

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on June 4, 2019, the following order was made and entered:

RE: PROVISIONAL APPROVAL AND PUBLICATION OF RULES AND COURT FORMS FOR FINANCIAL EXPLOITATION ACTIONS, Docket No. 19-RULES-06

On May 28, 2019, the Division of Court Services of the West Virginia Supreme Court of Appeals presented to the Court the following: (1) Rules of Practice and Procedure for Financial Exploitation Civil Proceedings; (2) a Magistrate Court Civil Case Information Statement for Financial Exploitation; (3) a Magistrate Court Petition for Temporary Financial Exploitation Order; (4) a Magistrate Court Order Granting Temporary Financial Exploitation Petition; (5) a Magistrate Court Order Denying Petition for Temporary Financial Exploitation; (6) a Magistrate Court Appeal: Denial of Petition for Temporary Financial Exploitation; (7) a Circuit Court Financial Exploitation Protective Order; and (8) a Order Denying Financial Exploitation Protective Order and Terminating Emergency Temporary Financial Exploitation Protective Order. The new rules and forms were created in response to House Bill 2618 (2019), effective June 7, 2019, regarding financial exploitation actions.

Upon consideration and review, the Court is of opinion to and does hereby provisionally approve and adopt the Rules of Practice and Procedure for Financial Exploitation Civil Proceedings and forms in relation to these Rules for use, effective June 7, 2019. Further, the Court does hereby approve a period of public comment on the Rules of Practice and Procedure for Financial Exploitation Civil Proceedings to conclude on July 22, 2019. Comments are to be filed in writing with the Clerk of this Court on or before July 22, 2019.

The Court directs the Administrative Office to distribute the forms and provide instructions for their use as necessary. The Magistrate Court Civil Case Information Statement for Financial Exploitation and the Magistrate Court Petition for Temporary Financial Exploitation Order may be accessed and downloaded from the internet on the West Virginia Judiciary's website and from the West Virginia Supreme Court of Appeals' Intranet. The Magistrate Court Order Granting Temporary Financial Exploitation Petition; Magistrate Court Order Denying Petition for Temporary Financial Exploitation; Magistrate Court Appeal: Denial of Petition for Temporary Financial Exploitation; Circuit Court Financial Exploitation Protective Order; and Order Denying Financial Exploitation Protective Order and Terminating Emergency Temporary Financial Exploitation Protective Order may be accessed and downloaded from the West Virginia Supreme Court of Appeals' Intranet only.

A True Copy

Attest: /s/Edythe Nash Gaiser
Clerk of Court





**PROPOSED RULES OF PRACTICE AND
PROCEDURE FOR FINANCIAL
EXPLOITATION CIVIL PROCEEDINGS**

Rules of Practice and Procedure for Financial Exploitation Civil Proceedings

Rule 1. Scope; conflicts

- a. These rules shall govern financial exploitation civil proceedings in the circuit courts and magistrate courts of the State of West Virginia. If these rules conflict with other rules or statutes, these rules shall apply. The purpose of these rules is to help resolve cases in a just, speedy, and inexpensive manner.
- b. Rule 6 of the Rules of Civil Procedure shall govern computation of time in financial exploitation civil proceedings.

Rule 2. Terminology

- a. **“Diminished capacity”** means the inability to address, avoid, prevent or stop financial exploitation because of physical, mental or emotional conditions
- b. **“Department”** means the West Virginia Department of Health and Human Resources.
- c. **“Elderly person”** means a person who is 65 years or older.
- d. **“Financial exploitation”** or **“financially exploit”** means the intentional misappropriation or misuse of funds or assets or the diminishment of assets due to undue influence of an elderly person, protected person, or incapacitated adult, but may not apply to a transaction or disposition of funds or assets where the respondent made a good faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value.
- e. **“Financial exploitation protective order”** refers to the order entered after a §55-7J-1(e) hearing in circuit court.
- f. **“Incapacitated Adult”** means any person eighteen years of age or older who by reason of advanced age, physical, mental or other infirmity is unable to carry on the daily activities of life necessary to sustaining life and reasonable health.
- g. **“Protected person”** means an adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: (A) To meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (B) to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment, alone, is not sufficient evidence that the individual is a protected person within the meaning of this subsection. “Protected person” also means a person whom a court has determined is a missing person.
- h. **“Temporary protective order”** refers to the temporary protective order entered after a W. Va. Code §55-7J-1(e) hearing in magistrate court.
- i. **“Undue influence”** means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. In determining whether alleged financial exploitation was produced by undue influence, all of the following may be considered:

