

STATE OF WEST VIRGINIA
IN THE SUPREME COURT OF APPEALS
IN VACATION

IN RE: **RULES OF PRACTICE AND PROCEDURE FOR DOMESTIC
 VIOLENCE CIVIL PROCEEDINGS**

 This day came Barbara Baxter, Director of the Family Law System for the Supreme Court of Appeals of West Virginia, and presented to the Court proposed amended Interim Rules of Practice and Procedure for Domestic Violence Civil Proceedings.

 Upon consideration whereof, the Court is of opinion to and doth hereby adopt the following amended rules on an interim basis, effective on the 1st day of September, 2001.

**"RULES OF PRACTICE AND PROCEDURE FOR DOMESTIC
VIOLENCE CIVIL PROCEEDINGS**

Rule 1. Scope; conflicts.

 These rules shall govern domestic violence civil proceedings. If these rules conflict with other rules or statutes, these rules shall apply, except as noted in subsection (b). The purpose of the rules is to help resolve cases in a just, speedy, and inexpensive manner.

 (a) Domestic violence civil proceedings. -- These rules apply to all domestic violence civil cases in the circuit courts, family courts, and magistrate courts of the State of West Virginia.

 (b) Magistrate domestic violence criminal proceedings. --

The Rules of Criminal Procedure for the Magistrate Courts of West Virginia shall apply to all domestic violence criminal proceedings.

(c) Administrative rules for magistrate courts. -- The Administrative Rules for the Magistrate Courts of West Virginia which specifically govern domestic violence proceedings apply to all domestic violence proceedings while they are pending in magistrate court.

(d) Rules of Evidence. -- Unless the West Virginia Rules of Evidence conflict with these rules or statutes, the West Virginia Rules of Evidence apply to all domestic violence civil cases.

Rule 2. Terminology.

(a) "Emergency protective order" refers to the temporary protective order entered after a W. Va. Code, §48-27-203 hearing.

(b) "Domestic Violence Protective Order" refers to the 90 or 180-day order entered after a W. Va. Code, §48-27-205 hearing in accordance with W. Va. Code, §48-27-209.

(c) "Family Court" refers to the court created in the circuit court of each county in the State as a division of the circuit court pursuant to W. Va. Code, §51-2A-1.

(d) "Family court judge" shall mean a family law master appointed pursuant to W. Va. Code, §51-2A-2.

Rule 3. Effective date.

These rules shall take effect on the first day of September 2001, and shall govern all domestic violence civil proceedings after this date.

Rule 4. Fees; costs.

(a) Assessment of court costs and fees when emergency protective order "denied." -- If the petition is denied by the magistrate during the emergency hearing, court costs and fees shall be assessed by the magistrate at the conclusion of the emergency hearing and shall be paid to the magistrate clerk as follows, unless an affidavit of indigency 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 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 domestic violence protective order "granted" or "denied" by circuit or family court. -- Except as in subsection (a) of this rule, court costs and fees shall be assessed by the family court during the hearing or by a circuit court at the conclusion of proceedings before it and shall be paid to the circuit clerk as follows, unless an affidavit of indigency has been filed:

- (1) Family Court Fund: \$25.00;
- (2) Magistrate Court Fund: \$10.00;
- (3) Court Security Fund: \$5.00; and
- (4) Regional Jail Authority: \$10.00.

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: Family Court Fund, Magistrate Court Fund, Court Security Fund, Regional Jail Fund, and other costs, if any.

Rule 5. 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 an affidavit of indigency, which shall be kept confidential. An additional affidavit of indigency shall be filed whenever the financial condition of the person no longer conforms to the financial condition established by the Supreme Court for determining indigency or whenever an order has been entered directing the filing of a new affidavit.

Rule 6. Confidentiality of court files.

Rule 6 of the Rules of Practice and Procedure for Family Court shall govern the confidentiality of court files in domestic violence civil proceedings.

Rule 7. Persons allowed to be present during hearing.

No person accompanying a person who is seeking to file a petition is precluded from being present if his or her presence is desired by the person seeking a petition, W. Va. Code, §48-27-307, and no person requested by a party to be present during a hearing on a petition for a protective order shall be precluded from being present unless such person is a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present. W. Va. Code, §48-27-403(f). Rule 8 of the Rules of Practice and Procedure for Family Law shall govern the unofficial recording of domestic violence civil proceedings.

Rule 8. Filing of petitions.

(a) Commencement of action. -- To commence an action for a protective order, a verified petition shall be filed in the magistrate court.

(b) Petition. -- The petition shall contain a short and plain statement of the facts showing that the petitioner is entitled to relief, and a demand for the relief the petitioner seeks.

(c) Petitions for contempt or modification of a protective order. -- A petition for contempt or modification of a protective order shall be filed with the circuit clerk.

(d) Other required documents. -- The original petition, and petitions for contempt or modification of a protective order, shall be accompanied by a completed domestic civil case information statement. In cases which may involve spousal support, child support, allocation of custodial responsibility, visitation or paternity, the petition shall be accompanied by a IV-D application.

