

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 15th day of March, 2000 the following order was made and entered:

**IN RE:        PROPOSED AMENDMENTS TO RULE 16 OF THE WEST  
              VIRGINIA TRIAL COURT RULES**

On this day came the Court and proceeded to consider amendments to Rule 16 of the West Virginia Trial Court Rules. Upon consideration whereof, the Court is of opinion to and doth hereby approve a period of time for public comment on the proposed amendments, said comment period to conclude on the 5th day of May, 2000, with comments to be filed with the Clerk of this Court. Deletions are indicated by strike-throughs and additions are indicated by underscoring.

"WEST VIRGINIA TRIAL COURT RULES

**Rule 16.    Time Standards.**

**16.01 Purpose**

Article III, Section 17 of the West Virginia Constitution provides, "justice shall be administered without sale, denial or delay." Article III, Section 13 of the West Virginia Constitution provides, "Trials of crimes ... shall be ... without unreasonable

delay." Article VIII, Section 8 of the West Virginia Constitution further provides, "Under its inherent rule-making power, which is hereby declared, the Supreme Court of Appeals shall, from time to time, prescribe, adopt, promulgate and amend rules prescribing . . . standards of conduct and performance for justices, judges, and magistrates, along with sanctions and penalties for any violation thereof [.]" Rule 1 of the Rules of Civil Procedure provides that they "shall be construed to secure the just, speedy, and inexpensive determination of every action." Rule 2 of the Rules of Criminal Procedure provides that they "shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay." Canon 3B(8) of the Code of Judicial Conduct provides, "A judge shall dispose of all judicial matters promptly, efficiently, and fairly." Finally, Section 2.50 of the American Bar Association Standards Relating to Court Delay Reduction provides, "the court, not the lawyers or litigants, should control the pace of litigation." Pursuant to these principles, the Supreme Court of Appeals has determined that the expeditious processing and timely disposition of cases by circuit courts are essential to the proper administration of justice. Accordingly, it directs circuit courts and their officers to comply with these rules, which provide time standards for the processing of all cases except for those governed by statute or in which the circuit court finds, on the record, that extraordinary circumstances exist for exemption from these standards.

## 16.02 Implementation.

(a) *Criminal.* The percentage of criminal cases that must be at or under the applicable time standards as provided in these rules is eighty (80) percent.

(b) *Civil.* The percentage of civil cases that must be at or under the applicable time standards as provided in these rules is seventy-five (75) percent.

(c) *Reporting.* The Administrative Director of Courts shall issue, on a semi-annual basis, a report indicating the degree of compliance with these rules by the circuit courts. For those circuit courts not in compliance, the chief judge shall file with the Administrative Director of Courts within sixty (60) days of receipt of the report by the Administrative Director a report indicating the reasons for such noncompliance. Following receipt of the report, the Administrative Director shall take such remedial measures, with the approval of the Chief Justice of the Supreme Court of Appeals, including the recall of senior status judges, the reassignment of judges from other circuit courts, or the implementation of case management procedures, as are necessary to bring the circuit court into compliance with these rules.

(d) Reporting by Judges. Every circuit judge, at the end of each calendar quarter, shall file with the Administrative Director

of the Courts, a certificate, on a form provided by the Administrative Director, that no motions or matters submitted to said judge for a ruling or other action are or have been pending before such judge for period longer than prescribed by these standards, except that any such motion or other matter pending as of the date of such certificate for a period of time in excess of the time prescribed shall be listed on said form by style and case number with a full description of the nature of the matter pending and a full explanation of the causes of the delay. Following receipt of such certificates, or upon the failure of a judge to file the certificate timely, the Administrative Director shall promptly take such remedial measures, with the approval of the Chief Justice, as may be deemed appropriate, which may include the assignment of an additional judge or additional staff to assist with the existing workload. If any motion or other matter remains unresolved and appears on two consecutive quarterly certificates, the last certificate filed shall be delivered to the Clerk of the Supreme Court of Appeals who shall present it forthwith to the Supreme Court as a petition for mandamus in the names of the parties in any such underlying proceeding.

**Commentary:** *The Supreme Court of Appeals has neglected to prescribe rules designed to monitor the performance of circuit judges under these rules and thereby fulfill its constitutional mandate. Particularly, the Court has not heretofore devised or set forth any reporting process which would bring to the attention of the Court delay in rendering rulings and entering orders.*

*The purpose of these amendments is to let the Court know when and by whom the time standards in Rule 16 are being violated. The Administrative Director would then be able to furnish assistance to the judges or would be required to institute proceedings before the*

Court to compel compliance with these standards. In the absence of any such reporting, it has been the parties themselves, in seeking writs of mandamus, who have born the burden of policing compliance with time standards in that they have had to incur expense in the employment of counsel and bear the risk of offending the judges. With these amendments, the Court will be able to monitor performance by the judges and furnish whatever assistance or incentive is required to see to it that justice is rendered without unreasonable delay.