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1. The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, diminished capacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.
2. The influencer's apparent authority. Evidence of apparent authority may include but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, intimate partner, or other qualification.
3. The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep; use of affection, intimidation, or coercion; or initiation of changes at inappropriate times and places, and claims of expertise in effecting changes.
4. The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences of the victim any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship. Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

Rule 3. Effective Date

These rules will take effect on the seventh day of June of 2019.

Rule 4. Venue:

Pursuant to W.Va. Code §55-7J-1, an individual who is an elderly person, incapacitated person, or protected person, may file a petition to initiate a financial exploitation action. The Department or a reputable person may file a petition to initiate a financial exploitation action on behalf of a petitioner who is an elderly person, incapacitated person or protected person as defined in Rule 2. In all matters the person for whom protection is being sought shall be deemed the petitioner. The petition shall be filed where the alleged financial exploitation occurred. Under no circumstance may a party file a petition in more than one county based on the same set of facts.

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Rule 5. Costs and Fees

- a. **Assessment of court costs and fees when temporary financial exploitation protective order "denied."** If the petition is denied and the court finds that the petitioner, protected person, or incapacitated person is not a victim of financial exploitation as provided in W. Va. Code §55-7J-1, court costs and fees shall be assessed by the magistrate against the person or department that filed the petition at the conclusion of the hearing and shall be paid to the magistrate clerk as follows, unless a fee waiver affidavit has been filed:

1. Magistrate Court Fund: \$10.00;
2. Court Security Fund: \$5.00; and
3. Regional Jail Authority: \$10.00.

Costs and fees may not be assessed against a prevailing party. Partial payments of costs and fees shall be applied by the magistrate clerk in the following order: Magistrate Court Fund, Court Security Fund, Regional Jail Fund, and other costs, if any. If the denial of the petition is appealed, payment of costs shall be stayed until resolution of the appeal.

- b. **Assessment of court costs and fees when petitioner fails to appear or present evidence.** No court costs and fees shall be assessed against the petitioner for failure to appear or failure to present evidence at the final hearing in circuit court.
- c. **Assessment of court costs and fees when petitioner moves to terminate financial exploitation protective order.** No court costs or fees shall be assessed against a petitioner who moves to terminate a protective order, whether the court grants or denies the motion.
- d. **Assessment of court costs and fees when financial exploitation protective order denied.** If the magistrate or circuit court denies a temporary or financial exploitation protective order after the presentation of all evidence and testimony of the petitioner and respondent and further finds that the petitioner is not a victim as provided in W. Va. Code §55J-7-1, the person or department that filed the petition may be assessed the costs and fees provided in (e) and (f) herein unless a fee waiver affidavit has been filed.
- e. **Assessment of court costs and fees when financial exploitation protective order "granted" by circuit court.** Except as in subsection (a) of this rule, court costs and fees shall be assessed by the magistrate or circuit court at the conclusion of a proceeding, and shall be paid to the circuit clerk within ten (10) days by Respondent as follows, unless a fee waiver affidavit has been filed:
1. Circuit Court Fund: \$25.00;
 2. Magistrate Court Fund: \$10.00;
 3. Court Security Fund: \$5.00;
 4. Regional Jail Authority: \$10.00.

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Court costs and fees may not be assessed against a prevailing party. Partial payments of fees and costs shall be applied by the circuit clerk in the following order: Circuit Court Fund, Magistrate Court Fund, Court Security Fund, Regional Jail Fund, and other costs, if any as provided in subsection (e).

