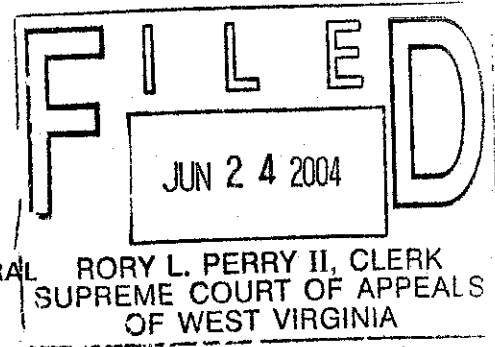




STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305



DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

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June 22, 2004

The Honorable Rory L. Perry, II, Clerk  
West Virginia Supreme Court of Appeals  
State Capitol, Room E-317  
Charleston, West Virginia 25305

Re: *State ex rel. Mary Ann Podelco, v. Tomblin, et al*, No. 040909

Dear Mr. Perry:

Please allow this correspondence to serve (1) as an informal response on behalf of the "Office of the Governor of the State of West Virginia" in the above referenced matter and (2) to clarify that neither the "Office of the Governor of the State of West Virginia" nor the Office of the Attorney General received any pre-suit notice, pursuant to W. Va. Code § 55-17-1, et seq., in the above referenced matter.

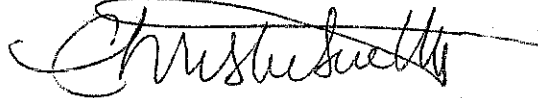
First, the style of the referenced matter includes the "Office of the Governor of the State of West Virginia"; however, the Petition makes absolutely no reference to the "Office of the Governor of the State of West Virginia." See generally Petition. The Petitioner neither identifies the Office of the Governor of the State of West Virginia as a "party" nor does she assert any allegation of fact on the part of the Office of the Governor of the State of West Virginia. *Id.* In fact, the word "Governor" is only included in the style and in subparagraph (o) of paragraph 17, on page 12, where a quote is attributed to "[t]he Governor's general counsel". Thus, the "Office of the Governor of the State of West Virginia" is not a proper party and should be dismissed as a named respondent.

Second, although the West Virginia Ethics Commission indicates in a footnote of its Response in this matter that the Office of the Attorney General may have received the statutorily mandated pre-suit notice, neither the Attorney General nor the Governor's Office received the requisite W. Va. Code § 55-17-1, et seq., notification. Like the West Virginia Ethics Commission, the Governor's Office learned of the action from the Court. In turn, the Office of the Attorney General received notice from the Governor's Office when legal representation in the matter was requested. Thus, dismissal of this action is proper where the Petitioner failed to provide notification pursuant to W. Va. Code § 55-17-1, et seq.

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Should you have any questions or require additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Christie S. Utt", with a long horizontal flourish extending to the right.

Christie S. Utt, Deputy Attorney General  
Counsel for Respondent, the Office of the  
Governor of the State of West Virginia

cc: Erica M. Mani, General Counsel, Office of the Governor