

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 21<sup>st</sup> day of September 2006, the following order was made and entered:

**RE: REQUEST FOR COMMENT ON PROPOSED AMENDMENT TO  
RULE 4(d)(1)(E) OF THE RULES OF CIVIL PROCEDURE**

On this day came the Court, and proceeded to consider a proposal received from the Circuit Clerk's Liaison Committee, relating to a proposed amendment to Rule 4 (d)(1)(E) of the Rules of Civil Procedure, increasing the fee for service by certified mail. Upon consideration whereof, the Court is of the opinion to and does hereby approve a period of public comment on the proposed amendment, to conclude on November 30, 2006, with public comments to be filed with the Clerk of Court. Justice Starcher would refuse the proposal. Additions are indicated by underlining, deletions are indicated by strikethrough:

**“Rule 4. Summons.**

\* \* \*

(d)(1)(E) The clerk sending a copy of the summons and complaint by first class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 14 and a return envelope, postage prepaid, addressed to the clerk.

The plaintiff shall furnish the person making service with such copies of the complaint or order as are necessary and shall advance the costs of service. For service by certified mail, the plaintiff shall pay to the clerk a fee of ~~ten~~ twenty dollars for each complaint to be served. For service by first class mail, the plaintiff shall pay to the clerk a fee of five dollars for each complaint to be served.

Service pursuant to subdivision (d)(1)(D) shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a return envelope showing refusal of the registered or certified mail by the defendant. If delivery of the summons and complaint pursuant to subdivision (d)(1)(D) is refused, the clerk, promptly upon receipt of the notice of such refusal, shall mail to the defendant, by first class mail, postage prepaid, a copy of the summons and complaint and a notice that despite such refusal, the case will proceed and that judgment by default will be rendered against the defendant unless the defendant appears to defend the suit. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by or delivery was

refused by an unauthorized person. The notice and acknowledgment of receipt of the summons and complaint pursuant to subdivision (d)(1)(E) shall be executed in the manner prescribed on Form 14. Unless good cause is shown for failure to complete and return the notice and acknowledgment of receipt of summons and complaint pursuant to subdivision (d)(1)(E) within twenty (20) days after mailing, the court may order the payment of cost of personal service by the person served. Service pursuant to subdivision (d)(1)(E) shall not be the basis for entry of default or a judgment by default unless the record contains a notice and acknowledgment of receipt of the summons and complaint. If no acknowledgment of service pursuant to subdivision (d)(1)(E) is received by the clerk within twenty (20) days after the date of mailing, service of such summons and complaint shall be made under subdivisions (d)(1)(A), (B), (C), or (D).”

A True Copy

Attest: \_\_\_\_\_  
Clerk, Supreme Court of Appeals