- f. **Assessment of other costs and fees.** The following fees shall be assessed by the Court when pleadings and orders have been served by a law enforcement agency and/or the circuit clerk. For service of process by law enforcement the sum of \$25.00 as provided in W. Va. Code §59-1-14. For service of process by the circuit clerk, by certified mail, restricted delivery, return receipt requested, the sum of \$20.00 as provided in Rule 4(d)(1) of the Rules of Civil Procedure.
- g. Payment of court costs and fees. The court shall require a party to appear before the court or show proof of payment of any costs and fees ordered by the court within ten (10) days of the entered order, unless the party qualifies for a fee waiver after review by the court pursuant to Rule 5 of these rules.

Rule 6. Waiver of fees and costs for indigents

A person seeking waiver of fees, costs, or security pursuant to W. Va. Code §59-2-1, shall execute before the clerk where the matter is pending a fee waiver affidavit which shall be kept confidential. An additional fee waiver affidavit shall be filed whenever the financial condition of the person no longer conforms to the financial condition established by the Supreme Court of Appeals for determining inability to pay fees or whenever an order has been entered directing the filing of a new affidavit. The fee waiver affidavit shall be reviewed pursuant to W. Va. Code §59-2-1(d) by the presiding court to determine whether the person seeking the waiver qualifies as established by the West Virginia Supreme Court. If the court determines that the person does not qualify, the court shall assess the costs and fees in Rule 5 of these rules.

Rule 7. Confidentiality of proceedings

- a. **Hearings** Attendance at all proceedings brought pursuant to W. Va. Code § 55-7J-1, *et seq.* shall be limited to the parties, counsel, persons entitled to notice and the right to be heard, witnesses while testifying, Adult Protective Services personnel, and other persons whom the circuit court determines have a legitimate interest in the proceedings.
- b. **Court Records.** All records and information maintained by the courts in financial exploitation proceedings shall be kept confidential except as otherwise provided in this rule. In the interest of assuring that any determination made in proceedings before a circuit or magistrate court arising under W. Va. Code, Chapter 55, or W. Va. Code § 61-2-29B, does not contravene any determination made by a circuit court in a related prior or pending financial exploitation case arising under W. Va. Code, Chapter 55, magistrate courts and staff shall have access to all circuit court orders and case indexes in this State in all such related Chapter 55 proceedings.

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Rule 8. Persons allowed to be present during hearing; unofficial recording of financial exploitation proceedings prohibited.

- a. Notwithstanding the provisions in Rule 6a of these rules, no person or advocate accompanying a petitioner or protected, or incapacitated person, is precluded from being present if his or her presence is desired by the person seeking a petition, unless such person is a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. Any person shall be permitted to sit with a party during the hearing. Any person found by the court to be disruptive may be precluded from being present. For purposes of this rule, an advocate means an employee or representative of a licensed program for victims of elder abuse.

Rule 9. Filing of petitions and other pleadings

- a. **Commencement of action.** To commence an action for a temporary protective order, a verified petition shall be filed in the magistrate court. Petitioner may file an action for a permanent financial exploitation order in circuit court in conjunction with any other pleading.
- b. **Petition.** The petition shall contain a short and plain statement of the facts showing that the petitioner is entitled to relief, and it shall contain a demand for the relief the petitioner seeks.
- c. **Pleadings filed after original petition.** All pleadings filed after the original petition, except as provided in Rule 9 herein, including petitions for criminal contempt shall be filed with the circuit clerk. Misdemeanor complaints for violation of protective orders shall be filed in the magistrate court.
- d. **Other required documents.** The original petition, and petitions for contempt or modification of a protective order, shall be accompanied by a completed financial exploitation civil case information statement.
- e. **Petitioner's identifying information.** At petitioner's request, the magistrate court shall immediately seal within the file the portion of the financial exploitation civil case information statement and any other document containing the address or other identifying information for the petitioner such as the petitioner's phone number, facsimile number, or e-mail address. The petitioner's identifying information shall remain sealed in the court file unless the court in a final hearing orders the release of the information and makes a finding that the release of the petitioner's identifying information does not increase the risk of harm or the threat of harm to the petitioner or other protected individuals, provided, however, the court may provide access to the petitioner's identifying information to a law enforcement agency, and the Department.

