rule 8.

**(e) *Correction of errors.*** Any omission, misstatement, or error in the record, either clerical or otherwise, may be corrected at any time by stipulation filed with the Intermediate Court or the Supreme Court. The Intermediate Court or the Supreme Court, upon motion of a party or its own motion, may direct that an omission, misstatement, or error be corrected, and, if necessary, that a supplemental record be provided or transmitted.



**(f) Sanctions.** The Intermediate Court or the Supreme Court, on its own motion or on motion of ~~any~~ party, may impose sanctions against attorneys who unreasonably and vexatiously increase the costs of litigation through the inclusion of unnecessary material in the appendix or designated record. Attorneys shall receive reasonable notice and an opportunity to respond before the imposition of any sanctions. A party's motion for imposition of sanctions will be considered ~~by the Court~~ only if filed within fourteen days after the issuance of the opinion or memorandum decision and only if counsel for the moving party previously objected to including the allegedly unnecessary material in writing to opposing counsel within ten days of receiving the list of materials required by Rule 7(e) or 8(c).

## **Rule 7. Appendix record.**

**(a) Format.** An appendix must contain accurate reproductions of the ~~papers~~ documents and exhibits submitted to the lower court, administrative agency, or other tribunal, and may be reproduced using any method that produces a permanent, legible ~~black image~~. A paper appendix permitted under Rule 38B must be on white paper measuring eight and one-half inches by eleven inches. Reproductions may be slightly reduced in size to accommodate the page numbers required by subparagraph (b), provided, however, that legibility of the appendix is not significantly impaired. To the extent practicable, reproduction on both sides of ~~the~~ each page of paper appendices is encouraged. Paper Appendices must be fastened on the left side in a manner that will keep all the pages securely together and permit the Court to easily disassemble for copying. Use of binding methods for paper appendices that result in bulky protrusions or sharp edges, such as three-ring binders or spiral binders, is prohibited. ~~An~~ a paper appendix of excessive length must be divided into volumes not to exceed three inches in thickness. ~~In~~ If a paper appendix is permitted under Rule 38B, in addition to the paper appendix, an electronic Portable Document Format (Pdf) copy in no less than 150 dots per inch and no greater than 300 dots per inch (dpi) resolution is required. An appendix of excessive length must be divided into volumes not to exceed 20 megabytes (MB) in size. The electronic copy of the appendix shall be provided by electronic mail to: scawv.filing@courtsv.gov. If an appendix contains only one volume, then the name of the file transmitted to the Clerk's Office must include: (1) the petitioner's last name; (2) the term "Appx."; and (3) the term "p." followed by the page numbers. EX. Smith-Appx. p.1-10. If an appendix contains more than one volume, then the name of the file transmitted to the Clerk's Office must include: (1) the petitioner's last name; (2) the term "Appx."; (3) the term "Vol." followed by the volume number; and (4) the term "p." followed by the page numbers within that volume. EX. Smith-Appx.Vol.1 p.1-200; Smith-Appx.Vol.2 p.201-399, etc.

**(b) Page numbering.** Each page of an appendix must be clearly numbered in a sequential fashion so as to permit each page to be located by reference to a single page number. Page numbers must be legible and distinct from any other numbers that appear on the documents. If official transcripts are stand-alone volumes, and the transcripts contain assigned page numbers, additional sequential page numbering is not required.

**(c) General requirements.** Any appendix filed by any party must contain the following sections, as described and in the order indicated.

- (1) The upper portion of the cover page of an appendix must contain the caption of the case, (noting in parentheses the case number of the lower court or agency), and the title and volume number of the appendix, if applicable. If the case is confidential, the upper portion of the cover page must prominently state: "Confidential Case." If the appendix contains confidential or sealed material or personal identifiers restricted by Rule 40, the appendix need not be redacted, but the upper portion of the cover page must prominently state: "Contains Confidential Materials." The lower portion of the cover page must contain the name, address, telephone number, e-mail address, and West Virginia Bar Identification Number of counsel, if the petitioner is represented by counsel.
- (2) Immediately following the cover page, an appendix must contain a certification page signed by counsel or unrepresented party. For an appeal, the certification page must certify that: (a) the contents of the appendix are true and accurate copies of items contained in the record of the lower tribunal; and (b) the petitioner has conferred in good faith with all parties to the appeal in order to determine the contents of the appendix. For an original jurisdiction proceeding, the certification page must certify that the appendix as a whole is sufficient to permit the Supreme Court to fairly consider the questions presented in the petition.
- (3) Immediately following the certification page, an appendix must contain a table of contents that lists and briefly describes each item included in the appendix by reference to its page number and volume number, if applicable.

**(d) Preparing the Appendix on appeal.** The petitioner shall prepare and file an appendix containing:

- (1) The judgment or order appealed from, and all other orders applicable to the assignments of error on appeal;
- (2) Pleadings, motions, and other filings, if their sufficiency, content, or form is in issue or material;
- (3) In a criminal case, the indictment or information and the sentencing order;
- (4) In an abuse and neglect case, a copy of the abuse and neglect petition;
- (5) Material excerpts from official transcripts of testimony or from papers in connection with a motion. Such excerpts must contain all the testimony or averments upon which

the petitioner relies and upon which it may be reasonably assumed the respondent will rely. If transcript excerpts are misleading or unintelligible by reason of incompleteness or lack of surrounding context, the entire transcript must be provided;

- (6) ~~Copies of~~ critical exhibits, including photographs and maps, to the extent practicable;
- (7) A ~~certified copy of the~~ complete docket sheet in the case obtained from the clerk of the ~~circuit court~~ lower tribunal;
- (8) Other parts of the record ~~to which the parties wish to direct the Court's attention~~ necessary for consideration of the appeal.

**(e) *Determining the contents of the appendix.*** The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the petitioner must, within the time period set forth in the scheduling order, serve on the respondent a list of the parts of the record that the petitioner intends to include in the appendix, along with a list of any issues intended to be presented ~~to the Court~~ that were not contained in the notice of appeal. The respondent may, within ten days after receiving the petitioner's list, serve on the petitioner a list of additional parts of the record ~~to which it wishes to direct the Court's attention~~ it deems necessary for consideration of the appeal. The petitioner must include the respondent's listed parts of the record in the appendix, unless the petitioner advises the respondent that all or some of the parts are unnecessary as set forth in the costs provision of this Rule. The parties must not list unnecessary parts of the record for inclusion in the appendix, ~~because the entire record is available to the Court~~.

**(f) *Costs of the appendix on appeal.*** Unless the parties agree otherwise, the petitioner must pay the cost of the appendix. If the petitioner considers parts of the record designated by the respondent to be unnecessary, the petitioner may advise the respondent, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. If any party causes unnecessary parts of the record to be included in the appendix, the Intermediate Court or the Supreme Court may impose the cost of those parts on that party.

**(g) *Supplemental appendix.*** A party may file a motion for leave to file a supplemental appendix that includes such matters from the record not previously submitted. The motion shall set forth good cause why the material was not previously included. If the respondent's brief contains cross-assignments of error, the respondent may file a supplemental appendix that does not contain materials duplicative to the appendix already filed in the case. A supplemental appendix must comply with the format, page numbering, and general requirements of this Rule.

**(h) *Transcripts.*** If entire transcript volumes are included as part of an appendix, the volumes must comply with the format requirements in subsection (a) of this Rule and must contain a cover page as required by subdivision (c)(1) of this Rule. Pursuant to Rule 7(b), the page numbers of transcript volumes do not have to be re-numbered.

## **Rule 8. Alternative method—designated record.**

**(a) *When permitted.*** The Intermediate Court or the Supreme Court may consider a case without an appendix record, or upon a partially designated record, when: (1) ~~a motion to proceed on the designated record has been granted by the Court; or (2)~~ a scheduling order allows designation; or ~~(3)~~ (2) an order ~~permitting~~ allowing designation is entered by the ~~Court with appellate jurisdiction of the action, either by granting a motion to proceed on a designated record or~~ its own motion.

**(b) *Petitioner's designation.*** Within the time frame set forth by order, the petitioner shall file with the clerk of the circuit court an itemized designation of such pleadings, orders, exhibits, and transcripts to enable the Intermediate Court or the Supreme Court to decide the matters arising in the ~~petition~~ proceeding, along with the appropriate bond for costs as required by subsection (g).

**(c) *Respondent's designation.*** Within the time frame set forth by order ~~of the Court~~, the respondent shall file with the circuit clerk a designation of such additional parts of the record as ~~he considers~~ considered necessary in view of the petitioner's designation.

**(d) *Joint designation.*** The Intermediate Court or the Supreme Court may, ~~in its discretion,~~ and by order entered of record, require the parties to confer and submit a joint designation.

**(e) *Form of Designation.*** Designations shall be in such form as to guide the person assembling the record. Counsel may mark the docket sheet with appropriate notations. Asterisks or ellipses should be used to indicate omissions in testimony of witnesses or other parts of the record.

**(f) *Assembling the designated record.*** The circuit clerk, before transmitting the designated record ~~to the Supreme Court~~, shall arrange the designated ~~papers~~ documents, as nearly as possible, in chronological order of filing, number the pages as described in Rule 7(b), and prepare a table of contents as described in Rule 7(c)(3). Physical evidence or bulky items that have been designated by the parties may be omitted from the record transmitted ~~to this Court~~, provided that the table of contents describes the omitted exhibits and makes a notation that the exhibits are available ~~to the Court~~ upon request. Original documents are not required to be transmitted unless ~~the Court specifically directs~~ expressly required by order.

**(g) *Bond for Costs.*** Before the designated record is transmitted, the petitioner shall deposit with the clerk of the circuit court sufficient money, or a bond conditioned to pay the same, in a penalty and with sureties to be fixed and approved by such clerk, to pay: (1) the expenses of preparing and indexing the record; (2) fees for certifying necessary copies of orders; (3)

costs of transmission and return of the record; and (4) costs of the making of the transcript. The clerk shall endorse on the record that such deposit has been made or such bond fixed.

## **Rule 9. Transcripts.**

**(a)** *When transcripts are necessary.* In preparing the notice of appeal, the petitioner is responsible for making the initial determination as to whether a written transcript of a proceeding in the lower tribunal will assist ~~the Court~~ in deciding the issues presented on appeal. Because the parties are encouraged to agree on the contents of the appendix pursuant to Rule 7(e), the petitioner is encouraged to confer with the other parties to the case as to whether transcripts are necessary.

**(b)** *Requesting transcripts-preliminary matters.* Before a transcript of proceedings may be requested for purposes of an appeal, the requesting party must obtain—from each court reporter who will be involved in preparing any portion of the transcript—an estimate of the length of the transcript, and must make appropriate financial arrangements with each court reporter either by: (1) immediate payment in full or by another payment arrangement that is acceptable to the court reporter pursuant to subsection (e) of this Rule; or (2) filing, in appropriate cases, an affidavit of indigency or order appointing counsel in the circuit clerk's office, in which case payment for the transcript will be made by the Supreme Court.

**(c)** *Transcript requests by the petitioner.* The petitioner's transcript request is made by filing a notice of appeal and appellate transcript request form as required by Rule 5 and in the format provided in Appendix A of these Rules. If a petitioner fails to properly request a transcript within the time specified, fails to make satisfactory financial arrangements with the court reporter, or fails to specify in adequate detail those proceedings to be transcribed, the Intermediate Court or the Supreme Court may deny motions for an extension of the appeal period or subject the appeal to dismissal by the Court for failure to perfect.

**(d)** *Transcript requests by the respondent.* If the respondent, upon review of the petitioner's notice of appeal, is of the opinion that the transcripts listed by the petitioner, if any, are not adequate to permit ~~the Court to fairly consideration of~~ the assignments of error presented, the respondent shall, within fourteen days ~~of receipt~~ of the notice of appeal, request that additional transcripts be prepared by completing and filing an appellate transcript request contained in Appendix A or Appendix B of these Rules. The respondent's transcript request shall be served upon opposing counsel, on each court reporter from whom a transcript is requested, and be filed with the Clerk ~~of the Supreme Court~~. As appropriate to the circumstances, the Intermediate Court or the Supreme Court will issue an amended scheduling order. The respondent ~~shall~~ may provide a statement of costs to the Intermediate

Court or the Supreme Court if transcripts produced under this subsection are included in a supplemental appendix under Rule 7.

**(e) *Payment for transcripts.*** In cases where transcripts are not paid for by the Supreme Court, the court reporter may, for good cause shown by the requesting party, defer payment at the time the transcript is requested. If payment is deferred in whole or in part, the requesting party must make full payment upon receipt of the court reporter's invoice. If payment is not received by the court reporter within a reasonable amount of time, the Intermediate Court or the Supreme Court may deny motions for extension of the appeal period or dismiss the appeal for failure to perfect. When a transcript has been properly requested, but the appeal is later dismissed or withdrawn, the requesting party is nevertheless obligated to pay the court reporter for the cost of the transcript prepared prior to the court reporter's receipt of notification from the requesting party that the appeal has been dismissed or withdrawn. If a party has made an informal request for a transcript but fails to properly complete and file a notice of appeal containing the appropriate transcript request, the court reporter is not obligated to perform any work to complete the transcript unless otherwise provided by order.

**(f) *Duties of the court reporter.*** Unless otherwise provided in a scheduling order or other order issued by the Intermediate Court or the Supreme Court, a completed transcript is due forty-five days from the court reporter's receipt of the appellate transcript request; provided, however, that transcripts in abuse and neglect appeals under Rule 11 are not prepared for purposes of appeal unless specifically approved in advance by the Supreme Court. The court reporter shall promptly notify the Deputy Clerk of the Supreme Court of any problem with the appellate transcript request or the financial arrangements. Upon completion of the transcript, the court reporter must promptly provide a copy to the requesting party, file the original transcript in the circuit clerk's office, and provide a completed certification—setting forth the date the transcript was filed—to the Clerk of the Supreme Court. Additional duties and responsibilities applicable to court reporters are set forth in the Official Manual for West Virginia Court Reporters.

**(g) *Extensions of time to complete transcripts.*** The Clerk may grant an extension of time for the court reporter to complete a transcript. All requests for extensions of time must be specific and in writing.

## **Rule 10. Briefs.**

**(a) *Format.*** In addition to the specific requirements in this Rule, all briefs and summary responses are required to: (1) comply with the general format requirements and page

limitations set forth in Rule 38; and (2) avoid unnecessary use of personal identifiers as required by Rule 40(e).

**(b) Time for filing, ~~number of copies, and method of filing.~~** Unless otherwise provided, briefs are due within the time frame set forth in the scheduling order. Typically, the petitioner's brief must be filed four months from entry of the final order being appealed, the respondent's brief must be filed forty-five days after the petitioner's brief, and any reply brief deemed necessary must be filed twenty days after the respondent's brief. The number of copies and page limitations for briefs and summary responses are set forth in Rule 38. Briefs and summary responses are deemed filed when ~~the requisite number of documents they~~ are received in the Clerk's Office in proper form, not when mailed.

**(c) Petitioner's brief.** ~~The petition for appeal and note of argument shall be consolidated into a single document called the petitioner's brief. To the fullest extent possible, t~~The petitioner's brief shall contain the following sections in the order indicated, immediately following the cover page required by Rule 38(b).

- (1) Table of Contents: If the brief exceeds five pages it must include a table of contents, with page references to the sections of the brief and the argument headings. The table of contents does not count toward the page limit for briefs.
- (2) Table of Authorities: If the brief exceeds five pages it must include a table of authorities with an alphabetical list of cases, statutes, and other authorities cited, and references to the pages of the brief where they are cited. The table of authorities does not count toward the page limit for briefs.
- (3) Assignments of Error: The brief opens with a list of the assignments of error that are presented for review, expressed in terms and circumstances of the case but without unnecessary detail. The assignments of error need not be identical to those contained in the notice of appeal. The statement of the assignments of error will be deemed to include every subsidiary question fairly comprised therein. If the issue was not presented to the lower tribunal, the assignment of error must be phrased in such a fashion as to alert the Intermediate Court or the Supreme Court to the fact that plain error is asserted. In its discretion, the Intermediate Court or the Supreme Court may consider a plain error not among the assignments of error but evident from the record and otherwise within its jurisdiction to decide.
- (4) Statement of the Case: Supported by appropriate and specific references to the appendix or designated record, the statement of the case must contain a concise account of the procedural history of the case and a statement of the facts of the case that are relevant to the assignments of error.
- (5) Summary of Argument: The summary of argument should be a concise, accurate, and clear condensation of the argument made in the body of the brief, and need not

contain extensive citation to legal authorities. The summary may not be a mere repetition of the headings under which the argument is arranged.