(e) Petitioner's contact information. -- At petitioner's request, the magistrate court shall immediately seal within the file the domestic civil case information statement, the IV-D application, and any other document containing the address or other contact information for the petitioner such as the petitioner's phone number, fax number, or e-mail address, until further order.

Rule 9. Answer.

An answer, which need not be verified, may be filed and served by the respondent prior to the family court hearing. If the answer is filed thereafter, it shall be filed with the circuit clerk. Filing of an answer does not constitute a request for a hearing pursuant to W. Va. Code, 48-27-403(d). The respondent shall not be denied the right to request a hearing if no request for hearing is made in the answer.

Rule 10. Request for family court hearing.

(a) Time requirements. -- Any party to an emergency protective order may, as a matter of right, request a family court hearing within 10 days of service of the order to the respondent, or delivery of the order to the petitioner. If the request is made within 10 days, the hearing shall be held by the family court within 10 days following the request. The emergency protective order shall remain in effect pending the hearing unless stayed by the family court.

(b) Telephonic requests. -- A telephonic request for a family court hearing shall be made by calling the number listed on the emergency protective order between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays, during the 10-day period for requesting a hearing. Telephonic requests for hearings made to a telephone number other than the one listed on the emergency protective order, or left on an answering machine, are not valid and shall not be acted upon.

(c) Facsimile requests. -- A facsimile request for a family court hearing shall be made by fax transmission of a written request to the FAX number listed on the emergency protective order, at any time during the 10-day period for requesting a hearing.

Rule 11. Service.

(a) Service of the petition and emergency protective order. -- If the respondent is present at the emergency hearing, the order shall be served by the magistrate upon the respondent at the conclusion of the hearing. If the respondent is not present at the hearing, then the petition and emergency protective order shall be immediately served by law enforcement. If personal service has been unsuccessful, the respondent shall be served in accordance with W. Va. Code, §48-27-311.

(b) Service of the family court order. -- If a party is present at the family court hearing, the order shall be served by the family law master upon the party at the conclusion of the hearing. If a party is not present at the family court hearing, then the order shall be immediately served by law enforcement upon the party who was not present. If personal service of the order upon a party has been unsuccessful, that party shall be served in accordance with W. Va. Code, §48-27-311.

(c) Service of a petition for the contempt or modification of a protective order. -- A petition for the contempt or modification of a protective order shall be served immediately by the sheriff, or by certified mail, return receipt requested, upon movant's payment of the fee to the circuit clerk, if an application for indigency has not been filed.

(d) Service of documents other than the original petition, emergency or domestic violence protective orders, or petitions for the contempt or modification of a protective order. -- Every document other than the original petition, emergency or domestic violence protective orders, or petitions for the contempt or modification of a protective order, 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 certified mail, return receipt requested, to the party's last-known address or by any other means permitted by Rule 4 of the West Virginia Rules of Civil Procedure.

(e) Service by respondent when petitioner's contact information has been sealed in the file. -- When petitioner's address and other contact information has been sealed in the file pursuant to these rules, and the respondent needs to make service on the petitioner, the respondent shall direct the circuit clerk to make service upon the petitioner. Service shall be made by the circuit clerk if petitioner's contact 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 contact information.

(f) Service allowing direct contact between the parties is strictly prohibited.

Rule 12. Filing and service by facsimile transmission.

Pleadings and other documents, including requests for

hearings, may be filed with the clerk and served upon law enforcement authorities by facsimile transmission in accordance with Rule 12.05 of the Trial Court Rules for Trial Courts of Record.

Rule 13. Continuances.

(a) Filing of motion for continuance. -- A movant may file a motion for continuance with the circuit clerk, or with the family law master, if the family law master consents.

(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 family law master.

Rule 14. 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 15. 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 pursuant to W. Va. Code, §48-27-403(c).

(b) The IV-D application. -- The IV-D application shall be immediately faxed to the local child support enforcement office.

(c) Fax machine. -- The circuit clerk and all family court staff shall leave the fax machine on 24-hours-a-day every day.

Rule 16. Appeal of denial of emergency order.

A person whose petition was denied by the magistrate court may, as a matter of right, present a notice of appeal within 5 days of entry of the order denying the petition in the magistrate court, to the family court. No bond shall be required to appeal.

Rule 17. Review of family court decision.

Within 10 days following the entry of an order by family court, any party may file a petition for review to the circuit court. The family court order shall remain in effect pending the circuit court's consideration unless stayed by the circuit court. The circuit court shall hear the petition for review within 10 days after the petition is filed. No bond shall be required for a petition for review.

Rule 18. Confirmation of domestic violence protective order.

(a) Confirmation. -- If no request for review is filed within 10 days following the entry of the domestic violence protective order, the circuit judge shall consider the order as soon as practicable and confirm the order if the court finds it to be proper. The domestic violence protective order shall remain in effect pending the circuit court's confirmation.