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Rule 10. Temporary Financial Exploitation Protective Order

- a. Upon the filing of a petition in magistrate court, the magistrate shall conduct an emergency hearing regarding the petition, pursuant to West Virginia Code §55-7J-1(e), and grant or deny said petition and enter a temporary protective order as it may determine necessary to protect the petitioner from further exploitation. Clear and convincing evidence of immediate and present financial exploitation of petitioner constitutes good cause for the issuance of an emergency protective order pursuant to this section. If the respondent is not present at the proceeding, the petitioner, or person filing on the petitioner's behalf shall certify to the court, in writing, efforts to give notice to the respondent, or just cause why notice should not be required. Copies of medical and financial records may be admitted into evidence to the same extent as original reports or records. The custodian of records is not required to be present to authenticate the records for any proceedings pursuant to this subsection.
- b. **Mandatory Relief.** If the magistrate determines that circumstances warrant the entry of a temporary protective order, the order shall
 1. prohibit the respondent, or respondent's agents from committing any acts of abandonment, abuse, or financial exploitation against petitioner;
 2. prohibit the respondent from taking any action that results in the diminution of value of petitioner's assets; and
 3. order the respondent to provide an accounting of the disposition of the petitioner's income or other resources to the circuit court within twenty days.
- c. **Permissive Relief.** The temporary protective order may also
 1. prohibit the respondent from transferring or converting any of the petitioner's property until the circuit court enters an order permitting otherwise;
 2. prohibit the respondent from contacting, attempting to contact, or harassing the petitioner directly or indirectly through third parties regardless of whether those parties are aware of this Order;
 3. prohibit the respondent from receiving, holding, or accessing any assets of the petitioner;
 4. prohibit the respondent from transferring any property that is the subject of the petition;
 5. prohibit the respondent from knowingly coming within a particular distance of the petitioner's residence, workplace, adult day program, or long-term care facility.
 6. provide for the appointment of a receiver; and

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7. freeze assets pursuant to West Virginia Code §55-7J-5
- d. The magistrate may also grant any other relief deemed necessary by the magistrate to protect the petitioner from financial exploitation.
- e. Upon the entry of the temporary protective order, the magistrate shall report the entry of the order pursuant to W.Va. Code §61-2-29B(e).

Rule 11. Answer

An answer which need not be verified, may be filed and served by the respondent prior to the circuit court hearing.

Rule 12. Notice of circuit court final hearing

- a. Upon entry of a temporary protective order, pursuant to West Virginia Code §55-7J-1(e), the magistrate shall immediately transfer the matter to the circuit court of the county in which the petition was filed.
- b. **Scheduling information.** Upon receipt of notice of transfer from the magistrate court, the circuit court shall set a review hearing within twenty days. After the hearing, the circuit court may issue a permanent financial exploitation protective order.

Rule 13. Service

- a. **Service of the petition and temporary emergency protective order.** If the respondent is present at the emergency hearing, the temporary emergency protective order and petition shall be served by the magistrate or magistrate designee upon the respondent at the conclusion of the hearing. If the respondent is not present at the hearing, the petition and temporary protective order shall be immediately served by law enforcement. The law enforcement agency shall file the return of service with the circuit clerk within five (5) days of service. If the court finds that personal service by law enforcement has been unsuccessful and continues the scheduled review hearing, the court shall instruct the circuit clerk in the order of continuance to serve the respondent by certified mail, restricted delivery, return receipt requested, to the last known address, which is the most current address, of the respondent. If return of service is not received by the clerk within thirty (30) days or service by mail is unsuccessful, then the court shall continue the final hearing and instruct the circuit clerk to serve the respondent through publication in the last known, which is the most current, county of residence in accordance with Rule 4 of the West Virginia Rules of Civil Procedure. Provided however, in the discretion of the court, the respondent may be served by certified mail, restricted delivery, return receipt requested to the last known address, which is the most current address, of the respondent and publication simultaneously to expedite the proceeding.