- (6) **Statement Regarding Oral Argument and Decision:** The brief must contain a statement as to whether oral argument is necessary pursuant to the criteria in Rule 18(a). If the party deems oral argument to be necessary, the party must indicate whether the case should be set for a Rule 19 argument or a Rule 20 argument, and why. If the party requests a Rule 19 argument, the party must state whether the case is appropriate for a memorandum decision. If the party requests that the case be set for oral argument and believes that the minimum time for argument set forth in Rule 19 or Rule 20 will not be sufficient, the party may request a specific amount of additional time for argument and explain why the party believes that good cause exists for granting additional time.
- (7) **Argument:** The brief must contain an argument exhibiting clearly the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error. The argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal. The Intermediate Court and the Supreme Court may disregard errors that are not adequately supported by specific references to the record on appeal.
- (8) **Conclusion:** The brief must end with a conclusion, specifying the relief to which the party believes himself to be entitled.
- (9) **Certificate of Service:** A certificate of service as required by Rule 37 must be attached to the end of the brief. The certificate of service does not need a page number and does not count toward the page limit for briefs.
- (10) The following requirements must be observed when counsel in a criminal, habeas corpus, or abuse and neglect case is directed by a client to file an appeal where counsel lacks a good faith belief that an appeal is reasonable and warranted under the circumstances:
  - (a) Counsel must engage in a candid discussion with the client regarding the merits of the appeal. If, after consultation with the client, the client insists on proceeding with the appeal, counsel must file a notice of appeal and perfect the appeal on the petitioner's behalf. The petitioner's brief should raise any arguable points of error advanced by the client. Counsel need not espouse unsupportable contentions insisted on by the client, but should present a brief containing appropriate citations to the appendix and any case law that supports the assignments of error.
  - (b) In extraordinary circumstances, if counsel is ethically compelled to disassociate from the contentions presented in the brief, counsel must preface the brief with a statement that the brief is filed pursuant to Rule 10(c)(10)(b).



Counsel should not inject disclaimers or argue against the client's interests. If counsel is ethically compelled to disassociate from any assignments of error that the client wishes to raise on appeal, counsel must file a motion requesting leave for the client to file a pro se supplemental brief raising those assignments of error that the client wishes to raise but that counsel does not have a good faith belief are reasonable and warranted.

**(d) *Respondent's brief.*** The respondent must file a brief in accordance with this subsection, or a summary response in accordance with subsection (e) of this Rule. The respondent's brief must conform to the requirements in subsection (c) of this Rule, except that no statement of the case need be made beyond what may be deemed necessary in correcting any inaccuracy or omission in the petitioner's brief, and except that the respondent need not specifically restate the assignments of error. Unless otherwise provided by the Intermediate Court or the Supreme Court, the argument section of the respondent's brief must specifically respond to each assignment of error, to the fullest extent possible. If the respondent's brief fails to respond to an assignment of error, the Intermediate Court or the Supreme Court will assume that the respondent agrees with the petitioner's view of the issue.

**(e) *Summary response.*** Instead of a brief, the respondent may file a summary response. A summary response need not comply with all the requirements for a brief set forth in this rule but must contain an argument responsive to the assignments of error with appropriate citations to the record on appeal, exhibiting clearly the points of fact and law being presented and the authorities relied on; a conclusion, specifying the relief to which the party believes himself entitled; and a certificate of service as required by Rule 37. A party who files a summary response is deemed to have consented to the waiver of oral argument.

**(f) *Cross-assignment of error.*** The respondent, if he is of the opinion that there is error in the record to his prejudice, may assign such error in a separate portion of his brief and set out authority and argument in support thereof in the manner provided in subsection (c) of this Rule. Such cross-assignment may be made notwithstanding the fact that the respondent did not perfect a separate appeal within the statutory period for taking an appeal. If the respondent's brief contains cross-assignments of error, the cover page of the brief must clearly so reflect. The petitioner may respond to the cross-assignment of errors in the reply brief.

**(g) *Reply brief.*** The petitioner may file a reply brief, which must comply with such parts of this rule applicable to the respondent, but need not contain a summary of argument, if appropriately divided by topical headings. If a timely-filed respondent's brief asserts cross-assignments of error, the applicable page limitation for a reply brief set forth in Rule 38 is extended to forty pages, and the time for filing a reply brief is automatically extended, without need for further order, until thirty days after the date the respondent's brief containing cross-assignments of error was filed. Unless otherwise provided by order, in

cases where more than one respondent's brief is filed, the petitioner is limited to filing only a single reply brief that consolidates the reply to each of the responses. In cases where more than one response brief is filed, the page limitation for the reply brief under Rule 38 is automatically extended to thirty pages, without need for further order.

**(h) *Supplemental brief.*** The Intermediate Court or the Supreme Court may, on its own motion or upon motion of a party, direct that supplemental briefs be filed addressing a particular issue or circumstance. Unless otherwise provided, supplemental briefs need only comply with such parts of this rule applicable that are appropriate under the circumstances.

**(i) *Notice of additional authorities.*** Whenever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in time to have been included in the party's brief, the party may briefly inform the Court Clerk by letter, with copy provided to opposing parties. If the Intermediate Court or the Supreme Court desires any further briefing or argument, it will so instruct by order.

**(j) *Failure to file brief.*** The failure to file a brief in accordance with this rule may result in the Intermediate Court or the Supreme Court refusing to consider the case, denying oral argument to the derelict party, dismissing the case from the docket, or imposing such other sanctions ~~as the Court may deem~~ appropriate.

## **Rule 11. Abuse & neglect appeals.**

**(a) *Applicability.*** This Rule governs all appeals from a circuit court final judgment in abuse and neglect cases under West Virginia Code §49-4-601, et seq.

**(b) *Docketing the appeal.*** Within thirty days of entry of the judgment being appealed, the petitioner shall file the notice of appeal and the attachments required in the notice of appeal form contained in Appendix A of these Rules. The notice of appeal shall be filed in the Office of the Clerk of the Supreme Court. ~~The petitioner must file an original and the number of copies required by Rule 38.~~ In addition to serving the notice of appeal in accordance with Rule 37, the party appealing shall serve a copy of the notice of appeal, including attachments, on all parties to the action in circuit court, on the clerk of the circuit court from which the appeal is taken—which shall be made a part of the record in the circuit court—and on each court reporter from whom a transcript is requested. To the extent that a transcript of a particular proceeding is necessary for the Supreme Court to review a disputed evidentiary or testimonial issue, the petitioner must so indicate in the notice of appeal. Upon motion filed in accordance with Rule 39(b), the Supreme Court may extend the time period for filing a notice of appeal for good cause shown.

**(c) *Parties to the appeal.*** All parties to the proceeding in the court from which the appeal is taken, including the guardians ad litem for the minor children, shall be deemed parties in ~~this~~ the Supreme Court, unless the appealing party shall indicate on the notice of appeal that one or more of the parties below has no interest in the outcome of the matter. A party mistakenly designated as no longer interested may remain a party in ~~this~~ the Supreme Court by notifying the Clerk of ~~this Court~~, with notice given to the other parties, that ~~he has~~ they have an interest in the appeal, within twenty days of the filing of the notice of appeal.

**(d) *Scheduling order.*** As soon as practicable after the proper filing of the notice of appeal, the Supreme Court will issue a scheduling order. As appropriate to the circumstances, the scheduling order will contain the dates on which the petitioner's brief, the response brief, the reply brief, and the designated record or appendix shall be filed; will set forth whether a transcript will be prepared, the extent of any transcript, and the date the transcript is due; will set forth deadlines for filing motions; and may set forth such other matters as deemed beneficial or necessary. The scheduling order will set forth the official caption of the case, which should be used on the cover page of all documents filed with the Supreme Court.

**(e) *Failure to comply with scheduling order.*** If a party fails to comply with a scheduling order the Supreme Court may impose sanctions or dismiss the appeal, or both.

**(f) *Perfecting the appeal—timing.*** Unless otherwise provided by law, an appeal in an abuse and neglect case must be perfected within sixty days of the date the judgment being appealed was entered in the office of the circuit clerk; provided, however, that the circuit court from which the appeal is taken or the Supreme Court may, for good cause shown, by order entered of record, extend such period, not to exceed a total extension of two months, if the notice of appeal was properly and timely filed by the party seeking the appeal. If a motion for leave to extend the time for perfecting an appeal is filed with the circuit court, a copy of the motion must be filed with the Clerk of ~~the Supreme Court~~, and the order of the circuit court ruling on the motion must also be provided to the Clerk of ~~the Supreme Court~~. A motion that is filed with this Court to extend time to perfect an appeal must comply with Rule 29 and must state with particularity the reasons why an extension is necessary. Upon motion filed on or before the deadline for perfecting an appeal, the Supreme Court may grant leave to the petitioner to perfect an appeal where a notice of appeal has not been filed and a scheduling order has not been entered. Such relief will be granted only in extraordinary circumstances, and if the motion is granted, the Supreme Court may, in its discretion, deny oral argument or impose other sanctions for failure to comply with the Rules.

**(g) *Perfecting the appeal—method.*** An appeal is perfected by the timely and proper filing in the Office of the Clerk of ~~the Supreme Court of an original and the number of copies required by Rule 38~~ of: (1) the petitioner's brief prepared in accordance with Rule 10 and (2) the appendix record prepared in accordance with Rule 7, unless the Supreme Court has

specifically provided that an appendix record is not required. Failure by the petitioner to perfect an appeal will result in the case being dismissed from the docket of the Supreme Court.

**(h) Responsibilities of guardian ad litem.** Unless the guardian ad litem brings an appeal for a child as the petitioner, The guardian ad litem for any minor child involved in an abuse and neglect appeal must file a respondent's brief—or a summary response in an appropriate case—and if argument is held the guardian must appear and present argument unless otherwise specifically ordered by the Supreme Court.

**(i) Special requirements for briefs.** In addition to the items required by Rule 10, the briefs filed by the parties (including the guardian ad litem) must contain a section immediately following the concise summary of argument required by Rule 10(c)(5), setting forth the current status of the minor children and any plans for permanent placement, and the current status of the parental rights of all the children's parents.

**(j) Update regarding the current status of the child.** The parties shall provide a written statement of any change in the circumstances that were set forth in the briefs within one week of any oral argument scheduled by the Supreme Court or within such other time as may be specified by order.

**(k) Consideration of the appeal.** After the response brief or summary response has been filed in accordance with Rule 10, and any reply brief deemed necessary has been filed (or the time for filing a reply has expired), the appeal will be deemed to be mature, and thereafter the Supreme Court will fully consider the written arguments of all parties to the appeal. Thereafter, the Supreme Court will: (1) decide the case on the merits without oral argument; or (2) set the case for oral argument and decide the case on the merits; or (3) issue an appropriate order after considering any written and oral arguments made by the parties, ~~(e.g. the appeal is premature because it is an appeal from an interlocutory decision, or the appeal is dismissed because the case has been settled.)~~

## **Rule 12. Workers' compensation appeals.**

**(a) Applicability.** This Rule governs all appeals from a final decision of the Workers' Compensation Board of Review pursuant to West Virginia Code §23-5-15 to the Intermediate Court and all appeals in workers' compensation cases from the Intermediate Court to the Supreme Court, or as allowed by motion under West Virginia Code § 23-5-15 51-11-5.

**(b) Time for appeal.** No appeal shall be presented from a decision of the Workers' Compensation Board of Review ~~which that~~ has been rendered more than thirty days before such appeal is filed with the Clerk of the Supreme Court.

**(c) Perfecting the appeal.** An appeal from a decision of the Workers' Compensation Board of Review is perfected upon the timely and proper filing of ~~an original and the number of copies required by Rule 38 of the~~ a docketing statement, petitioner's brief, and appendix in the Office of the Clerk of the Supreme Court.

**(d) Docketing statement.** The petitioner must file ~~an original and the number of copies required by Rule 38 of the~~ docketing statement with the attachments mentioned in the form contained in Appendix B ~~C~~ of these Rules.

**(e) Petitioner's brief.** The petitioner must file ~~an original and the number of copies required by Rule 38 of~~ a brief in the same format as provided in Rule 10; and must comply with the page limitations set forth in Rule 38. If applicable, the petitioner's brief shall name the successor to the workers' compensation commission as a respondent in addition to the adverse party.

**(f) Appendix.** The petitioner must file ~~an original and the number of copies required by Rule 38 of~~ a separate appendix of documents relevant to the issues on appeal. The appendix shall accurately reflect the relevant documents submitted in the administrative proceedings; and must include the decision of the Office of Judges, if applicable, and the Board of Review. The appendix must also include all relevant medical reports, psychological reports, vocational reports, transcripts, correspondence, orders, and other written material that is necessary for a fair consideration of the issues on appeal.

**(g) Service of papers.** All papers filed in a workers' compensation appeal shall be served on all parties to the appeal or, if represented, upon their attorneys, and upon the successor to the Workers' Compensation Commission and the Workers' Compensation Board of Review, in accordance with Rule 37.

**(h) Respondent's brief.** Within thirty days of receipt of the petitioner's brief, the respondent may file ~~an original and the number of copies required by Rule 38 of~~ a brief or summary response in the same format as provided in Rule 10; and must comply with the page limitations set forth in Rule 38. The respondent may file ~~an original and the number of copies required by Rule 38 of~~ a separate appendix of additional documents relevant to the issues on appeal not contained in the petitioner's appendix. Cross-assignments of error are not permitted.

**(i) Reply brief.** If the respondent files a brief or summary response, the petitioner may file ~~an original and the number of copies required by Rule 38 of~~ a reply brief, which must comply

with the page limitations set forth in Rule 38, within twenty days of receipt of the respondent's brief or summary response.

**(j) *Consideration of the appeal.*** After the response brief or summary response has been filed, and any reply brief deemed necessary has been filed (or the time for filing a reply has expired), the appeal is deemed to be mature for full consideration by the Intermediate Court or the Supreme Court. Thereafter, the Intermediate Court or the Supreme Court will: (1) decide the case on the merits without oral argument; or (2) set the case for oral argument and decide the case on the merits; or (3) issue an appropriate order after considering any written and oral arguments made by the parties (e.g. the appeal is premature because it is an appeal from an interlocutory decision, or the appeal is dismissed because the case has been settled.)

**(k) *Decision.*** The Intermediate Court or the Supreme Court shall certify its decision upon the merits of the appeal to the Workers' Compensation Board of Review and, in an appropriate case, to the successor to the ~~w~~Workers' c~~e~~Commissioner.

### **Rule 13. Family court appeals.**

**(a) *Applicability.*** This rule governs ~~direct~~ appeals from a family court final order to the Supreme Court pursuant to West Virginia Code §51-2A-15(a), and appeals transferred to the Supreme Court pursuant to West Virginia Code §51-2A-14(f). Any other appeals from a final circuit court order refusing a petition for appeal from family court or ruling on a family court appeal pursuant to West Virginia Code § 51-2A-15(b) order or from a final circuit court order in an appeal from family court in domestic violence cases under West Virginia Code §48-27-101. are governed by Rule 5.

**(b) *Direct ~~a~~ Appeals from family court to the Supreme Court.*** An appeal from a final order of a family court may not be filed in the Supreme Court unless, within fourteen days after entry of a family court final order, both of the parties file a notice of intent to appeal directly to the Supreme Court and waive their right to appeal to the circuit court.

- (1) The notice of intent to appeal and waiver shall be filed in the office of the circuit clerk where the final order of the family court was entered. The notice of intent to appeal and waiver shall be in the same or substantially similar form as that contained in Appendix A of the Rules of Practice and Procedure for Family Court, and may be filed jointly or separately. The circuit clerk shall forward a copy of the notice of intent to appeal and waiver, whether joint or separate, bearing a legible indication of the date of filing, together with a copy of the docket entries in the case, to the Clerk ~~of the Supreme Court~~.