### **16.03 Definitions**

(a) *Purpose*. The definitions set forth in this rule are for the purpose of measuring compliance with the time standards set forth in these rules.

(b) *Filing*. "Filing" is defined as the date of formal registration of a case and assignment of a case number by the clerk of court.

(c) *Submission*. "Submission" is defined as the later of the date of argument or the filing of the final reply brief, unless otherwise ordered by the court.

(d) *Ruling*. "Ruling" is defined as the date of the oral or written pronouncement of a decision by the court.

(e) *Final Judgment*. "Final judgment" is defined as the date of the entry by the circuit clerk of a final order, decree or other

document that terminates or otherwise disposes of the case.

(f) *Other Civil Cases.* "Other civil cases" shall mean civil cases which do not involve a money judgment, generally require only one hearing and are generally commenced by the filing of a petition.

#### **16.04 Time Standards for Criminal Cases**

(a) *Applicability.* These rules are not intended to supersede any constitutional or statutory speedy trial provisions.

(b) *Pretrial Motions.* An order shall be entered which sets forth a ruling on pretrial motions which require a hearing or ruling within ~~one~~ two months of submission or on the date of the trial, whichever is earlier.

(c) *Felony Prosecutions.* A sentencing order shall be entered in felony prosecutions within eight (8) months of the date of the indictment or information.

(d) *Misdemeanor Prosecutions.* A sentencing order shall be entered in misdemeanor prosecutions within eight (8) months from the date of indictment or information, the date of arrest, or the date of service of summons.

(e) *Post-trial Motions.* An order shall be entered on post-trial motions within ~~one~~ two months of submission.

#### **16.05 Time Standards for Civil Cases**

(a) *Applicability.* This rule governs general civil cases and does not apply to domestic relations, juvenile delinquency, abuse and neglect, mental hygiene, guardianship or conservatorship, extraordinary writs, appeal, declaratory judgment, and equity proceedings.

(b) *Pretrial Motions.* An order shall be entered which sets forth a ruling on pretrial motions which require a hearing or ruling within ~~one~~ two months of submission or on the date of trial, whichever is earlier.

(c) *General Civil Cases.* Final judgment shall be entered in general civil cases within eighteen (18) months of the filing of the complaint.

(d) *Other Civil Cases.* Final judgment shall be entered in other civil cases within six (6) months of the filing of the case.

(e) *Post-trial Motions.* An order shall be entered on

post-trial motions within ~~one~~ two months of submission.

(f) *Civil Case Management*. In order to conform with the time standards relating to civil cases, circuit courts shall comply with the provisions of W.Va. R.Civ.P. 16(b), and may, in their discretion, dismiss cases for lack of service as provided in W.Va. R.Civ.P. 4(k) and for inactivity as provided in W.Va. R.Civ.P. 41(b).

#### **16.06 Domestic Relations Proceedings**

(a) *Applicability*. The time standards set forth in this rule are not intended to supersede, but to supplement, statutory provisions applicable to domestic relations proceedings.

(b) *Pretrial Motions*. An order shall be entered on pretrial motions which require a hearing or ruling within one month of submission.

(c) *Divorce, Annulment, and Separate Maintenance Proceedings*. A final decree shall be entered in divorce, annulment, and separate maintenance proceedings within six (6) months of the filing of the complaint.

(d) *Miscellaneous Domestic Relations Proceedings*. A final

decree shall be entered in miscellaneous domestic relations proceedings, including adoptions, paternity, and URESA actions, within nine (9) months of the filing of the petition.

(e) *Post-hearing Motions.* An order shall be entered on post-hearing motions within one month of submission.

#### **16.07 Juvenile Delinquency Proceedings**

(a) *Applicability.* The time standards set forth in this rule are not intended to supersede, but to supplement, statutory provisions applicable to juvenile delinquency proceedings.

(b) *Pre-adjudicatory Motions.* An order shall be entered on pre-adjudicatory motions within one week of hearing on the motion.

(c) *Preliminary Hearing.* Unless the child is in detention or the hearing is continued for good cause to a date certain, the preliminary hearing shall be held within two (2) weeks of the filing of the petition.

(d) *Arraignment.* If an arraignment is held, it shall be conducted within two (2) weeks of the preliminary hearing.

(e) *Adjudicatory Hearing.* Unless an improvement period is

granted or the hearing is continued for good cause to a date certain, the adjudicatory hearing shall be conducted within two (2) months of the preliminary hearing if a jury trial is demanded or within one month if a jury trial is waived. If an improvement period is granted, but revoked prior to its expiration, the adjudicatory hearing shall be conducted within one month of revocation.

(f) *Disposition.* The dispositional order shall be entered within two (2) months of the adjudicatory hearing. If a child is in detention, the dispositional hearing shall be conducted within one month from the date the child is placed in detention.