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- b. **Service of financial exploitation protective order.** If a party is present at the circuit court hearing where a financial exploitation protective order has been entered, the order shall be served by the circuit court judge or the judge's designee upon the party at the conclusion of the final hearing. If a party is not present at the final hearing, then the financial exploitation protective order shall be immediately served by law enforcement upon the party who was not present and in the discretion of the circuit clerk, the clerk may serve the respondent by first class mail to the last known address, which is the most current address, simultaneously to expedite service. The law enforcement agency shall file the return of service with the circuit clerk within five (5) days of service. If the clerk does not receive the return of service from law enforcement within five (5) days of the entry of the order by the court, then personal service of the financial exploitation protective order upon a party has been unsuccessful. The party shall be served by the circuit clerk by first class mail, and in the last known county of residence through publication in accordance with Rule 4 of the West Virginia Rules of Civil Procedure.
- c. **Service of an order continuing an emergency protective order, an extension of a protective order, an order of contempt of a protective order, an order of modification of a protective order, a petition for the contempt of a protective order, or an order to show cause.** An order of contempt of a protective order or order of modification of a protective order shall be served by the circuit court judge or the judge's designee upon the party at the conclusion of the final hearing. If a party is not present at the final hearing, then the order shall be served by law enforcement as provided herein. An order continuing an emergency protective order, an order extending a protective order for an additional ninety days, and a petition for the contempt or an order to show cause shall be served immediately by law enforcement. The law enforcement agency shall file the return of service with the circuit clerk within five (5) days of service. If the court finds that personal service by law enforcement has been unsuccessful and continues the scheduled hearing, the court shall instruct the circuit clerk to serve the respondent by first class mail to the last known address, which is the most current address, and to serve the respondent through publication in accordance with Rule 13a of these rules and Rule 4 of the West Virginia Rules of Civil Procedure. Provided however, in the discretion of the court, the respondent may also be served by certified mail, restricted delivery, return receipt requested to the last known address, which is the most current address, of the respondent.
- d. **Service of order terminating protective order or denying a protective order.** The order terminating or denying a protective order shall be served on the parties in person by the judge or the judge's designee or by first class mail by the circuit clerk if the parties are not present at the hearing.
- e. **Service of other documents.** Every document other than as provided in this rule shall be served upon each party as follows: if a party is represented by an attorney, service shall be made upon the attorney pursuant to Rule 5(b) of the West Virginia Rules of Civil Procedure. Otherwise, service shall be made by mailing a copy by first class mail to the party's last-known address, which is the most current address.
- f. **Service by respondent when petitioner's identifying information has been sealed in the file.** When the petitioner's address and other identifying information have been sealed

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in the file pursuant to these rules, and the respondent needs to make service on the petitioner, the respondent shall file any pleadings with the circuit clerk and direct the circuit clerk to make service upon the petitioner. Service shall be made by the circuit clerk if the petitioner's identifying information is sealed in the case file. No court employee shall reveal to anyone other than a court official or law enforcement officer the petitioner's address or other identifying information.

- g. Service allowing direct contact between the parties is strictly prohibited.
- h. Service by law enforcement may properly be accomplished by a process server employed by a sheriff's office, or by a process server employed by a law enforcement agency, both of whom shall provide returns on forms to be provided by the Supreme Court of Appeals and filed with the clerk's office within five (5) days of service.
- i. Out-of-state service is permissible in accordance with Rule 4 of the Rules of Civil Procedure. Provided however, the issuing court shall attempt to obtain personal service on the respondent by contacting the out-of-state law enforcement agency located in the last known, which is the most current county of residence of the respondent and shall provide the petition and order issued by the court to said out-of-state law enforcement agency for service. If the court finds that personal service by law enforcement has been unsuccessful and continued the scheduled final hearing, the court shall instruct the circuit clerk to serve the respondent by first class mail to the last known address, which is the most current address, of the respondent and by publication in the last known, which is the most current, county of residence, Provided however, in the discretion of the court, the respondent may also be served by certified mail, restricted delivery, return receipt requested, to the last known address, which is the most current address, of the respondent.

Rule 13a. Order of Publication

The order of publication shall contain the following information: the name and last known address of the respondent; the magistrate court case number and civil action number; the county where the financial exploitation action has been filed; any scheduled hearing date; and where the respondent can obtain a copy of the petition and order. The order of publication shall not contain the petitioner's name or any other identifying information of the petitioner.