(2) As soon as practicable after receipt of the foregoing documents from the circuit clerk, the appeal will be docketed, the Supreme Court will issue a scheduling order, and the case will proceed in accordance with Rule 5 through Rule 10.

**(c) *Transfer of appeals from circuit court.*** When, under the provisions of W. Va. Code §51-2A-14(f), a petition for appeal is transferred to the Supreme Court for review due to the failure of the circuit court to timely enter an order, the circuit clerk shall retain one copy of the petition for appeal originally filed, and transmit by certified mail to the Clerk ~~of the Supreme Court~~ the original and one copy of the petition, together with a copy of the docket entries in the case. Upon receipt of the foregoing documents, the appeal will be docketed. Prior to issuing a scheduling order, the Supreme Court may, in its discretion, direct that the appeal be summarily remanded to the circuit court with directions to issue a decision in the case. If a summary remand order is not entered, the Supreme Court will, as soon as practicable, issue a scheduling order and the case will proceed in accordance with Rule 5 through Rule 10.

#### **Rule 14. Public service commission appeals.**

**(a) *Applicability.*** This Rule governs all appeals from a final decision of the Public Service Commission pursuant to West Virginia Code § 24-5-1.

**(b) *Time for appeal.*** A party seeking review in ~~this~~ the Supreme Court of a final order of the Public Service Commission must perfect the appeal within thirty days of entry of the final order of the Commission.

**(c) *Perfecting the appeal.*** An appeal under subsection (a) is perfected upon the timely and proper filing of ~~an original and the number of copies required by Rule 38 of~~ a petitioner's brief and appendix in the ~~Office of the Clerk of this Court~~ Office of the Clerk of the Supreme Court.

**(d) *Petitioner's brief.*** The petitioner shall file ~~an original and the number of copies required by Rule 38 of~~ a brief in substantially the same format as provided in Rule 10.

**(e) *Appendix.*** The petitioner must file ~~an original and the number of copies required by Rule 38 of~~ an appendix of documents that comply with the format, page numbering, and general requirements set forth in Rule 7. The appendix must include the relevant decisions or orders pertaining to the subject matter of the appeal, but need not contain evidence that will be provided with the Commission record.

**(f) *Commission record.*** Within thirty days of receipt of notice that an appeal has been perfected, the Commission shall transmit to the Clerk ~~of this Court~~ the record of the proceedings had before it, including all the evidence.

**(g) *Scheduling order.*** As soon as practicable after the appeal is perfected, the Supreme Court will issue a scheduling order. As appropriate to the circumstances, the scheduling order will set forth the date upon which a statement of reasons must be filed by the Commission, the date upon which any respondent's brief must be filed, and the date for oral argument.

**(h) *Statement of reasons.*** Within the time period provided in the scheduling order, the Commission shall file ~~an original and the number of copies required by Rule 38~~ of a statement of reasons in the same format as the respondent's brief set forth in Rule 10.

**(i) *Respondent's brief.*** Within the time period provided in the scheduling order, a party to the proceedings before the Commission against whom the appeal is taken must file ~~an original and the number of copies required by Rule 38~~ of a respondent's brief or summary response in the same format required for the respondent's brief set forth in Rule 10. Cross-assignments of error are not permitted.

**(j) *Reply brief.*** Within the time period provided in the scheduling order, the petitioner may file ~~an original and the number of copies required by Rule 38~~ of a reply brief in the same format as set forth in Rule 10.

**(k) *Oral argument.*** The date for oral argument under Rule 19 or Rule 20 will be set forth in the scheduling order. Unless otherwise provided by order, the petitioner, the Commission and any respondent who filed a brief shall be entitled to present argument.

**(l) *Consideration of the appeal.*** At the conclusion of oral argument, the case will be submitted to the Supreme Court for its consideration. The Supreme Court may, in its discretion, decide the case on the briefs without further argument, issue a written decision on the merits, or issue an appropriate order.

## **Rule 15. ~~Human rights commission appeals. [Abrogated.]~~**

~~**(a) *Applicability.*** This Rule governs direct appeals from a final order of the West Virginia Human Rights Commission pursuant to West Virginia Code § 5-11-11(a) and appeals from a final order of the Circuit Court of Kanawha County following an appeal from a final order of the Human Rights Commission pursuant to West Virginia Code § 5-11-11(a) and § 29A-6-1. Appeals from actions initiated in circuit court to enforce rights granted by the West Virginia Human Rights Act are governed by Rule 5.~~

~~**(b) *Time for appeal.*** A party seeking review in this Court of a final order of the Human Rights Commission in accordance with West Virginia Code § 5-11-11(a) must perfect the appeal within thirty days of receipt of the final order of the Commission. A party seeking~~



~~review in this Court of a final order of the Circuit Court of Kanawha County ruling on an appeal from the Human Rights Commission in accordance with West Virginia Code § 5-11-11(a) must perfect the appeal within thirty days of entry of the final order of the Circuit Court of Kanawha County.~~

~~—(c) *Perfecting the appeal.* An appeal under subsection (a) is perfected upon the timely and proper filing of an original and the number of copies required by Rule 38 of the petitioner's brief and appendix in the Office of the Clerk of this Court.~~

~~—(d) *Petitioner's brief.* The petitioner must file an original and the number of copies required by Rule 38 of a brief in the same format as provided in Rule 10. In the case of a direct appeal from a final order of the Commission, the petitioner's brief shall name the Human Rights Commission and the adverse party as respondents, and must contain satisfactory proof of the date that the final order of the Commission was received by the petitioner.~~

~~—(e) *Appendix.* The petitioner must file an original and the number of copies required by Rule 38 of an appendix of documents that complies with the format, page numbering, and general requirements set forth in Rule 7. The content of the appendix shall be determined in accordance with Rule 7(e), but need not contain evidence that will be provided with the Commission record.~~

~~—(f) *Human Rights Commission record.* Within thirty days of receipt of notice that an appeal has been perfected, the Commission shall transmit to the Clerk of this Court the record of the proceedings had before it, including all the evidence.~~

~~—(g) *Respondent's brief.* Within forty-five days of receipt of the petitioner's brief, the respondent shall file an original and the number of copies required by Rule 38 of a brief or summary response in substantially the same form provided in Rule 10. Filing a supplemental appendix is permitted to the extent set forth in Rule 7(g).~~

~~—(h) *Cross-assignments of error.* The respondent, if of the opinion that there is prejudicial error in the record, may assign such error in a separate portion of his brief and set out authority and argument in support thereof in the manner provided in Rule 10(c). Such cross-assignment may be made notwithstanding the fact that respondent did not perfect a separate appeal within the statutory period for taking an appeal. If the respondent's brief contains cross-assignments of error, the cover page of the brief must clearly so reflect. Filing a supplemental appendix is permitted to the extent set forth in Rule 7(g). The petitioner may respond to the cross-assignment of errors in the reply brief.~~

~~—(i) *Reply brief.* Within twenty days of receipt of the respondent's brief or summary response, the petitioner may file an original and the number of copies required by Rule 38~~

~~of a reply brief, which must comply with such parts of this rule and Rule 10 applicable to the respondent, but need not contain a summary of argument, if appropriately divided by topical headings. If a timely filed respondent's brief asserts cross-assignments of error, the applicable page limitation for a reply brief set forth in Rule 38 is extended to forty pages, and the time for filing a reply brief is automatically extended, without need for further order, until thirty days after the date the respondent's brief containing cross-assignments of error was filed.~~

~~—(j) *Consideration of the appeal.* After the response brief or summary response has been filed, and any reply brief deemed necessary has been filed (or the time for filing a reply has expired), the appeal is deemed to be mature for full consideration by the Court. Thereafter, the Court will: (1) decide the case on the merits without oral argument; or (2) set the case for oral argument and decide the case on the merits; or (3) issue an appropriate order after considering any written and oral arguments made by the parties (e.g. the appeal is premature because it is an appeal from an interlocutory decision, or the appeal is dismissed because the case has been settled.)~~

## Part IV. Original Jurisdiction and Certified Questions

### **Rule 16. Original jurisdiction.**

**(a) *Applicability.*** This rule governs all cases seeking a writ of mandamus, prohibition, habeas corpus, or certiorari under the original jurisdiction of the Supreme Court. Issuance by the Supreme Court of an extraordinary writ is not a matter of right, but of discretion sparingly exercised.

**(b) *Docketing the petition.*** An original jurisdiction action will be docketed upon the timely and proper filing with the Clerk of the Supreme Court of ~~an original and the number of copies required by Rule 38 of~~ the following: (1) a petition in the format set forth in subsection (d) of this Rule; and (2) an appendix prepared in accordance with subsection (e) of this Rule.

**(c) *Service.*** ~~One copy of~~ The petition and appendix shall be served, in accordance with Rule 37, on each of the respondents. If one or more of the respondents is an elected or appointed judicial officer, ~~one copy of~~ the petition and appendix shall be ~~mailed or otherwise~~ provided to the office of the elected or appointed judicial officer. If one or more of the respondents is an official of the State, or if the petition seeks relief based upon an argument that a statute, rule, or other practice is unconstitutional under the state or federal

constitution, the petitioner shall, in addition to service under Rule 37, serve ~~a copy~~ of the petition and appendix upon the Attorney General of the State of West Virginia at: State Capitol, Room E-26, 1900 Kanawha Blvd. East, Charleston WV 25305. If one or more of the respondents is a county official, the petitioner shall serve ~~one copy~~ of the petition and appendix upon the prosecuting attorney of such county. A petition seeking expedited or emergency relief must be served upon all respondents contemporaneously with the filing of such petition with the Clerk, and the petitioner must provide adequate proof of such contemporaneous service ~~by e-mail, facsimile, or hand-delivery~~.

**(d) Contents of petition.** The petition shall be captioned: "State of West Virginia ex rel. [name of petitioner] v. [name of respondent(s)]". In the case of a petition for mandamus or prohibition involving an action pending in a lower tribunal, the petition shall name the presiding judicial officer of the lower tribunal and any real party or parties in interest as a respondents in the action. In the case of a petition for writ of habeas corpus, the petition shall name the person having custody of the ~~body of the~~ petitioner's body as the respondent. An original jurisdiction petition shall, insofar as applicable, follow the format requirements prescribed by Rule 10 and Rule 40(e), and contain the following sections in the order listed, immediately following the cover page required by Rule 38(b).

- (1) Table of contents. If the petition exceeds five pages it must contain a table of contents, with page references to the sections of the petition and the argument headings. The table of contents does not need a page number and does not count toward the page limit.
- (2) Table of authorities. If the petition exceeds five pages, it must contain a table of authorities containing an alphabetical list of cases, statutes, and other authorities cited, with references to the pages of the petition where they are cited. The table of authorities does not need a page number and does not count toward the page limit.
- (3) Questions Presented. The petition opens with a list of the questions that are presented for review, expressed in terms and circumstances of the case but without unnecessary detail. The statement of a question will be deemed to include every subsidiary question fairly comprised therein.
- (4) Statement of the case. Supported by appropriate and specific references to the appendix, the statement of the case must contain a concise account of the procedural history of the case and a statement of the facts of the case that are relevant to the questions presented. The statement of the case must clearly set forth any deadlines or upcoming events that are relevant to the questions presented and relief requested.
- (5) Summary of Argument. The summary of argument should be a concise, accurate, and clear condensation of the argument made in the body of the petition, and need not contain extensive citation to legal authorities. The summary may not be a mere repetition of the headings under which the argument is arranged.

- (6) Statement Regarding Oral Argument and Decision. The petition must contain a statement as to whether oral argument is necessary pursuant to the criteria in Rule 18(a). If the party deems oral argument to be necessary, the party must indicate whether the case should be set for a Rule 19 argument or a Rule 20 argument, and why. If the party requests a Rule 19 argument, the party must state whether the case is appropriate for a memorandum decision. If the party requests that the minimum time for argument set forth in Rule 19 or Rule 20 will not be sufficient, the party may request a specific amount of additional time for argument and explain why the party believes that good cause exists for granting additional time.
  - (7) Argument. The petition must contain an argument, exhibiting clearly the points of fact and law presented, the standard of review applicable, with citations to the authorities relied upon, all arranged under headings that correspond with the questions presented. The argument must explain why the original jurisdiction relief sought is not available in any other court or cannot be had through any other process. The argument must contain appropriate and specific citations to the appendix, including citations that pinpoint when and how the issues were presented to the lower tribunal. The Supreme Court may disregard questions presented that are not adequately supported by specific references to the appendix.
  - (8) Conclusion. The petition must end with a conclusion, specifying the relief to which the party believes ~~himself~~ to be entitled.
  - (9) Verification. In the case of a petition for mandamus or prohibition, the petition must contain a verification as required by West Virginia Code § 53-1-3. The verification does not count toward the page limit.
  - (10) Certificate of Service. A certificate of service as required by Rule 37, and further indicating that all persons upon whom a rule to show cause should be served, if granted, have been timely provided ~~a copy of~~ the petition and appendix, and indicating the name, address, e-mail address, if any, and telephone number of all such persons, must be attached to the end of the petition. The certificate of service does not count toward the page limit.
- (e) Appendix.** ~~Insofar as applicable, a~~ An appendix must follow the format, page numbering, and general requirements prescribed by Rule 7 and contain the following items in the order listed:
- (1) ~~Except in mandamus proceedings, A copy of~~ the decision sought to be reviewed, and all other orders that are necessary for a fair review of the questions presented. If a written decision has not been issued, a copy of the portion of the transcript where the decision is set forth is sufficient;
  - (2) Pleadings, motions and other filings, if their sufficiency, content or form is in issue or material;
  - (3) In a proceeding related to a criminal case, the indictment or information;

- (4) In a proceeding related to an abuse and neglect case, the abuse and neglect petition;
- (5) Documents relevant to the case that are contained in the record of the lower tribunal. Documents that are relevant and material to the case but not contained in the record of the lower tribunal may be provisionally included in an appendix only if the documents are clearly identified in the table of contents to the appendix and if the petitioner files a motion for leave to include documents not contained in the record, setting forth good cause why the documents should be considered. An opposing party may respond to the motion within ten days of the date the motion is filed;
- (6) Material excerpts from official transcripts of testimony or from ~~papers~~ documents in connection with a motion. Such excerpts must contain all the testimony or averments upon which the ~~petitioner~~ party relies and upon which it may be reasonably assumed the ~~respondent~~ opposing party or parties will rely. If transcript excerpts are misleading or unintelligible by reason of incompleteness or lack of surrounding context, the entire transcript must be provided;
- (7) ~~Copies of e~~Exhibits, including photographs or maps, to the extent practicable;
- (8) The certification required by Rule 7(c)(2), ~~modified to certify~~ that the appendix as a whole is sufficient to permit the Supreme Court to fairly consider the questions presented in the petition.

**(f) *Scheduling order.*** As soon as practicable after the petition is filed, the Supreme Court will issue a scheduling order. The scheduling order may, as appropriate to the circumstances, set forth the date on or before which a response may be filed or prescribe other deadlines. Failure to comply with a scheduling order may result in sanctions, dismissal, or both.

**(g) *Respondent's brief.*** If required by the Supreme Court, the respondent shall, within the time prescribed by the scheduling order, file an ~~original and the number of copies required by Rule 38 of~~ a respondent's brief. Unless otherwise provided, the respondent's brief must comply with the page limitations and other requirements set forth in Rule 38; and must conform to the requirements of subsection (d) of this Rule, except that no statement of the case or statement of facts need be made beyond what may be deemed necessary in correcting any inaccuracy or omission in the petition. If the response does not contain an argument in response to a question presented by the petition, the Supreme Court will assume that the respondent agrees with the petitioner's view of the issue. The respondent may, in accordance with ~~the applicable portions of Rules 7(g) 7(c) and 38~~, file ~~and original and the number of copies of~~ an appendix ~~required by Rule 38~~ at the same time the response is filed. The respondent in an original jurisdiction action does not have to seek leave to file an appendix record with their response.