(g) *Placement.* If a child is in detention, an appropriate placement order shall be entered within two (2) weeks of the dispositional hearing.

(h) *Modification.* An order shall be entered on a motion to modify within one month of the filing of the motion.

(i) *Reporting Standard.* The reporting standard from the filing of the petition to disposition in delinquency cases shall be eight (8) months. The reporting standard from the filing of the petition to disposition in status offender cases shall be six (6) months.

#### **16.08 Abuse and Neglect Proceedings**

(a) *Applicable Standards.* The specific time standards applicable to abuse and neglect proceedings are those contained in W.Va. Code §§ 49-6-1 et seq. and in the Rules of Procedure for Child Abuse and Neglect Proceedings.

(b) *Reporting Standard.* The reporting standard from the filing of the petition to the entry of an order of disposition, pursuant to W.Va. Code § 49-6-5(a), shall be twelve (12) months.

#### **16.09 Mental Hygiene Proceedings**

(a) *Applicability.* The time standards set forth in this rule are not intended to supersede, but to supplement, statutory provisions applicable to mental hygiene proceedings.

(b) *Findings and Recommendations.* Findings of fact and a recommended order shall be entered within two (2) weeks from the filing of an application for final commitment.

(c) *Final Order.* The final order shall be entered within one week of the recommended order.

(d) *Reporting Standard.* The reporting standard from the

filing of the petition to disposition shall be three (3) months.

#### **16.10 Guardianship and Conservatorship Proceedings**

(a) *Applicability.* The time standards set forth in this rule are not intended to supersede, but to supplement, statutory provisions applicable to guardianship and conservatorship proceedings.

(b) *Findings and Recommendations.* Findings of fact and recommendations by a mental hygiene commissioner shall be submitted to the assigned circuit judge within seven (7) days of the hearing on any petition filed pursuant to W.Va. Code §§ 44A-2-1 et seq.

(c) *Findings, Conclusions, and Final Order.* The assigned circuit judge shall issue findings of fact, conclusions of law, and a final order pursuant to W.Va. Code § 44A-2-13, within seven (7) days of receiving the submission by the mental hygiene commissioner or, if the judge conducts a hearing, within seven (7) days of the hearing.

(d) *Post-appointment Hearings and Rulings.* Hearings on post-appointment petitions or motions shall be held within sixty (60) days of the filing of such petitions or motions. Findings of fact and recommendations by a mental hygiene commissioner shall be

submitted to the assigned circuit judge within seven (7) days of the hearing. The assigned circuit judge shall issue findings of fact, conclusions of law, and the order ruling on the petition or motion within seven (7) days of receiving the submission of the mental hygiene commissioner or, if the judge conducts a hearing, within seven (7) days of the hearing.

(e) *Reporting Standard.* The reporting standard from the filing of a petition pursuant to W.Va. Code §§ 44A-2-1 et seq. to the disposition pursuant to W.Va. Code § 44A-2-13 shall be three (3) months.

#### **16.11 Petitions and Appeals**

(a) *Petitions for Modification of Magistrate Sentence.* An order shall be entered on a motion to modify a magistrate sentence pursuant to W.Va. Code §§ 62-11A-1, 62-11B-1 et seq., or 62-12-4, within two (2) months of the filing of the motion.

(b) *Magistrate Court Appeals.* A final judgment in civil cases or a sentencing order in criminal cases shall be entered within six (6) months of receipt of the magistrate court file by the clerk of the circuit court, except that, pursuant to W.Va. Code §§ 50-5-12(c)(6) and 50-5-13(c)(6), a final judgment in cases tried before a jury shall be entered within ninety (90) days after the

appeal is regularly placed on the docket of the circuit court.

(c) *Administrative Appeals.* Unless otherwise provided by statute, a final judgment in an appeal from an administrative agency shall be entered within six (6) months of the filing of the appeal.

#### **16.12 Extraordinary, Declaratory Judgment, and Equitable Proceedings**

A final judgment or decree shall be entered in extraordinary, declaratory judgment, and equitable proceedings within one month of submission.

#### **16.13 Duties of Court Officers**

(a) *Circuit Clerks.* Every circuit clerk shall keep such records and make monthly reports on the status of cases in their respective courts as required by the Administrative Director of the Supreme Court of Appeals. Every circuit clerk shall also periodically inform the circuit court on the status of cases which may be dismissed pursuant to W.Va. R.Civ.P. 4(k) and 41(b).

(b) *Judicial Officers.* It shall be the duty of circuit judges and family law masters to effectuate expeditious movement and

timely disposition of all cases assigned to them. It shall further be the duty of such judicial officers to control their dockets and to control continuances by means of strict application of the Rules of Civil Procedure, Rules of Criminal Procedure, and statutory time frame provisions governing continuances."

A True Copy

//s// Deborah L. McHenry  
Clerk, Supreme Court of Appeals