(b) Procedure for obtaining confirmation. -- Ten days after a domestic violence protective order was signed by the family court, the circuit clerk shall determine whether or not a request for circuit court review has been filed. If no request for review has been filed, the circuit clerk shall within one judicial day send a form confirmation order to the circuit judge, along with a copy of the order, for the court's consideration.

Rule 19. Disposition of Orders.

By the next judicial day following the entry of any order by the family or circuit court, the circuit clerk shall provide a copy of the order to the magistrate clerk. The magistrate clerk shall cause the order to be entered in the domestic violence registry.

Rule 20. Domestic violence support orders.

(a) When a case is dismissed in which an order of support has been entered. -- When a case is dismissed in which an order of child and/or spousal support has been entered, an order shall be entered by the next judicial day stating the date that the support obligation shall end.

(b) Documentation to local child support enforcement office. -- Any order imposing, modifying, or terminating child and/or spousal support shall be delivered by the next judicial

day following the hearing at which the order is made by hand or by fax to the local child support enforcement office. The order shall state the date that the support obligation shall end.

Rule 21. Testimony of children.

Rules 8 and 9 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings shall govern the taking of testimony of children.

Rule 22. Domestic violence civil contempt bond.

Rule 23 of the Rules of Civil Procedure for the Magistrate Courts of West Virginia shall govern domestic violence civil contempt bond proceedings, in accordance with W. Va. Code, §48-27-901.

Rule 23. Concurrent jurisdiction.

The circuit courts may assist family law masters in the disposition of their case load during the period of transition addressed by these interim rules by utilizing the provisions of W. Va. Code, §51-2A-10(b), when and where the circuit courts deem appropriate, to conduct family court protective order proceedings or other domestic law proceedings referred to family law masters.

DONE IN VACATION of the Supreme Court of Appeals
this 25th day of July, 2001.

Honorable Warren R. McGraw, Chief Justice

Honorable Robin Jean Davis

Honorable Larry V. Starcher

Honorable Elliott E. Maynard

Honorable Joseph P. Albright

Received the foregoing order this the 25th day of
July, 2001.

A True Copy

Attest: _____
Clerk, Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals
continued and held at Charleston, Kanawha County, on the 21st
day of June, 2001, the following order was made and entered:

IN RE: AMENDMENTS TO RULE 40 OF THE RULES OF PRACTICE
AND PROCEDURE FOR FAMILY COURT

This day came the Court and proceeded to consider
proposed amendments to Rule 40 of the Rules of Practice and
Procedure for Family Court. Following consideration thereof,

the Court is of opinion to and doth hereby adopt provisionally the proposed amendments, effective immediately, and doth hereby approve a period for public comment on the amendments, said public comments to be filed on or before the 21st day of July, 2001, with the Clerk of the Supreme Court of Appeals of West Virginia. The amendments follow with deletions indicated by strike-throughs and additions indicated by underscoring:

"RULES OF PRACTICE AND PROCEDURE FOR FAMILY COURT

SPECIAL PROCEEDINGS AND PROCEDURES

Rule 40. Appointments of guardians ad litem and attorneys for children.

As provided by chapter 48, article 11, section 302 [48-11-302] of the Code, the court may appoint a guardian ad litem to represent a child's best interest, or ~~and~~ an attorney ~~for~~ to represent a child. ~~Such~~ The appointments shall be made independently of any nomination ~~by~~ of the parties. The court shall specify the terms of the appointment, including the guardian's or attorney's roles, duties, scope of authority, and method of payment, if any.

Appointed guardians may (a) serve on a voluntary basis without compensation, (b) be paid by a litigant-parent of the child for whom the appointment is made who has the ability to pay, or (c) in some circumstances, be paid by the Supreme Court of Appeals. The court may appoint any attorney to serve as a guardian ad litem.

Eligibility for Supreme Court payment for court-appointed guardians ad litem or attorneys shall be determined by the family court using guidelines established by the Administrative Director of the Courts. Payment shall be made from court funds appropriated for that purpose, or from grant funds designated for that purpose, at the rates established for compensation of attorneys pursuant to W. Va. Code, 29-21-1 to 22. The total compensation paid to guardians or attorneys from

court or grant funds shall not exceed five hundred dollars (\$500.00) per appointment. Requests for payment shall be made on forms provided by the Administrative Director of the Courts. Requests for payment shall be reviewed and approved by order of the court prior to submission to the Administrative Director of the Courts for payment.

As circumstances may warrant, at any time during the proceedings, the family court or the circuit court, in its discretion, may tax the costs of the appointment of a guardian ad litem or an attorney to either of the parties and require that any compensation previously paid from court funds or grant funds be refunded to the Administrative Director of the Courts.

The Administrative Director of the Courts shall have the authority to approve and pay compensation in excess of the five hundred dollars (\$500.00) per appointment in exceptional cases and for good cause shown."

A True Copy

Attest: _____
Clerk, Supreme Court of Appeals