**(h) *Summary Response.*** Instead of a respondent's brief, the respondent may file an ~~original and the number of copies required by Rule 38 of~~ a summary response. At the

summary response need not comply with all the requirements for a response set forth in this Rule but must contain an argument responsive to the questions presented, exhibiting clearly the points of fact and law being presented and the authorities relied on, and a conclusion, specifying the relief to which the party believes himself entitled. Unless otherwise provided, the summary response must comply with the page limitations and other requirements set forth in Rule 38. A party who files a summary response is deemed to have consented to the waiver of oral argument.

**(i) *Consideration of the petition.*** After the response or summary response has been filed, or upon the date set forth in the scheduling order, the petition will be deemed to be mature. Thereafter, the Supreme Court will fully consider the written arguments of the parties. Upon its consideration, the Supreme Court may, ~~in its discretion,~~ decline to issue a rule to show cause, issue a rule to show cause, or issue an order appropriate to the circumstances of the case.

**(j) *Rule to show cause.*** If the Supreme Court determines to issue a rule to show cause, the Clerk shall so notify the parties. Unless otherwise provided, the issuance of a rule to show cause in prohibition stays all further proceedings in the underlying action for which an award of a writ of prohibition is sought. If the Supreme Court declines to issue a rule to show cause, such determination shall be without prejudice to the right of the petitioner to present a petition to a lower court having proper jurisdiction, unless the Supreme Court specifically notes in the order denying a rule to show cause that the denial is with prejudice. An order declining to issue a rule to show cause does not prevent the petitioner from pursuing the same issues on appeal following a final order in the lower court. If a response was not required in a scheduling order, then the rule to show cause will set forth the deadline for filing a response. The rule to show cause may set forth a briefing schedule if additional briefing would assist the Supreme Court in deciding the questions presented. The rule to show cause shall set forth a date when the action will be submitted for decision, either upon the ~~papers~~ documents previously submitted without further argument, or upon oral argument under Rule 19 or Rule 20, and shall further set forth such other matters as appropriate to the circumstances of the case. The rule to show cause may be made returnable to a lower court for further proceedings.

**(k) *Discovery.*** In the event that the response raises a genuine issue of material fact, the parties may advise the Clerk of ~~the Supreme~~ Court in writing of any proposed schedule for taking and filing depositions, which shall be subject to the approval of the Supreme Court. No other or further discovery shall be allowed, except by leave of the Supreme Court.

**(l) *Reference.*** In an original jurisdiction proceeding, the Supreme Court, on its own motion or upon written motion of the parties, may determine that because of the complexity of the factual issues involved, the proceeding should be referred to a special master or

commissioner for the purpose of supervising the taking of depositions and to make such findings of fact as the Supreme Court may direct. Any such findings of fact made by the special master or commissioner shall be in writing and the parties shall have the right to file written objections ~~thereto~~ before the findings are considered by the Supreme Court.

**(m) *Argument.*** If permitted by the Supreme Court, argument in an original jurisdiction case shall be held in accordance with Rule 19 or Rule 20.

## **Rule 17. Certified questions.**

**(a) *Certified questions by a West Virginia circuit court or administrative tribunal.***

- (1) *Certification order—contents.* In cases where questions have been certified pursuant to the provisions of West Virginia Code § 5-11-11, § 23-5-15, or § 58-5-2, the order of certification complying with statutory requirements must further contain a concise statement of each question of law, the answer to each question of law by the circuit court or administrative tribunal, a notation of the extent to which the action is stayed pending resolution of the certified questions, and a directive to the parties to prepare a joint appendix of the record sufficient to permit review of the certified questions.
- (2) *Transmittal of certification order.* Upon entry of the order of certification, the clerk of the circuit court or the administrative tribunal is directed to transmit the order certifying questions and a list of the docket entries in the case to the Clerk of ~~this~~ Court.
- (3) *Scheduling order.* As soon as practicable after receipt of the order of certification, the Supreme Court will issue a scheduling order, and the case will proceed in accordance with Rule 5 through Rule 10. The scheduling order shall designate which party in the case is responsible for filing the petitioner's brief and which party is responsible for filing the respondent's brief.
- (4) *Joint Appendix.* As directed in the order of certification or as directed by ~~this the~~ Supreme Court, the parties to a certified question case must file ~~an original and the number of copies required by Rule 38 of~~ a joint appendix that complies with the format, page numbering, and general requirements in Rule 7. The joint appendix must be filed at the same time the petitioner's brief is filed, unless otherwise provided.
- (5) *Briefs.* Briefs in certified question cases are subject to Rule 10 and to the page limitation ~~and number of copies~~ required by Rule 38; provided, however, that briefs in certified question cases need not strictly comply with the content requirements for assignments of error in Rule 10(c)(3). Instead, the petitioner's brief must assign the specific points of legal error that arise from the circuit court's answer to the

certified question, with the respondent's brief to follow a similar pattern. The Supreme Court may modify the briefing schedule in order to suit the circumstances of the case.

- (6) *Consideration of the question.* After the response brief or summary response has been filed, and any reply brief deemed necessary has been filed (or the time for filing a reply has expired), the certified question is deemed to be mature for full consideration by the Supreme Court. Upon its consideration, the Supreme Court may, in its discretion, schedule the case for argument under Rule 19 or Rule 20, issue an order declining to accept the certified question, or issue an otherwise appropriate order.

*(b) Certified questions by federal and other courts.*

- (1) *Certification order—transmittal.* In cases where questions have been certified pursuant to the provisions of the Uniform Certification of Questions of Law Act, West Virginia Code § 51-1A-1, et seq., the clerk of the court where the certification order was entered is required to transmit the order certifying questions and a list of the docket entries in the case to the Clerk of this Court.
- (2) *Scheduling order.* As soon as practicable after receipt of the order of certification, the Supreme Court will issue a scheduling order, and the case will proceed in accordance with subsection (a) of this Rule, except that the Supreme Court may suspend briefing until after the Supreme Court has determined whether to accept the certified questions.
- (3) *Consideration of the question.* At a date set forth in the scheduling order, or, if briefing has been ordered, after the response brief or summary response has been filed, and any reply brief deemed necessary has been filed (or the time for filing a reply has expired), the certified question is deemed to be mature for full consideration by the Supreme Court. Upon its consideration, the Supreme Court may, in its discretion, schedule the case for argument under Rule 19 or Rule 20, issue an order declining to accept the certified question, or issue an otherwise appropriate order.

**(c) Order declining to accept.** An order declining to accept a certified question is not subject to the rehearing procedure in Rule 25.



## Part V. Oral Argument

### Rule 18. Argument calendar.

**(a) *Criteria for oral argument.*** Oral argument is unnecessary when:

- (1) all of the parties have waived oral argument; or
- (2) the appeal is frivolous; or
- (3) the dispositive issue or issues have been authoritatively decided; or
- (4) the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument.

**(b) *Clerk to prepare argument calendar.*** From time to time, the Clerk will prepare a calendar of cases ~~ready~~ for oral argument. A case ordinarily will be scheduled for argument at least thirty days prior to the date of argument, unless circumstances otherwise require. The Clerk will advise counsel when they are required to appear for oral argument, under either Rule 19 or Rule 20, and will publish an argument docket in advance of each session for the convenience of counsel and the information of the public.

**(c) *Consolidated argument.*** The Intermediate Court or the Supreme Court, on its own motion or ~~that of~~ by motion of a party, may order that two or more cases involving the same or related assignments of error or questions of law be argued together as one case or on such other terms as ~~the Court~~ may be prescribed.

### Rule 19. Oral argument.

**(a) *Selection of cases for Rule 19 argument.*** If the Intermediate Court or the Supreme Court, ~~in its discretion~~, determines that Rule 19 oral argument shall be held in a case, the parties shall be notified by the Clerk. Cases suitable for Rule 19 argument include, but are not limited to: (1) cases involving assignments of error in the application of settled law; (2) cases claiming an unsustainable exercise of discretion where the law governing that discretion is settled; (3) cases claiming insufficient evidence or a result against the weight of the evidence; (4) cases involving a narrow issue of law; and (5) cases in which a hearing is required by law.

**(b) *Notice.*** The Clerk shall notify each party that a case has been scheduled for Rule 19 argument. Unless circumstances otherwise require, the notice will issue at least thirty days prior to the date scheduled.

**(c) Continuance.** A request for continuance of the argument must be made by written motion—preferably a joint motion that suggests an alternative date—stating the grounds ~~therefore, for the continuance~~ and shall be filed within ten days of the date of the notice of argument.

**(d) Eligibility to argue.** A party who has not filed a brief may not present oral argument. A party who has filed a summary response in lieu of a brief is deemed to have waived oral argument, but shall be heard orally if the Intermediate Court or the Supreme Court specifically directs in the notice of argument. Amicus curiae shall not be heard during a Rule 19 argument.

**(e) Oral argument.** Oral arguments under Rule 19 are limited to ten minutes per side, unless otherwise indicated ~~by the Court~~ in the notice of argument. During oral argument, the Chief Judge in arguments before the Intermediate Court or the Chief Justice in arguments before the Supreme Court may direct counsel to conclude prior to the time allotted if the ~~Court understands the issues are understood and the Court determines that~~ further argument is ~~not~~ unnecessary. In the event of multiple parties on the same side, the Intermediate Court or the Supreme Court may determine, either upon its own motion or upon motion of a party, an appropriate amount of time for oral argument. When a guardian ad litem in a case appears as a respondent for argument an additional five minutes of argument shall be allotted to the guardian ad litem. The petitioner shall be entitled to open and close the argument.

**(f) Waiver of argument.** Within ten days of the date of a notice scheduling a case for argument under this Rule, counsel may inform the Clerk and all parties to the case in writing that oral argument is not desired, in which case argument will be conducted by the remaining parties to the case.

**(g) ~~Consideration by the Court.~~** Upon conclusion of the argument, the case will be further considered by the Intermediate Court or the Supreme Court in chambers. Thereafter, the Intermediate Court or the Supreme Court will: (1) decide the case on the merits by issuing a memorandum decision or an opinion; (2) set the case for oral argument under Rule 20; or (3) issue an appropriate order after considering the written and oral arguments made by the parties. ~~(e.g. the appeal is premature because it is an appeal from an interlocutory decision, or the appeal is dismissed because the case has been settled.)~~

## **Rule 20. Oral argument.**

**(a) Selection of cases for Rule 20 argument.** If the Intermediate Court or Supreme Court, ~~in its discretion,~~ determines that a case presents an issue proper for consideration by oral

argument under this Rule, the parties shall be notified by the Clerk. Cases suitable for Rule 20 argument include, but are not limited to: (1) cases involving issues of first impression; (2) cases involving issues of fundamental public importance; (3) cases involving constitutional questions regarding the validity of a statute, municipal ordinance, or court ruling; and (4) cases involving inconsistencies or conflicts among the decisions of lower tribunals.

**(b) Notice.** The Clerk shall notify each party that a case has been scheduled for Rule 20 argument. Unless circumstances otherwise require, the notice will issue at least thirty days prior to the date scheduled.

**(c) Continuance.** A request for continuance of Rule 20 argument must be made by written motion—preferably a joint motion that suggests an alternative date—stating the grounds ~~therefore, for the continuance~~ and shall be filed within ten days of the date of the notice of argument.

**(d) Eligibility to argue.** A party who has not filed a brief may not present oral argument. A party who has filed a summary response in lieu of a brief is deemed to have waived oral argument, but shall be heard orally if oral argument is held under this rule. Amicus curiae may not present oral argument unless ~~the Court has~~ granted permission under Rule 30.

**(e) Oral argument.** Unless otherwise provided in the notice or by order, oral argument under this Rule is limited to twenty minutes per side. During oral argument, the Chief Judge in arguments before the Intermediate Court or the Chief Justice in arguments before the Supreme Court may direct counsel to conclude prior to the time allotted if the ~~Court~~ understands the issues are understood and ~~the Court determines that~~ further argument is ~~not unnecessary~~. In the event of multiple parties on the same side, the Intermediate Court or the Supreme Court may determine, either upon its own motion or upon motion of a party, an appropriate arrangement for oral argument. The Chief Judge in arguments before the Intermediate Court or the Chief Justice in arguments before the Supreme Court may, at the conclusion of the time allotted, permit further argument if necessary. When a guardian ad litem in a case appears as a respondent for argument an additional five minutes of argument shall be allotted to the guardian ad litem. The petitioner shall be entitled to open and close the argument. A party is not obliged to utilize all of the time allotted, and the Intermediate Court or the Supreme Court may terminate the argument whenever in its judgment further argument is unnecessary. Oral argument shall emphasize and clarify the written argument appearing in the briefs. The Intermediate Court or the Supreme Court may decline to consider issues at oral argument that were not presented in the briefs. ~~The Court does not favor any oral argument that is read from briefs or from a prepared text~~ is disfavored.

**(f) Waiver of oral argument.** Within ten days of the date of a notice scheduling a case for the argument docket, a party may inform the Clerk and all parties to the case in writing that

oral argument is not desired, in which case the oral argument will be conducted by the remaining parties to the case.

**(g) ~~Consideration by the Court.~~** Upon conclusion of the oral argument, the case will be submitted for decision. Thereafter, the Intermediate Court or the Supreme Court will: (1) decide the case on the merits by issuing a memorandum decision when appropriate under Rule 21 which explains the reasons why the Intermediate Court or the Supreme Court is not issuing an opinion; (2) decide the case on the merits by issuing an opinion; or (3) issue an appropriate order after considering the written and oral arguments made by the parties. ~~(e.g. the appeal is premature because it is an appeal from an interlocutory decision, or the appeal is dismissed because the case has been settled.)~~ The Intermediate Court or the Supreme Court shall take all reasonable action to decide the case on the merits by issuing an opinion or other appropriate order; and shall not decide the case by issuing a memorandum decision absent exceptional or compelling circumstances.

## Part VI. Disposition of Cases

### Rule 21. Memorandum decisions.

(a) *Memorandum decisions.* At any time after a case is mature for consideration ~~by the Court~~, the Intermediate Court or the Supreme Court may issue a memorandum decision addressing the merits of the case.

(b) *Motion for disposition by memorandum decision.* A party may move that a docketed case be disposed by memorandum decision by filing ~~an original and the number of copies required by Rule 38~~ of a motion for disposition by memorandum decision. No motion for disposition by memorandum decision shall be accepted for filing after twenty days from the date the appeal is perfected, except if such motion is for the purpose of bringing to the Court's attention the effect that a controlling legal authority, issued after the case was perfected, may have on the case pending in this Court. The opposing party has ten days from the date of filing of the motion to file a response ~~and the number of copies required by Rule 38~~. The filing of a motion for disposition by memorandum decision shall not toll any time limitations established by law, rule or order.

(c) *Affirmative Affirmance.* A memorandum decision affirming the decision of the lower tribunal may be entered under this Rule when: (1) ~~this the~~ the Intermediate Court or the Supreme Court finds no substantial question of law and ~~the Court~~ does not disagree with the decision of the lower tribunal as to the question of law; (2) upon consideration of the applicable standard of review and the record presented, ~~this the~~ the Intermediate Court or the Supreme Court finds no prejudicial error; or (3) other just cause exists for summary affirmance. The memorandum decision shall contain a concise statement of the reason for affirmance, and a concise statement of the reason for issuing a memorandum decision instead of an opinion.

(d) *Reversal.* A memorandum decision reversing the decision of the lower tribunal shall contain a concise statement of the reason ~~therefor~~ for reversal and a concise statement of the reason for issuing the memorandum decision instead of an opinion. A memorandum decision reversing the decision of a circuit court should be issued in limited circumstances.

(e) *Citation of memorandum decisions.* Memorandum decisions may be cited in any court or administrative tribunal in this State; provided, however, that the citation must clearly denote that a memorandum decision is being cited, e.g. *Smith v. Jones*, No. 11-098 (W. Va. Supreme Court, January 15, 2011)(memorandum decision). Memorandum decisions are not published in the West Virginia Reports, but will be posted to the Court's website.