Rule 14. Filing and service by facsimile transmission

Pleadings and other documents, including requests for hearings, may be filed with the circuit clerk and served upon law enforcement authorities by facsimile transmission in accordance with Rules 12.03, 12.04 and 12.05 of the Trial Court Rules for Trial Courts of Record.

Rule 15. Judicial economy and consolidation

- a. **Transfer by magistrate to circuit court judge before whom the parties have a case pending.** If the petitioner indicates that the parties to the protective order proceeding are

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also parties in a case pending before a circuit court judge in the same county, then the magistrate shall notice the final hearing before that circuit court judge.

- b. **Transfer by circuit court judge to another circuit court judge before whom the parties have a circuit court case pending.** If a circuit court judge learns that the parties to a protective order proceeding have a circuit court case pending before another circuit court judge, then the circuit court judge before whom the financial exploitation proceeding is pending shall transfer the case to the circuit court judge before whom the circuit court case is pending, if venue is proper.
- c. **Consolidation.** If a circuit court judge learns that the parties to a protective order proceeding have a second protective order proceeding pending before another circuit court judge, then the circuit court in which the first such action was commenced shall order both protective order proceedings transferred before it or any other circuit court in which another protective order proceeding is pending, if venue is proper. The court to which the actions are transferred may order a joint hearing of the matters in issue, and may make such other orders as may tend to avoid unnecessary cost or delay, provided, however, the court shall enter a separate order for each action.
- d. **Transfer from county to county.** When a financial exploitation case is transferred between counties, the financial exploitation case shall be closed in circuit court from the originating county and assigned a new circuit court case number in the county receiving the case. Upon holding the final hearing, the circuit court shall fax the order to the magistrate clerk's office of the originating county and the clerk shall immediately fax a copy of the order to the Department pursuant to W. Va. Code §61-2-29B(e).

Rule 16. Continuances

- a. **Filing of motion for continuance.** A party may file a motion for continuance with the circuit clerk, or with the court, at the convenience of the court.
- b. **Requirements for a continuance.** A continuance may be granted upon a showing of good cause.
- c. **Notice requirements.** A motion for continuance may be heard after such reasonable notice to the opposing party as required by the court.
- d. **Continuance of a final hearing.** A review hearing may be continued on motion of the petitioner or respondent at the convenience of the court. A review hearing continued for failure to obtain personal service by law enforcement shall be rescheduled no more than thirty (30) days from the scheduled hearing date, if the court orders the circuit clerk to attempt service by certified mail return receipt requested and or publication. Otherwise, a continuance of a review hearing by the court shall be rescheduled no more than seven days from the scheduled hearing date. If a hearing is continued, the court may modify the emergency protective order as it deems necessary.

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- e. **Continuance of review hearing when personal service unsuccessful.** If a hearing is continued by the court for lack of personal service by law enforcement and the court finds that a second attempt of personal service by law enforcement will not be successful, the court shall instruct the circuit clerk to serve the pleading and order by certified mail, restricted delivery, return receipt requested, to the last known address of respondent and may in the court's discretion require the circuit clerk to serve the respondent by publication in accordance with Rule 13a of these rules and Rule 4 of the West Virginia Rules of Civil Procedure simultaneously.

Rule 17. Amended pleadings

Upon request by any party and at any stage of the proceedings, a pleading may be amended for good cause shown upon such terms as the court may require.

Rule 18. Transfer of case file from magistrate to circuit court when emergency protective order granted

- a. **Transfer to the circuit clerk.** — Following the emergency hearing, the magistrate clerk shall cause the court file to be delivered to the circuit clerk immediately.
- b. **Facsimile machine.** — The circuit clerk and all magistrate court staff shall leave the facsimile machine on 24-hours-a-day every day to facilitate the transfer of financial exploitation protective orders.

Rule 19. Termination of emergency protective order

A temporary protective order is terminated by the entry of a financial exploitation protective order or an order denying a financial exploitation protective order.