**(f) Rehearing.** Memorandum decisions are subject to the rehearing procedures set forth in Rule 25. Unless otherwise provided, the memorandum decision is not final until the ~~Court~~ mandate has issued a ~~mandate~~ under Rule 26.

## **Rule 22. Opinions of the court.**

**(a) Release and effect of opinions.** Opinions ~~of the Court~~ will be released by the Clerk at 3:00 p.m. on the day of filing, unless circumstances require otherwise. The Clerk will provide a copy of the opinion to each party in the case. Opinions ~~of the Court~~ do not take effect until issuance of the mandate under Rule 26, unless otherwise provided ~~in the opinion~~.

**(b) Publication.** The Clerk will cause opinions ~~of the Court~~ to be issued in slip form. The slip opinions issued by the Clerk and appearing on the Court's website are not the final, official opinions ~~of the Court~~. Slip opinions are subject to modification and petitions for rehearing pursuant to Rule 25. Opinions ~~of the Court~~ remain subject to clerical correction until officially published in the bound volumes of the West Virginia Reports (West Publishing Co.). Prior to issuance of the mandate, the parties may inform the Clerk of typographical or other formal errors.

## **Rule 23. Interest on judgements.**

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the circuit court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the circuit court, the mandate shall contain instructions with respect to allowance of interest.

## **Rule 24. Filing fees; Costs.**

**(a) Filing fees charged by the Clerk.** Except as provided by law for indigent parties, the Clerk shall charge the following: \$200 for docketing any civil appeal, including an appeal from family courts, but not including appeals in worker's compensation cases, original jurisdiction actions before the Supreme Court, or any other action, cause, or proceeding before the Supreme Court. Except as provided by law for indigent parties, the Clerk shall charge \$200 for docketing any civil appeals, including appeals from family courts and administrative agencies, in the Intermediate Court.

~~(a)~~ **(b)** *To whom costs are allowed.* Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the petitioner unless otherwise agreed by the parties or so ordered ~~by the Court~~; if a judgment is affirmed, costs shall be taxed against the petitioner unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the respondent unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered ~~by the Court~~.

~~(b)~~ **(c)** *Costs for or against the state.* In cases involving the State of West Virginia or an agency or officer thereof, if an award of costs against the State is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the State.

~~(c)~~ **(d)** *Taxable costs.* Costs of assembling and filing the appendix are taxable as costs in the discretion of the Intermediate Court or the Supreme Court and may be divided among the parties to the appeal. Other taxable costs include costs for the preparation and handling of the designated record. Attorney's fees and costs are not taxable unless specifically provided by law.

~~(d)~~ **(e)** *Costs in disciplinary actions.* If the Supreme Court directs that costs be paid in connection with a lawyer or judicial disciplinary action, disciplinary counsel shall, within twenty days of entry of the applicable order, memorandum decision, or opinion, provide the Supreme Court and the respondent in the disciplinary action with a certified statement of the costs as specified by the Supreme Court.

~~(e)~~ **(f)** *Clerk to insert costs in mandate.* The Clerk shall prepare and certify an itemized statement of costs taxed in the Intermediate Court or the Supreme Court for insertion in the mandate. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, may be added to such order at any time upon request of the Clerk.

~~(f)~~ **(g)** *Costs on appeal taxable in the circuit courts.* Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, and the premiums paid for cost of appeal bonds or other bonds to preserve rights pending appeal, shall be taxed in the circuit court as costs of the appeal in favor of the party entitled to costs under this rule.

## **Rule 25. Petition for rehearing.**

**(a)** *Time for filing.* A petition for rehearing may be filed within thirty days of release of any memorandum decision or opinion of ~~this~~ the Intermediate Court or the Supreme Court that

passes upon the merits of an action, unless the time for filing is shortened or enlarged by order. ~~The requisite number of copies under Rule 38 must be filed with the Clerk.~~ In those instances when the Court shortens the time period for issuance of the mandate is shortened and ~~directs~~ the Clerk is directed to issue the mandate in accordance with that time frame, the Intermediate Court or the Supreme Court shall set forth by order the deadline for filing, if any.

**(b) Content and form of petition.** A petition for rehearing is granted only in exceptional cases. The petition shall comply with the ~~number of copies and~~ page limitation set forth in Rule ~~28~~ 38 and shall state with particularity the points of law or fact which in the opinion of the ~~petitioner~~ party seeking rehearing the Intermediate Court or the Supreme Court has overlooked or misapprehended, ~~and shall contain such argument as the petitioner desires to present.~~ Repetition of argument previously presented to the Court in the case is not a proper basis for a petition for rehearing.

**(c) Response.** A response to a petition for rehearing is not required. If desired, an opposing party may file a response ~~and the number of copies required by Rule 38 of a response~~ within fourteen days of the filing of the petition for rehearing.

**(d) Consideration of the petition.** When the time for filing a response has passed, the petition for rehearing will be deemed mature for consideration ~~by the Court.~~ Upon its consideration, the Intermediate Court or the Supreme Court may, ~~in its discretion,~~ refuse the petition for rehearing or grant the petition for rehearing and direct by order such further proceedings as are required, including issuing a modified opinion or memorandum decision, or taking such other action that is necessary to accomplish substantial justice in the case.

## **Rule 26. Issuance of mandate; stay of mandate.**

**(a) Effect of mandate.** Issuance of the mandate terminates jurisdiction ~~of the Court~~ in an action before ~~this~~ the Intermediate Court or the Supreme Court, unless ~~the Court has provided~~ by order pursuant to Rule 25(a) ~~that~~ a petition for rehearing may be filed after a mandate has issued. Unless otherwise provided, an opinion ~~of the Court~~ or memorandum decision ~~of the Court~~ considering the merits of a case is not final until the mandate has been issued by that court.

**(b) Time for issuance, contents.** The timely filing of a petition for rehearing will stay issuance of the mandate. If a petition for rehearing is not timely filed, the Clerk will issue the mandate as soon as practicable after the passage of thirty days from the date the opinion or memorandum decision is released, unless the time is shortened or enlarged by order. The mandate will contain a summary description of the judgment ~~of the Court~~, and any direction



as to costs or other matters. The mandate must be read and construed together with the opinion or memorandum decision in the case. If a petition for rehearing is denied, the Clerk will issue the mandate within seven days of the date of the order refusing the rehearing petition, unless the time is shortened or enlarged by order.

**(c)** *Stay of Supreme Court's mandate pending application for certiorari.* A stay of the Supreme Court's mandate pending application to the Supreme Court of the United States for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. Unless the Supreme Court otherwise provides in its order, the stay shall not exceed ninety days. If during the period of the stay there is filed with the Clerk ~~of the Supreme Court~~ a notice from the Clerk of the Supreme Court of the United States that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until the filing of an order of the Supreme Court of the United States denying the petition for writ of certiorari, or, in the event the petition for writ of certiorari is granted, until the mandate of the Supreme Court of the United States is issued; provided, however, that if a case is remanded to ~~this~~ the Supreme Court for further proceedings following an appeal to the Supreme Court of the United States and the mandate of ~~this~~ the Supreme Court has not previously issued, the mandate need not issue, and ~~this~~ the Supreme Court may provide by order for further proceedings as are required under the circumstances of the case. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

## **Rule 27. Dismissal.**

**(a)** *Voluntary dismissal.* If the parties to an appeal or other proceeding shall sign and file with the Clerk ~~of the Supreme Court~~ an agreement that the proceeding be dismissed, specifying the terms as to payment of any costs, the Clerk shall enter the case dismissed. An appeal may be dismissed on motion of the petitioner upon such terms as may be agreed upon by the parties or fixed by ~~the Court~~ order.

**(b)** *Involuntary dismissal.* At any time after an appeal is docketed, a party to the appeal may file a motion to dismiss for failure to comply with the Rules of Appellate Procedure or for other just cause. Upon the granting of a motion to dismiss under Rule 27, the case shall be dismissed from the docket of the Intermediate Court or the Supreme Court. The Intermediate Court or the Supreme Court may, on its own motion, send a notice to the parties of its intent to dismiss an action for failure to comply with the Rules of Appellate Procedure or for other just cause; and may thereafter dismiss the action if the interests of justice so require. The Intermediate Court or the Supreme Court may dismiss an action that is moot on its own motion without prior notice to the parties.

## Part VII. Motions and Other Requests for Relief.

### Rule 28. Stays.

**(a) *Stay of circuit court order pending appeal.*** Any person desiring to present an appeal under Rule 5 may make an application for a stay of proceedings to the circuit court in which the judgment or order desired to be appealed was entered. Such application must be made by notice in writing to the ~~opposite~~ opposing party at any time after the entry of the judgment or order to be appealed. The circuit court shall grant such stay in a criminal case as provided by West Virginia Code § 62-7-1, and may grant a stay suspending the execution of a judgment or order, modifying, restoring, or granting an injunction, or staying the execution of a criminal sentence or fine beyond the time mandated by statute. Such stay shall be effective: (1) until the expiration of the time provided by law for presenting an appeal; and (2) any additional period after an appeal has been perfected pending final disposition of the appeal, unless sooner modified by such court, by the Intermediate Court, or by the Supreme Court.

**(b) *Application in Supreme Court*** ~~*Motion for stay of circuit court lower tribunal's order pending appeal.*~~ If the ~~circuit court~~ lower tribunal should refuse to grant a stay, or if the relief afforded is not acceptable, the applicant may, ~~upon written notice to the opposite party, apply to move the Intermediate Court or the Supreme Court, whichever appellate court has jurisdiction over the appeal,~~ for a stay. Such application The motion for stay shall show the reasons assigned by the ~~circuit court~~ lower tribunal for denying a stay or other relief, and further show the reasons for the relief requested and the grounds for the ~~underlying~~ appeal. If the facts are subject to dispute, the ~~application~~ motion shall be supported by affidavits or other sworn statements. Such parts of the record that are relevant shall be filed with the ~~application~~ motion. Any party may file a response to a motion for stay within ten days of the filing of the motion for stay.

**(c) *Bond.*** In civil cases the relief available in the circuit court, in the Intermediate Court, or the Supreme Court under this rule may be conditioned upon the filing of a bond or other appropriate security in the circuit court, in such amount and upon such conditions as the court granting the stay feels is proper for the protection of the adverse party. The provisions of West Virginia Code § 58-5-14, are applicable. Such bond shall be filed within such time as provided by the circuit court, the Intermediate Court, or ~~this the~~ the Supreme Court. Failure to execute such bond may be grounds for the dismissal of the appeal.

**(d) *Bankruptcy stays—continuing status report.*** When any pending action in ~~this the~~ Intermediate Court or the Supreme Court may be subject to an automatic stay pursuant to the provisions of the United States Bankruptcy Code, the affected party must file with the

~~Court wherein the action is pending~~ a written notice of bankruptcy, and serve a copy on all other parties to the ~~appeal action~~, setting forth the circumstances and providing an estimate of the time period in which it may be necessary to stay the case ~~in this Court~~. Any party to the case may respond to the notice of bankruptcy within ten days of receipt of the notice. Thereafter, the Intermediate Court or the Supreme Court will issue an order staying the case or directing other appropriate relief. Every six months during the pendency of the stay, counsel of record for the party who filed the notice of bankruptcy must file a continuing status report with the Clerk stating whether the ~~case pending action in this Court~~ is ripe for dismissal or lifting the automatic stay. Counsel for parties to the bankruptcy proceeding should provide counsel of record in ~~this~~ the Intermediate Court or the Supreme Court with sufficient information in a timely fashion to permit counsel to complete the continuing status report. Any party to the ~~case pending action in this Court~~ may file a response or objection to the continuing status report within ten days of receipt.

**(e) *Stays in original jurisdiction matters—~~modification~~***. A party to an original jurisdiction proceeding wherein the Court has issued a stay, either by rule or by order, may file a motion to modify the stay. in the Supreme Court may file a motion for stay of a lower tribunal's order, if the lower tribunal has refused to grant a stay, or if the relief afforded is not acceptable. The motion shall show the reasons assigned by the lower tribunal for denying a stay or other relief, and further show the reasons for the relief requested. If the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements. Such parts of the record that are relevant shall be filed with the application motion. Any party may file a response to a motion for stay within ten days of the filing of the motion for stay. Wherein the Supreme Court has issued a stay, either by rule or by order, a party to the original jurisdiction proceeding may file a motion to modify the stay. The motion shall set forth the specific reasons for the modification. Any other party to the case may file a response to the motion within ten days of receipt. Thereafter, the Supreme Court will issue an order denying the motion, issue an order modifying the stay, or issue an otherwise appropriate order.

**(f) *Abeyance of consideration ~~by the Court~~***. A party to a pending case may request that the Intermediate Court or the Supreme Court hold its consideration of a case in abeyance by filing a motion. A motion to hold a case in abeyance must set forth the specific circumstances supporting the request, the duration of time in which the case should be held in abeyance, and whether the opposing parties to the case consent to the request. Any party who does not consent to the request may file a response to the motion within ten days of the date the motion was filed. No deadline set forth in these rules is tolled until such time as the Intermediate Court or the Supreme Court issues an order granting a motion to hold a case in abeyance. Cases held in abeyance will be placed on the inactive docket, and counsel of record must file a status report with the Clerk every six weeks. Upon termination of the abeyance

as set forth in the order granting the motion, or at such other time as provided by ~~the Court~~ order, the case will be placed on the active docket for consideration ~~by the Court~~.

## **Rule 29. Motions; expedited relief.**

**(a) *Content of motions; response; reply not permitted.*** Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with service on all other parties. The motion shall state with particularity the grounds on which it is based, and shall set forth the relief sought. If a motion is supported by affidavits or other ~~papers~~ documents, the supporting documents shall be served and filed with the motion. Supporting documents filed with a motion do not become part of the appendix record. Any party may file a response in opposition to a motion within ten days of the filing of the motion. A reply to a response to a motion may not be filed without ~~leave of Court~~ granted by order.

**(b) *Determination of motions for procedural orders.*** Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation, or modification of such action within ten days of the date of the order.

**(c) *Expedited relief.*** Any request for expedited relief in connection with an action pending before ~~this~~ the Intermediate Court or the Supreme Court shall be made by filing a motion for expedited relief, which shall be separate and distinct from filings otherwise required in the action. A copy of the motion for expedited relief must be provided to all opposing parties contemporaneously with filing, and the certificate of service must indicate the method of contemporaneous service, which may include electronic mail. The motion for expedited relief shall set forth in specific detail the reasons for the request. The mere fact that a litigation deadline is approaching is not a sufficient basis for requesting expedited relief. A motion for expedited relief from an order entered more than two weeks prior to the filing of the motion will be granted only for extraordinary reasons. Any party may file a response to the motion for expedited relief within two days of the filing of the motion. The Intermediate Court or the Supreme Court may, at any time, direct that any case be expedited for consideration or decision.

**(d) *Form of papers; number of copies.*** All ~~papers~~ documents relating to motions must comply with the ~~document~~ requirements of Rule 38.

**(e) *Hearing.*** No oral argument shall be held on any motion, unless ~~requested~~ directed by the Intermediate Court or the Supreme Court.

(f) *Motions for direct review.* Within twenty days of the date a notice of appeal is filed in the Intermediate Court, a party to the appeal may file a motion in the Supreme Court for direct review of the final order on appeal. Any party may file a response in opposition to a motion within ten days of the filing of the motion. A reply to a response to a motion may not be filed without leave-granted by order. A motion for direct review may only be granted in appeals that involve fundamental public importance and where exigencies, in which time is of the essence, warrant direct review. If the motion is granted, jurisdiction of the appeal is transferred from the Intermediate Court to the Supreme Court.

The Court, on its own motion, may obtain jurisdiction over any civil case filed in the Intermediate Court.

### **Rule 30. Amicus curiae.**

(a) *When permitted.* The State of West Virginia or an officer or agency thereof, or a County or Municipality of the State, may file an amicus curiae brief without the consent of parties or leave of the Intermediate Court or the Supreme Court. Any other amicus curiae may file a brief only by leave ~~of Court~~ granted by order or if the brief states that all parties have consented to its filing.

(b) *Notice to parties.* An amicus curiae shall ensure that counsel of record for all parties receive notice of its intention to file an amicus curiae brief at least five days prior to the due date.

(c) *Motion for leave to file.* The motion for leave to file an amicus curiae brief must be accompanied by the proposed brief and appendix (if one is necessary), and must state: (1) the movant's interest; (2) the reason why an amicus curiae brief is desirable and why the matters asserted are relevant to the disposition of the case; and (3) if an appendix is provided, a statement of why the material provided in the appendix is not otherwise readily available and why the materials in the appendix are relevant and necessary to the disposition of the case. Any party opposed to the motion may respond within ten days.

(d) *Time for filing.* Unless otherwise provided by ~~the Court order~~, an amicus curiae brief must be filed within the time allowed the party whose position as to affirmance or reversal the brief will support unless the Intermediate Court or the Supreme Court for cause shown shall grant leave for later filing, in which event the ~~Court's~~ order may specify a time period within which an opposing party may file a supplemental brief in response. In an original jurisdiction action where the filing of a petitioner's brief initiates the action, an amicus curiae who supports the petitioner's position may file a motion for leave to file its brief within a reasonable time of its knowledge of the filing of the petition.

**(e) Contents of brief and appendix.** The amicus curiae brief need not strictly comply with Rule 10, but must include the following in the order listed:

- (1) a cover page with the caption of the case and further identifying the party supported and whether the amicus curiae supports affirmance or reversal;
- (2) a table of contents, with page references;
- (3) a table of authorities with references to the pages of the brief where they are cited;
- (4) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;
- (5) except for briefs presented as a matter of right on behalf of an amicus curiae listed in subdivision (a) of this Rule, a brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution specifically intended to fund the preparation or submission of the brief, and shall identify every person other than the amicus curiae, its members, or its counsel, who made such a monetary contribution. The disclosure shall be made in the first footnote on the first page of text.
- (6) The argument, exhibiting clearly the points of fact and law presented and citing the authorities relied on, under suitable headings.

An appendix must comply with the format, page numbering and general requirements of Rule 7 insofar as applicable.

**(f) Oral argument.** A motion of an amicus curiae to participate in the oral argument of a case on the Rule 20 docket will be granted only for extraordinary reasons.

### **Rule 31. Motions to dismiss the appeal.**

**(a) By party.** At any time after the filing of an appeal, any party to the action appealed from may move the Intermediate Court or Supreme Court to dismiss the appeal on any of the following grounds: (1) failure to properly perfect the appeal; (2) failure to obey an order of the Intermediate Court or the Supreme Court; (3) failure to comply with these rules; (4) lack of an appealable order, ruling, or judgment; or (5) lack of jurisdiction. Such motion shall be filed and served in accordance with Rule 37.

**(b) By Court.** The Intermediate Court or the Supreme Court may on its own motion notify any party who is in violation of the grounds set out in subsection (a) and fashion appropriate sanctions including the dismissal of the appeal.

**(c) Hearing.** No oral argument shall be held on such motion, unless ~~requested~~ directed by the ~~Court~~ order.

## **Rule 32. Intervention.**

Upon timely motion, anyone shall be permitted to intervene in a appeal or an original jurisdiction proceeding pending in ~~this~~ the Supreme Court or in an appeal pending in the Intermediate Court ~~a case pending before this Court on a direct appeal~~ from an administrative agency, but only when (1) a statute of this State confers an unconditional right to intervene; or (2) the representation of the applicant's interest by existing parties is or may be inadequate, and the applicant is or may be bound by judgment in the action. Intervention may be permitted in other cases in the discretion of the Intermediate Court or the Supreme Court. A party to the case may respond to a motion to intervene within ten days of the date the motion was filed.

## **Rule 33. Disqualification of a Judge of the Intermediate Court or of a Justice of the Supreme Court.**

**(a) *Duty to inform.*** Upon appearance in any case in ~~this~~ the Intermediate Court or the Supreme Court, counsel of record must inform the Clerk, by letter with a copy to the opposing parties, of any circumstance presented in the case in which a disqualifying interest of a Judge or Justice may arise under Canon 2, Rule 2.11 of the Code of Judicial Conduct.

**(b) *Grounds for disqualification.*** A Judge or Justice shall disqualify himself or herself, ~~upon~~ with or without proper motion ~~or sua sponte~~, in accordance with the provisions of Canon 2, Rule 2.11 of the Code of Judicial Conduct or, when ~~sua sponte~~ without proper motion, for any other reason the Judge or Justice deems appropriate.

**(c) *Motions for disqualification.*** A party to a proceeding in ~~this~~ the Intermediate Court or the Supreme Court may file a written motion in that court for disqualification of a Judge or Justice within thirty days after discovering the ground for disqualification and not less than seven days prior to any scheduled proceedings in the matter. If a motion for disqualification is not timely filed, such delay may be a factor in deciding whether the motion should be granted.

**(d) *Contents of motion.*** The motion shall be addressed to the Judge or Justice whose disqualification is sought and shall state the facts and reasons for disqualification, including the specific provision of Canon 2, Rule 2.11 of the Code of Judicial Conduct asserted to be applicable, and shall be accompanied by a verified certificate of counsel of record or unrepresented party that: (1) he has read the motion and that to the best of his knowledge, information, and belief formed after reasonable inquiry that it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal

of existing law; and (2) that 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.

**(e) *Sanctions for improper motion.*** If a motion is signed in violation of paragraph (d) of this rule, the Intermediate Court or the Supreme Court, with or without the participation of the Judge or Justice whose disqualification was sought, upon motion or upon its own initiative, may refer the matter to the appropriate disciplinary authority or may impose upon the person who signed it, an unrepresented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the motion, including reasonable attorney fees.

**(f) *Filing of motion.*** The ~~number of copies of the motion required by Rule 38~~ shall be filed with the Clerk with service on all parties. Upon filing of the motion, the Clerk shall examine it to determine whether it conforms with the requirements of paragraph (d) and, retaining the original ~~for the record~~, shall return the copies to the movant with instructions for correction of any nonconformity. The movant thereafter shall promptly advise the Clerk in writing of the abandonment of the motion or shall file ~~the required number of copies of a~~ corrected motion, with service on all parties. Once a proper motion is received, the Clerk shall promptly deliver a copy of the motion to each of the Judges or Justices.

**(g) *Decision on motion.*** As soon as practicable, the Judge or Justice sought to be disqualified shall notify the Clerk of his or her decision on the motion for disqualification, and the Clerk shall promptly notify the other Judges or Justices and the parties of such decision.

**(h) *Appointment of substitute Judge or Justice.*** When any Intermediate Court of Appeals Judge or Justice is disqualified pursuant to the provisions of this Rule, the Chief Justice, or Acting Chief Justice if the Chief Justice is unavailable, may, in his or her discretion, assign a senior justice, senior judge, or circuit judge to service for the disqualified Judge or Justice. The Chief Justice shall promptly notify the Clerk of the decision regarding the necessity of the appointment of a substitute Judge or Justice, and the Clerk shall promptly notify the other Judges or Justices and the parties of such decision.

#### **Rule 34. ~~Post-conviction~~ Bail.**

Summary petitions for ~~post-conviction~~ bail shall be filed in accordance with the provisions of West Virginia Code § 62-1C-1. The petitioner shall file ~~an original and the number of copies required by Rule 38~~ of the petition with the Clerk and shall serve a copy of the petition upon the prosecuting attorney in accordance with the provisions of Rule 37. The petition shall follow the format of a petitioner's brief under Rule 10. The prosecuting attorney shall file a response ~~and the number of copies required by Rule 38~~ within fourteen days of the filing of



the petition with the Clerk. The response shall follow the format of a respondent's brief, or summary response, under Rule 10. No reply brief is permitted, unless provided by order. Upon receipt of the response, the Supreme Court may grant the petition or deny the petition. If granted, the Supreme Court may direct the circuit court to set bail. Under West Virginia Code § 51-11-4, the Intermediate Court has no jurisdiction to consider bail petitions.

## Part VIII. Disciplinary Cases.

### **Rule 35. Docketing and filing in disciplinary cases.**

#### **(a) *Lawyer disciplinary cases.***

- (1) *Governing rules.* Lawyer disciplinary cases are governed by the Rules of Lawyer Disciplinary Procedure and the Rules of Appellate Procedure ~~to the extent provided herein.~~ A complaint against a lawyer is filed with the Lawyer Disciplinary Board pursuant to the Rules of Lawyer Disciplinary Procedure.
- (2) *Docketing.* The Rules of Lawyer Disciplinary Procedure require that certain documents be filed with the Clerk ~~of the Supreme Court.~~ Upon the filing of those specified documents, the Clerk will docket the action in the Supreme Court.
- (3) *Filings before a hearing panel subcommittee.* When a case is pending before a Hearing Panel Subcommittee of the Lawyer Disciplinary Board, the original of all documents shall be filed with the Clerk ~~of the Supreme Court,~~ and shall include a cover page with the heading "Before a Hearing Panel Subcommittee." However, for any discovery requested or produced during the litigation of formal charges, only the certificate of service shall be filed with the Clerk.
- (4) *Filings in the Supreme Court.* ~~The original and ten copies of a~~ A document shall be filed with the Clerk any time action is required or requested of the Supreme Court pursuant to the Rules of Lawyer Disciplinary Procedure, and shall include a cover page with the heading "In the Supreme Court of Appeals." Examples of such documents include, but are not limited to: any briefs directed to ~~this~~ the Supreme Court; a Hearing Panel Subcommittee's recommended disposition; a report or petition by the Office of Disciplinary Counsel pursuant to the Rules of Lawyer Disciplinary Procedure. All briefs directed to ~~this~~ the Supreme Court shall, to the extent practicable, include the material prescribed by Rule 10 except that assignments of error need not be designated. All briefs directed to ~~this~~ the Supreme

Court shall comply with the requirements set forth in Rule 38 for a petitioner's brief, respondent's brief, and reply brief.

**(b) *Judicial disciplinary cases.***

- (1) *Governing rules.* Judicial disciplinary cases are governed by the Rules of Judicial Disciplinary Procedure and the Rules of Appellate Procedure to the extent provided herein. A complaint against a judicial officer is filed with the Judicial Investigation Commission pursuant to the Rules of Judicial Disciplinary Procedure.
- (2) *Docketing.* The Rules of Judicial Disciplinary Procedure require that certain documents be filed with the Clerk ~~of the Supreme Court~~. Upon the filing of those specified documents, the Clerk will docket the action.
- (3) *Filings before the judicial hearing board.* When a case is pending before the Judicial Hearing Board, the original of all documents shall be filed with the Clerk ~~of the Supreme Court~~, and shall include a cover page with the heading "Before the Judicial Hearing Board." However, for any discovery requested or produced during the litigation of formal charges, only the certificate of service shall be filed with the Clerk.
- (4) *Filings in the Supreme Court.* ~~The original and ten copies of a~~ A document shall be filed with the Clerk any time action is required or requested of the Supreme Court pursuant to the Rules of Judicial Disciplinary Procedure, and shall include a cover page with the heading "In the Supreme Court of Appeals." Examples of such documents include, but are not limited to: any briefs directed to ~~this~~ the Supreme Court; the Judicial Hearing Board's recommended disposition; a report or petition by Judicial Disciplinary Counsel pursuant to the Rules of Judicial Disciplinary Procedure. All briefs directed to ~~this~~ the Supreme Court shall, to the extent practicable, include the material prescribed by Rule 10 except that assignments of error need not be designated. All briefs directed to ~~this~~ the Supreme Court shall comply with the requirements set forth in Rule 38 for a petitioner's brief, respondent's brief and reply brief.

**Rule 36. Consideration and disposition of disciplinary cases.**

The Rules of Lawyer Disciplinary Procedure and the Rules of Judicial Disciplinary Procedure govern when a disciplinary case may be considered by the Supreme Court for final disposition. Disciplinary cases may be disposed by order if authorized by a rule of disciplinary procedure. In cases where a hearing is required, or when a briefing schedule is required to be set, the Supreme Court will issue a scheduling order containing information and deadlines as appropriate under the circumstances. Once the Supreme Court has issued a scheduling order, all subsequent filings in the action and the Supreme Court's final disposition of the case are controlled by the Rules of Appellate Procedure.

## Part IX. General Provisions.

### **Rule 37. Service of ~~papers~~ documents.**

**(a) Service.** Unless otherwise provided in these rules, every pleading, brief, appendix, designation, motion, or other ~~paper~~ document required by these rules to be filed with the Intermediate Court or the Supreme Court shall be served upon other parties to the case in the following manner:

- (1) If such party is represented by an attorney, service shall be made upon such attorney, unless otherwise ordered ~~by the Court~~.
- (2) If the party is not represented by an attorney, service shall be made upon the party.
- (3) If no appearance has been made by a party, either in the appeal or in the action from which the appeal is taken, no service is necessary. Service shall be made upon an attorney or party by delivering a copy to him, or by mailing a copy to his last known address. In original jurisdiction cases, service shall be made by any method prescribed by Rule 4 of the Rules of Civil Procedure. Delivery within this rule means personally handing a copy to the party or attorney, or leaving a copy with a clerical employee or other responsible person at the office of an attorney. Service by mailing is complete upon mailing.
- ~~(4) Service by facsimile transmission is permissible in accordance with Rule 12 of the West Virginia Trial Court Rules.~~

**(b) Certificate of Service.** Papers presented for filing shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the ~~papers~~ documents filed. The Clerk may permit ~~papers~~ documents to be filed without acknowledgement or proof of service, but shall require such to be filed promptly thereafter.

### **~~Rule 38. General rule on form and filing of documents.~~**

~~**(a) Paper size, format, and spacing.** All briefs, motions, and other papers required documents to be filed with the Intermediate Court or the Supreme Court shall be printed or typed and reproduced by any duplicating or copying process which produces a clear black image on white paper. The individual copies shall be securely bound with metal staples or fasteners at the top left corner and the page size shall be eight and one-half inches by eleven inches. The text shall be double spaced and be no smaller than twelve point proportionally~~

spaced or eleven-point nonproportionally spaced type. Footnotes and indented quotations may be single-spaced and footnote text shall be no smaller than eleven-point proportionally spaced or ten-point nonproportionally spaced type. Margins shall be no less than one inch.

~~—(b) *Cover page and caption.* The cover page of briefs, summary responses, appendices, petitions, responses and motions shall contain (1) In the ~~[Intermediate or Supreme]~~ Court of Appeals of West Virginia; (2) the docket number of the case, if assigned; (3) the official caption of the case as set forth in the scheduling order, if one has issued; (4) a brief descriptive title indicating the nature of the document; and (5) the name, address, telephone number, West Virginia State Bar identification number, and e-mail address of the counsel or party, if unrepresented by counsel, filing the document.~~

~~—(c) *Page limits and number of copies.* Page limitations do not include the cover page, table of contents, table of authorities, or certificate of service. The page limitations and number of copies required to properly file a document under these Rules are as follows:~~

<b>Type of Document</b>	<b>Page Limit</b>	<b>Number Required</b>
<b>Notice of appeal (Rule 15, Rule 11, Rule 13)</b>	Form plus required attachments	Original and 5 copies
<b>Petitioner's brief and respondent's brief (Rule 10, Rule 11, Rule 13 through 15)</b>	40 pages	Original and 10 copies
<b>Reply brief (Rule 10, Rule 11, Rule 13 through 15)</b>	20 pages	Original and 10 copies
<b>Summary response (Rule 10, Rule 11, Rule 13 through 15)</b>	15 pages	Original and 10 copies
<b>Appendix in appeals from circuit court (Rule 7) and appendix in original jurisdiction cases (Rule 16)</b>	None	Original and 1 copy
<b>Workers' Compensation docketing statement (Rule 12)</b>	Form plus required attachments	Original and 3 copies
<b>Workers' Compensation appendix (Rule 12)</b>	None	1 Original
<b>Workers' Compensation petitioner's brief and respondent's brief (Rule 12)</b>	20 pages	Original and 5 copies
<b>Workers' Compensation reply brief (Rule 12)</b>	10 pages	Original and 5 copies
<b>Original jurisdiction petition and response (Rule 16)</b>	40 pages	Original and 10 copies
<b>Certified question joint appendix (Rule 17)</b>	None	Original and 1 copy
<b>Petition for rehearing and response (Rule 25)</b>	15 pages	Original and 10 copies

<b>Motion and response (Rule 29 through 33, Rule 40, Rule 41)</b>	15 pages	Original and 5 copies
<b>Amicus curiae briefs (Rule 30)</b>	25 pages	Original and 10 copies
<b>Appendix by amicus curiae (Rule 30)</b>	None	Original and 1 copy
<b>Petition for bail and response (Rule 34)</b>	15 pages	Original and 10 copies

~~—(d) Citations of authority.~~ Citations of authority shall be made either in the body of a document or in footnoted form. Citation to an opinion of this Court must use the full parallel citation and may indicate if the opinion is *per curiam*, e.g. *Fauble v. Nationwide Mutual Fire Ins. Co.*, 222 W.Va. 365, 664 S.E.2d 706 (2008)(*per curiam*).