Rule 20. Appeal of denial of emergency order

- a. **Time periods.** A person whose petition was denied by the magistrate court may, as a matter of right, present a petition for appeal to the circuit court by filing a petition for appeal in the magistrate court clerk's office within five (5) days of entry of the order denying the petition in the magistrate court, which petition shall be transferred to the circuit court immediately. The petition for appeal shall be heard by the circuit court within ten (10) days from the date of filing of the petition. No bond shall be required to appeal.
- b. **Hearing.** At the circuit court hearing on the petition for appeal, the circuit court judge shall enter an order either affirming the magistrate's denial of a temporary protective order, or granting a temporary protective order. If a temporary protective order is granted, the circuit court judge shall enter the order and set the matter for final hearing within ten (10) days of the date of entry of the temporary protective order and serve the order in accordance with Rule 13 herein.

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Rule 21. Permanent Financial Exploitation Protective Order

- a. Upon receipt of a notice of transfer from magistrate court, or upon the filing of a petition for permanent financial exploitation protective order in circuit court the circuit court shall set the matter for a final hearing on the petition. Following the hearing, the circuit court may dismiss the temporary protective order, or the circuit court may enter a permanent protective order if it finds by a preponderance of the evidence that,
 1. the respondent has committed an act against the victim that constitutes financial exploitation as defined in West Virginia Code §55-7J-1, and these rules; and
 2. There is reasonable cause to believe continued financial exploitation will occur unless relief is granted; or
 3. the respondent consents to the entry of the permanent protective order;

The permanent protective order may

1. order the respondent to return property or assets improperly obtained controlled or used;
 2. provide for the appointment of a receiver;
 3. award damages pursuant to West Virginia Code §55-7J-3(A)(2) and West Virginia Code §55-7J-3(B).
 4. freeze assets pursuant to West Virginia Code §55-7J-5;
 5. award attorneys' fees pursuant to West Virginia Code §55-7J-4, and
 6. grant any other relief the court deems appropriate.
- b. The circuit court shall transfer a copy of the permanent protective order to the appropriate entities as outlined in West Virginia Code §61-2-29B(e).
 - c. The circuit court may, following the entry of a final financial exploitation order, schedule review hearings as necessary.

Rule 22. Appeal of circuit court order

- a. Any party may appeal the entry of a circuit court order granting or refusing a financial exploitation order to the West Virginia Supreme Court pursuant to Rule 5 of the Rules of Appellate Procedure. Appeals are governed by the Rules of Appellate Procedure.

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- b. **Order in effect pending appeal.** The circuit court order shall remain in effect pending an appeal unless stayed by the circuit court or Supreme Court of Appeals upon proper motion.

Rule 23. Disqualification of Circuit Court Judge

Rule 17 of the West Virginia Trial Court Rules for Trial Courts of Record shall govern the disqualification of circuit court judges. Disqualification appointments in financial exploitation civil proceedings may be handled on an emergency basis.

Rule 24. Interested Persons Filing on behalf of Elderly, Incapacitated Persons or Protected Persons.

Individuals filing on behalf of a person in need of protection. The petitioner shall be the incapacitated person or protected person in need of protection. The person or entity filing on the incapacitated, or protected person's behalf shall be recognized on the petition as the parent/guardian or next friend. The person filing on behalf of the incapacitated or protected person shall attend any hearing scheduled to protect the interest of the elderly, incapacitated, or protected person.

Rule 25. Review Hearings

The circuit court may schedule as needed review hearings to monitor and enforce the protective order entered by the court. During the review hearings, the court may take such action as necessary to enforce the court's order. The court may require one or both parties to appear at the compliance hearings to provide evidence and testimony regarding compliance with the court's protective order.

Rule 26. Appointment of guardian ad litem

At any time the magistrate or circuit court may appoint a guardian ad litem for the petitioner. Rule 21 of the West Virginia Trial Court Rules for Trial Courts of Record shall govern the appointment of guardians *ad litem* in financial exploitation civil proceedings.

Rule 27. Time Computation

Rule 6 of the Rules of Civil Procedure shall govern the computation of any period of time. The computation of the time period of a protective order issued by magistrate or circuit court shall begin on the day immediately following the issuance of the order by magistrate or circuit court. The last day of the order shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.