~~—(e) Facsimile filing.~~ In accordance with Rule 12 of the West Virginia Trial Court Rules, the Clerk may permit certain filings required under these Rules to be made by facsimile transmission. Even with the consent of the Clerk, documents necessary to docket or perfect an action before the Court may not be filed by facsimile unless accompanied by a motion for leave to file by facsimile, setting forth good cause. In extraordinary circumstances, the Clerk may provide prior consent to exceed the twenty page limit for facsimile filings set forth in Trial Court Rule 12.03(c). If a facsimile filing is accepted by the Clerk, the Clerk will provide by return facsimile a notice of acceptance, and a statement of the photocopying charges that apply under Trial Court Rule 12.03(l). If a facsimile filing is accepted by the Clerk, the filing of the original shall not be required unless ordered by the Court or directed by the Clerk.

~~—(f) Filings immediately prior to argument.~~ No documents shall be filed less than forty-eight hours prior to a scheduled argument in a proceeding unless specifically requested by the Court.

~~—(g) (f) Improper form or filing.~~ The Clerk may refuse to accept for filing a brief or other paper which does not comply with the Rules of Appellate Procedure and is unaccompanied by a motion for leave to file such brief or other paper despite such noncompliance. If a brief or other paper is returned to counsel or a party, if unrepresented by counsel, for correction and resubmission, a motion for leave to file out of time must accompany any resubmission out of time. To constitute a proper filing, a document must be received by the Clerk on or before the date it is due. Under this rule, the mere act of placing a brief or other paper in the mail on or before the due date does not constitute a proper filing.

## **Rule 38. General rule on form and filing of documents.**

**(a) Format.** All briefs, motions, and other documents required to be filed with the Intermediate Court or the Supreme Court shall be reproduced by any process that produces a clear black image on white background. The text shall be double-spaced and be no smaller than twelve-point proportionally spaced or eleven-point nonproportionally spaced type. Footnotes and indented quotations may be single-spaced and footnote text shall be no smaller than eleven-point proportionally spaced or ten-point nonproportionally spaced type. Margins shall be no less than one inch.

**(b) Cover page and caption.** The cover page of briefs, summary responses, appendices, petitions, responses and motions shall contain (1) In the [Intermediate or Supreme] Court of Appeals of West Virginia; (2) the docket number of the case, if assigned; (3) the official caption of the case as set forth in the scheduling order, if one has issued; (4) a brief descriptive title indicating the nature of the document; and (5) the name, address, telephone number, West Virginia State Bar identification number, and e-mail address of the counsel or party, if unrepresented by counsel, filing the document.

**(c) Page limits.** Page limitations do not include the cover page, table of contents, table of authorities, or certificate of service. The page limitations required to properly file a document under these Rules are as follows:

<b><u>Type of Document</u></b>	<b><u>Page Limit</u></b>
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<b><u>Petitioner's brief and respondent's brief (Rule 10, Rule 11, Rule 13 through 15)</u></b>	<b><u>40 pages</u></b>
<b><u>Reply brief (Rule 10, Rule 11, Rule 13 through 15)</u></b>	<b><u>20 pages</u></b>
<b><u>Summary response (Rule 10, Rule 11, Rule 13 through 15)</u></b>	<b><u>15 pages</u></b>
<b><u>Appendix in appeals from circuit court (Rule 7) and appendix in original jurisdiction cases (Rule 16)</u></b>	<b><u>None</u></b>
<b><u>Workers' Compensation docketing statement (Rule 12)</u></b>	<b><u>Form plus required attachments</u></b>
<b><u>Workers' Compensation appendix (Rule 12)</u></b>	<b><u>None</u></b>

<b><u>Workers' Compensation petitioner's brief and respondent's brief (Rule 12)</u></b>	<u>20 pages</u>
<b><u>Workers' Compensation reply brief (Rule 12)</u></b>	<u>10 pages</u>
<b><u>Original jurisdiction petition and response (Rule 16)</u></b>	<u>40 pages</u>
<b><u>Certified question joint appendix (Rule 17)</u></b>	<u>None</u>
<b><u>Petition for rehearing and response (Rule 25)</u></b>	<u>15 pages</u>
<b><u>Motion and response (Rule 29 through 33, Rule 40, Rule 41)</u></b>	<u>15 pages</u>
<b><u>Amicus curiae briefs (Rule 30)</u></b>	<u>25 pages</u>
<b><u>Appendix by amicus curiae (Rule 30)</u></b>	<u>None</u>
<b><u>Petition for bail and response (Rule 34)</u></b>	<u>15 pages</u>

**(d) Citations of authority.** Citations of authority shall be made either in the body of a document or in footnoted form. Citation to an opinion of the Intermediate or the Supreme Court must use the full parallel citation and may indicate if the opinion is *per curiam*, e.g. *Fauble v. Nationwide Mutual Fire Ins. Co.*, 222 W.Va. 365, 664 S.E.2d 706 (2008)(*per curiam*).

**(e) Filings immediately prior to argument.** No documents shall be filed less than forty-eight hours prior to a scheduled argument in a proceeding unless specifically requested by the Intermediate Court or the Supreme Court.

**(f) Improper form or filing.** The Clerk may refuse to accept for filing a brief or other document that does not comply with the Rules of Appellate Procedure and is unaccompanied by a motion for leave to file such brief or other document despite such noncompliance. If a brief or other document is returned to counsel or a party, if unrepresented by counsel, for correction and resubmission, a motion for leave to file out of time must accompany any resubmission out of time. To constitute a proper filing, a document must be received by the Clerk on or before the date it is due.

## **Rule 38A. General rule on electronic filing and service of documents.**

**(a) Application.** This rule may be referred to as the "E-Filing Rule" and shall govern electronic filing and service of documents and maintenance of case-related information in the Intermediate Court and the Supreme Court.

**(b) Definitions.**

(1) "Action" – Any matter, issue, or proceeding filed or pending before the Intermediate Court or the Supreme Court.

(2) "Credentials" – The unique account username and password assigned to each E-Filing System registered user.

(3) "Document" – Any pleading, motion, notice of appeal, or other document intended to be filed in an Action.

(4) "E-File Case" – Any Action in which Documents will be electronically filed and served.

(5) "E-Filing Rule" – Rule 38A of the Rules of Appellate Procedure.

(6) "E-Filing Receipt" – The electronic document generated by the E-Filing System upon proper filing of a Document electronically.

(7) "E-Filing System" – The applications that support electronic filing and service in the Intermediate Court and the Supreme Court, as designated by the Supreme Court.

(8) "E-Filing System Administrator" – The provider of access to the E-Filing System and related support systems, as designated by the Supreme Court.

(9) "Notice of Electronic Filing" – The electronic document generated and emailed to Users in an Action notifying Users when a Document is electronically filed.

(10) "User" – A person who is approved by the Supreme Court to participate in the E-Filing System.

(c) *Filing of actions.* Electronic filing is mandatory for all Actions in the Intermediate Court or the Supreme Court, unless otherwise provided in these rules or by order, and shall be subject to this E-Filing Rule. Parties not represented by an attorney must file all Actions with Clerk, who shall electronically file the Actions upon receipt. The Intermediate Court, the Supreme Court, or the Clerk shall not offer to attorneys any alternative electronic document filing transmission system (including facsimile or e-mail filing), except for good cause shown.

(d) *Integration with other rules.* The filing and service of Documents in an E-File Case in accordance with this E-Filing Rule shall constitute compliance with the Rule 37.

(e) *Becoming an authorized user; credentials; payment of filing fees.* The E-Filing System requires Users to complete training and become registered participants in order to file and serve, receive service, access, and use the system. Each User shall provide the information necessary to complete registration, and pay all applicable fees associated with filing Actions



at rates approved by the Supreme Court. Upon completion of the registration, Users receive credentials by email from the provider.

(f) *User responsibility to maintain accurate information.* Users shall maintain accurate information within the E-Filing System and shall include a firm name, if any, mailing address, and email address. Participants who have set an email notification preference are solely responsible for providing an accurate, up-to-date email address and for ensuring that the email account is properly configured to receive Notices of Electronic Filing.

(g) *User responsibility for security.* Each User is responsible for the confidentiality, security, and use of their Credentials. If a User becomes aware that Credentials have become compromised, the User shall take immediate measures to change Credential password or profile information.

(h) *User responsibility for compliance with rules.* Use of Credentials shall constitute (a) an agreement by the User to comply with this E-Filing Rule and that any filings made under their Credentials will comply with this E-Filing Rule, and (b) an acknowledgement that the User's email address is current, functional, and capable of receiving Documents served electronically.

(i) *Use of credentials by others.* A User may authorize another User to file on their behalf provided that each user utilizes their unique credentials.

(j) *Signatures.* Each Document shall be deemed to have been signed by the attorney, or by the party not represented by an attorney who authorized the filing, and shall bear a facsimile or typographical signature of such person, e.g. "/s/ Adam Attorney." Each Document e-filed by or on behalf of a party shall also include the address and telephone number of the attorney or unrepresented party filing such document. Attorneys shall also include their West Virginia State Bar Identification Number or a notation that the attorney has been admitted pro hac vice. The e-filing of a Document by a lawyer, or another under the authorization of a lawyer, signed in the manner described in this Rule shall constitute a signature.

(k) *Authenticity.* Documents filed electronically in accordance with these E-Filing Rules and accurate printouts of such documents shall be deemed authentic.

(l) *Preservation of originals.* Where original documents exist, parties not represented by an attorney and attorney filers shall retain original documents until five (5) years following the final disposition of an Action. When necessary, the Intermediate Court or the Supreme Court may order production of original documents.

(m) *Form of document.* All Documents must comply with Rule 38's format standards and must be produced in a format and resolution that is both legible and acceptable within the E-filing System. If a Document is unable to be produced according to these standards, (audio

recordings, videos, large maps, etc.), then the Document must be filed conventionally with the Clerk. Except as described in these E-Filing Rules, all Documents filed electronically shall comply with other rules or statutes.

(n) Title and description of document. All Documents filed electronically shall be appropriately titled and described by the User within the E-Filing System. Titles contain generic document types generated by the E-Filing System, and the User must appropriately title, e.g., Motion to for Extension of Time, Motion for Leave to Supplement the Appendix Record, etc. Descriptions are entered by Users into text fields, and the User must accurately describe the Document, e.g., Petitioner's Brief, Respondent's Brief, etc.

(o) E-Filing receipts; effect of E-Filing; date and time of E-Filing. Once a Document is properly filed, the E-Filing System shall generate an E-Filing Receipt for that Document. A filing is not completed until the User making the filing has received the E-Filing Receipt. The Document shall be deemed filed with the Clerk in the Action on the date and time noted on the E-Filing Receipt. It is the responsibility of the User to check their registered email to view e-filed documents. Courtesy email notification of a filing shall not constitute service.

(p) Complaint and summons. Notices of Appeal or other initiating Document filed electronically shall be filed with the Action number blank. The E-filing System automatically assigns an appropriate Action number upon completion of electronically filing the Notice of Appeal or other initiating Document.

(q) Electronic service. Except where otherwise provided, every e-filed document shall be e-served. The E-Filing System shall generate a Notice of Electronic Filing and email it to the email address of record of the filing User and any attorney Users who have appeared in the Action who are also Users of the E-Filing System. The Notice of Electronic Filing will include the Document filed as an attachment or a link to download the Document. Upon receipt of the Notice of Electronic Filing, service is complete and effective to those parties who are Users of the E-Filing System as of the date and time listed on the Notice of Electronic Filing and shall be considered service under Rule 37. It is the responsibility of the User to check their registered email to view e-filed and served documents. Courtesy email notification of a filing shall not constitute service.

(r) Service to parties who are not Users of the E-Filing System. A User making a filing on the E-Filing System must determine if any parties in the Action are not Users and therefore not capable of receiving electronic service. If any such non-User has appeared as a party in the Action, the User making an e-filing must provide service to the non-User using traditional service methods.

(s) Unavailability of E-Filing System. If a party misses a filing deadline because of an inability to electronically file Documents based upon the unavailability of the E-Filing

System, the party may submit the untimely Document, accompanied by a sworn declaration stating the reason for missing the deadline no later than 12:00 p.m. of the first day on which the Office of the Clerk is open for business following the original filing deadline.

(t) *Filing of sealed documents.* A motion to seal documents shall be e-filed and served. However, any documents that are the subject of a motion to seal shall be filed enclosed in sealed envelopes to be opened as directed by court order.

(u) *Private information.* Users must comply with Rule 40. Unless expressly required by law, Users shall not e-file any Document available to the public that contains any person's social security, employer taxpayer identification, drivers' license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords. Redactions, where necessary, shall ensure complete privacy of the information. It shall be the sole responsibility of the User filing a Document to comply with this Rule. Neither the court nor the circuit clerk shall be responsible for reviewing Documents for compliance with this Rule.

(x) *Entry of order and judgment; notice.* Orders and mandates issued by the Intermediate Court or the Supreme Court shall bear an electronic signature and an official e-filing court stamp and shall be e-filed and served. Opinions and memorandum decisions shall bear an e-filing court stamp and shall be e-filed and served. Non-Users shall be served by mail. The date of the official e-filing court stamp shall constitute the date of entry of the order, opinion, memorandum decision, or mandate. An electronic register of actions, with associated documents and filing receipts, shall be maintained as part of the E-Filing System and shall constitute the electronic docket. Documents that are e-filed constitute the official court record, and e-filed documents have the same force and effect as documents filed by traditional means.

(y) *Public access to court records.* The circuit clerk where an E-File Case is pending shall make available to the general public access to the electronic docket, pleadings and other documents that are not sealed or otherwise confidential. Copies made from the electronic records shall be printed by the Clerk, who shall charge standard copying fees if applicable.

CLERK'S NOTE: The amendments will implement electronic (e-filing) in the Intermediate Court of Appeals and Supreme court of Appeals.

## **Rule 38B. General rule on form and filing of paper documents.**

**(a) Self-represented parties.** Self-represented parties who cannot electronically file documents under Rule 38A shall file documents in accordance with this rule.

**(b) Paper size, format, and spacing.** All briefs, motions, and other paper documents to be filed with the Intermediate Court or the Supreme Court shall be printed or typed and reproduced by any duplicating or copying process which produces a clear black image on white paper. The individual copies shall be securely bound with metal staples or fasteners at the top left corner and the page size shall be eight and one-half inches by eleven inches.

**(c) Number of copies.** The number of copies required to properly file a paper document under these Rules are as follows:

<b><u>Type of Document</u></b>	<b><u>Number Required</u></b>
<b><u>Notice of appeal (Rule 15, Rule 11, Rule 13)</u></b>	<u>Original and 5 copies</u>
<b><u>Petitioner's brief and respondent's brief (Rule 10, Rule 11, Rule 13 through 15)</u></b>	<u>Original and 10 copies</u>
<b><u>Reply brief (Rule 10, Rule 11, Rule 13 through 15)</u></b>	<u>Original and 10 copies</u>
<b><u>Summary response (Rule 10, Rule 11, Rule 13 through 15)</u></b>	<u>Original and 10 copies</u>
<b><u>Appendix in appeals from circuit court (Rule 7) and appendix in original jurisdiction cases (Rule 16)</u></b>	<u>Original and 1 copy</u>
<b><u>Workers' Compensation docketing statement (Rule 12)</u></b>	<u>Original and 3 copies</u>
<b><u>Workers' Compensation appendix (Rule 12)</u></b>	<u>1 Original</u>
<b><u>Workers' Compensation petitioner's brief and respondent's brief (Rule 12)</u></b>	<u>Original and 5 copies</u>
<b><u>Workers' Compensation reply brief (Rule 12)</u></b>	<u>Original and 5 copies</u>
<b><u>Original jurisdiction petition and response (Rule 16)</u></b>	<u>Original and 10 copies</u>
<b><u>Certified question joint appendix (Rule 17)</u></b>	<u>Original and 1 copy</u>
<b><u>Petition for rehearing and response (Rule 25)</u></b>	<u>Original and 10 copies</u>
<b><u>Motion and response (Rule 29 through 33, Rule 40, Rule 41)</u></b>	<u>Original and 5 copies</u>
<b><u>Amicus curiae briefs (Rule 30)</u></b>	<u>Original and 10 copies</u>

<b><u>Appendix by amicus curiae (Rule 30)</u></b>	<b><u>Original and 1 copy</u></b>
<b><u>Petition for bail and response (Rule 34)</u></b>	<b><u>Original and 10 copies</u></b>

**(d) Improper form or filing.** The Clerk may refuse to accept for filing a brief or other paper document that does not comply with the Rules of Appellate Procedure and is unaccompanied by a motion for leave to file such brief or other paper document despite such noncompliance. If a brief or other paper document is returned to counsel or a party, if unrepresented by counsel, for correction and resubmission, a motion for leave to file out of time must accompany any resubmission out of time. To constitute a proper filing, a document must be received by the Clerk on or before the date it is due. Under this rule, the mere act of placing a brief or other paper document in the mail on or before the due date does not constitute a proper filing.

### **Rule 39. Computation and extension of time.**

**(a) Computation of time.** In computing any period of time prescribed by these rules, by an order of the Intermediate Court or the Supreme Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Juneteenth Day, West Virginia Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Lincoln's Day, Christmas Day, and any other day appointed as a holiday by the President, Congress of the United States, Governor, or Legislature of West Virginia.

**(b) Enlargement of time.** The Intermediate Court or the Supreme Court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time.

**(c) Additional time after service by mail.** Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three days shall be added to the prescribed period. Provided, however, that this provision does not apply to extend the deadline provided by law or these rules for docketing or perfecting an appeal, and further does not apply to extend any deadline set forth in an order or notice of this the Intermediate Court or the Supreme Court.

## **Rule 40. Public access to case records and confidentiality.**

**(a) General Rule.** In all cases in which relief is sought in the Intermediate Court or the Supreme Court, all pleadings, docket entries, and filings related thereto (hereafter "case records") shall be available for public access unless otherwise provided by law or by a ~~court~~ rule of ~~this Court~~, or unless otherwise ordered by the Intermediate Court or the Supreme Court in accordance with this Rule.

**(b) Means of public access.** Case records that are available for public access may be reviewed in person at the Clerk's Office in the State Capitol or be reviewed electronically if the records are posted to the Supreme Court's website. Case records posted to the website may include, but are not limited to: the order of the lower tribunal that is subject to the appeal, certified question, or original action; the briefs filed by the parties in cases set for argument under Rule 20, even if the case is otherwise confidential; and the orders and decisions of ~~this~~ the Supreme Court. Case records in pending cases may be reviewed at the Clerk's Office in the State Capitol during regular business hours. Case records in disposed cases may be reviewed at the Clerk's Office during regular business hours, provided that sufficient advance notice is provided. Written requests for copies of documents must be addressed to the Clerk, be specific, and provide sufficient advance notice. Charges for copies of documents in case records provided by the Clerk's Office are set forth in an administrative order that is posted to the Court's website. There is no charge for access to case records using the Supreme Court's website.

**(c) Case records already determined to be confidential by a lower tribunal.** Either in the notice of appeal or in the petitioner's brief, whichever is filed first, the appealing party shall indicate that the case record or a portion of the case record was determined to be confidential by the lower tribunal, and shall cite the authority for the confidentiality. Unless otherwise provided by order of ~~this~~ the Intermediate Court or the Supreme Court, upon filing, the portion of the case record determined to be confidential by the lower tribunal shall remain confidential. Whenever a party files a pleading or other document that is confidential in part or in its entirety, the party shall identify, by cover letter or otherwise, in a conspicuous manner, the portion of the filing that is confidential. Any party or other person with standing may file a motion to unseal the case record or portion of a case record in ~~this~~ the Intermediate Court or the Supreme Court, setting forth good cause why the case record should no longer be confidential. An opposing party may respond to the motion within ten days from the date of filing of the motion. Upon its consideration, the Intermediate Court or the Supreme Court may, in its discretion, issue an order unsealing all or part of the case record, or issue an order denying the motion.

**(d) Case records not previously determined to be confidential.** Any party or other person with standing may file ~~an original and the number of copies required by Rule 38 of~~ a motion to seal the case record or portion of a case record in ~~this~~ the Intermediate Court or the Supreme Court. The motion must state the legal authority for confidentiality. Upon filing of the motion to seal, the case record or portion of the case record that is the subject of the motion shall be kept confidential pending a ruling on the motion. An opposing party may file a response to a motion to seal within ten days of the date of filing of the motion. Upon its consideration, the Intermediate Court or the Supreme Court may, in its discretion, issue an order sealing all or part of the case record, or issue an order denying the motion.

**(e) Personal identifiers restricted.** In order to protect the identities of juveniles and in order to avoid the unnecessary distribution of personal identifiers, any document filed with the Intermediate Court or the Supreme Court other than an appendix must comply with the following standards.

- (1) Initials or a descriptive term must be used instead of a full name in: cases involving juveniles, even if those children have since become adults; cases involving crimes of a sexual nature that require reference to the victim of such crime; abuse and neglect cases; mental hygiene cases; and cases relating to expungements.
- (2) Personal identifiers such as birth date and address may be used only when absolutely necessary to the disposition of the case.
- (3) Social Security numbers may not be used under any circumstances.
- (4) Sensitive financial or medical information may be used only when necessary to the disposition of the case.

**(f) Briefs in Rule 20 argument cases.** Because of the important public interest in cases set for oral argument under Rule 20, briefs in Rule 20 argument cases will be posted to the Supreme Court's website, even if the case is confidential under this Rule. A party who does not wish the brief to be posted to the Supreme Court's website must file a motion to seal the brief at the time the brief is filed, and the Intermediate Court or the Supreme Court will consider the matter.

**(g) Restriction of electronic records.** Any party or other person with standing may file ~~an original and the number of copies required by Rule 38 of~~ a motion to restrict access to a case record or portion of a case record that has been posted to the Supreme Court's website. The motion shall be served upon all other parties to the case and any other concerned persons. The motion shall state good cause why access to the case record through the Supreme Court's website should be restricted and shall specifically state the relief requested. An opposing party may respond to the motion within ten days of the date of filing of the motion. Upon its consideration, the Intermediate Court or the Supreme Court may, in its discretion, issue an order granting or denying the motion and directing such action as may be appropriate. Any

case record subject to restricted electronic access shall be available for public inspection in person at the Clerk's Office in the State Capitol during regular business hours.

**(h) *Oral argument open to the public.*** All oral arguments under Rule 19 or Rule 20 are open to the public and broadcast live on the Supreme Court's website. In presenting oral argument, parties must be mindful not to disclose the identity of juveniles and other personal identifiers contained in subsection (e) of this Rule.

#### **Rule 41. Substitution of parties.**

**(a) *Death of a party.*** If a party dies after an appeal is filed, the personal representative of the deceased party may be substituted as a party on motion that complies with Rule 38 filed by the representative or by any party with the Clerk. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 37. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Intermediate Court or the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the circuit court, but before an appeal is docketed, a petitioner may proceed as if death had not occurred. If the appeal is docketed, substitution shall be effected ~~in the Supreme Court~~ in accordance with this subdivision. If a party entitled to appeal shall die before an appeal is docketed, the notice of appeal and petitioner's brief may be filed and presented as if death had not occurred by ~~his the party's~~ personal representative, or, if ~~he has~~ there is no personal representative, by ~~his the party's~~ attorney of record within the time prescribed by these rules. After the notice of appeal is filed, substitution shall be effected ~~in the Supreme Court~~ in accordance with this subdivision.

**(b) *Substitution for other causes.*** If substitution of a party in the Intermediate Court or the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

**(c) *Public officers; death or separation from office.*** When a public officer is a party to an appeal or other proceeding in the Intermediate Court or the Supreme Court in ~~his~~ an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and ~~his the public officer's~~ successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. When a public officer is a party to an appeal or other proceeding in his official capacity, he may be described as a party by his official title rather than by name, but the Court may require his name to be added.



## **Rule 42. Media access.**

**(a) General rule.** In proceedings that are open to the public, the Intermediate Court or the Supreme Court may, in its discretion, permit a member of the media to utilize cameras or equipment used for word processing in and around the courtrooms in which ~~the Court~~ those courts may sit, provided that ~~the orderly procedures of the Court~~ are not impaired or interrupted.

**(b) Prior notice and compliance with rules required.** Members of the media who wish to cover an Intermediate Court or Supreme Court proceeding shall notify the public information officer of the Supreme Court as far in advance as is practicable. If the public information officer is not available, the Clerk must be notified. It shall be the duty of media personnel to affirm that they have read this Rule and will abide by the same and further, to demonstrate to the public information officer, or to the Clerk, sufficiently and in advance of any proceeding, that the equipment sought to be used does not produce a distracting sound or light. A failure to provide advance notice may preclude the use of such equipment in any proceeding.

**(c) Termination of coverage.** After the proceedings have commenced, the Clerk or the public information officer shall terminate coverage of any portion of the proceedings or of the remainder of the proceedings if the Clerk, or the public information officer, determines that continuing coverage is disturbing the proceeding, will impede justice, or will create unfairness for any party.

**(d) Nonjudicial meetings.** Media coverage of any nonjudicial meeting or other gathering in the courtrooms shall be determined by the concurrence of the sponsoring group and the public information officer or the Clerk, and shall be conducted in accordance with this Rule. These rules shall not limit media coverage of ceremonial proceedings conducted in court facilities under such terms and conditions as may be established by the public information officer.

**(e) Equipment and personnel.** Broadcast media should arrive at least thirty minutes prior to oral arguments to begin setting up equipment. All equipment must be in place and tested no less than fifteen minutes in advance of the time scheduled for the court proceeding. The following equipment and persons shall be the maximum equipment and broadcast personnel permitted to actively cover proceedings in the courtroom at any one time: (1) one portable television camera or film camera with not more than one person operating the same; (2) one still photographer with one camera and not more than two lenses and necessary related equipment. Only still camera equipment that does not produce distracting sound or light shall be employed in the courtroom. Only television equipment which does not produce distracting sound or light shall be employed in the courtroom. No artificial lighting (other

than that normally present in the courtroom) shall be employed in the courtroom except that, with the concurrence of the public information officer or the Clerk, modifications and additions may be made to lighting in the courtroom, if such modification or additions are installed and maintained without public expense. Reporters who wish to utilize laptop computers to take notes must do so in an area provided for that purpose, and must be in place before proceedings begin. Space will be provided on a first-come first-served basis.

**(f) *Live audio feed must be used.*** Only film and video cameras without working audio pickup shall be employed in the courtroom. Audio recording equipment of any kind is not permitted in the courtroom. Instead, members of the media must utilize the live audio feed in a designated location in the courtroom. The live audio feed is available as a microphone level or line level signal and requires a female XLR connector. Members of the media are responsible for providing their own equipment suitable to connect to the live audio feed.

**(g) *Location of equipment and personnel.*** Video or film camera equipment shall be positioned in such location in the courtroom as shall be designated by the Clerk. All camera equipment shall be positioned only in such area. Any additional television equipment shall be positioned in an area outside the courtroom if that is technically possible. Cables and wiring must be placed in a safe and unobtrusive manner. A still camera photographer shall position himself or herself in such location in the courtroom as shall be designated by the Clerk. The photographer shall assume a fixed position within the designated area and shall act so as not to create a disturbance or call attention to himself or herself through further movement. The photographer shall not move about the courtroom. Unless expressly permitted by the Clerk, representatives of the media shall not move about the courtroom while a proceeding is in progress, and equipment, once positioned, shall not be moved during a proceeding.

**(h) *Courtroom conduct.*** Broadcast, print, or other media interviews will not be permitted inside the courtroom at any time. Broadcast, print, or other media interviews may be conducted in the hallway outside the courtroom in an area designated by the public information officer. Distribution of printed material, including pamphlets or flyers of any kind, is prohibited both in the courtroom and in the hallway outside the courtroom on days when the Court is in session. Photographers, videographers, and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings. All media personnel shall observe the customs of the Intermediate Court and the Supreme Court, and appropriate dress is required.

**(i) *Pooling arrangements.*** Any pooling arrangements among those seeking to provide camera coverage shall be the sole responsibility of media persons. The Clerk, or the public information officer, will not resolve any dispute regarding the same unless a case has

attracted nationwide interest. In those instances, the public information officer and Clerk will be in charge of pooling arrangements.

**(j) *Rebroadcast of webcast prohibited.*** The live webcast of oral arguments is provided by the Supreme Court as a public service and is not intended to provide an official record of proceedings. The webcast may not be rebroadcast in any manner, in whole or in part, without the prior express written permission of the Supreme Court.

**(k) *Waiver of rules.*** The Supreme Court may, in its discretion, modify or waive parts of this Rule when the circumstances require.

### **Rule 43. Definitions and rules of construction.**

#### **~~—(a) Definitions.~~**

- ~~(1) “Appeal”—The procedure by which a case is brought from a lower tribunal to the Supreme Court of Appeals.~~
- ~~(2) “Brief”—A document filed by the parties to an action before the Court under Rule 10 that sets forth the arguments and issues that the parties wish the Court to consider.~~
- ~~(3) “Certificate of Service”—The statement signed by counsel or unrepresented party describing the date and manner of serving a particular filing on another party.~~
- ~~(4) “Docketing”—Assignment of a case number and placement of an action on the Court's docket by the Clerk upon the receipt of timely and proper filing of an action before the Court.~~
- ~~(5) “Lower Tribunal”—The circuit court, family court, or administrative agency from which an appeal is taken or an original jurisdiction proceeding is prosecuted.~~
- ~~(6) “Mature”—Unless otherwise provided by order, a case is mature for consideration by the Court when the deadline for all briefs to be filed has passed.~~
- ~~(7) “Notice of Appeal”—The mandatory notice filed to inform the Court and the other parties that a petitioner intends to perfect an appeal from a final judgment of a circuit court, in the form prescribed by these rules.~~
- ~~(8) “Party”—Where a party is represented by counsel, the term party applies to counsel; where a party is not represented by counsel, the term party applies to the self-represented litigant.~~
- ~~(9) “Perfectured”—An appeal is perfected upon the proper and timely filing of the petitioner's brief and appendix. An original jurisdiction action is perfected upon the timely and proper filing of the petition and appendix, if an appendix is required.~~
- ~~(10) “Petitioner”—A party who takes an appeal or prosecutes an original proceeding in the Supreme Court of Appeals.~~

- ~~(11) "Respondent"—A party against whom an appeal is taken or an original jurisdiction proceeding is prosecuted in the Supreme Court of Appeals.~~
- ~~(12) "Submitted"—At the conclusion of oral arguments, a case is submitted for final consideration by the Court.~~
- ~~(13) "Summary Response"—A document filed in lieu of a brief by the respondent to an action before the Court under Rule 10 or Rule 16, which is deemed to be a waiver of oral argument.~~
- ~~(b) Rule of Construction. (1) Words in the singular number include the plural, and in the plural include the singular. (2) Words of the masculine gender include the feminine and the neuter. (3) The word "person" shall include corporations, societies, associations, and partnerships, if not restricted by the context. (4) References to "the Court" means the Supreme Court of Appeals of West Virginia. (5) References to "the Rules" or "these Rules" mean the Rules of Appellate Procedure.~~

Attest:

Clerk of Court

