

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 24<sup>th</sup> day of January 2008, the following order was made and entered:

**IN RE: Request for Comments on Proposed Amendment to Rule 71B of the West Virginia Rules of Civil Procedure**

On this day came the Court, on its own motion and proceeded to consider an amendment to Rule 71B of the West Virginia Rules of Civil Procedure.

Upon consideration whereof, the Court is of opinion to and does hereby approve a period of public comment on the proposed amendment to conclude on February 27, 2008, with comments to be filed with the Clerk of this Court. Insertions are indicated by underscoring, to read as follows:

**“Rule 71B. Extraordinary writs.**

(a) *Applicability of rules.* – The West Virginia Rules of Civil Procedure govern the procedure for the application for, and issuance of, extraordinary writs.

(b) *Joinder of claims in different writs.* – A plaintiff may join a demand for relief which encompass different types of writs and other types of relief.

(c) *Complaint.* – (1) *Caption.* – The complaint shall contain a caption as provided in Rule 10(a) except that the plaintiff shall name as defendants the agencies, entities, or individuals of the State of West Virginia to which the relief shall be directed.

(2) *Contents.* – The complaint shall contain a short and plain statement of the authority for the writ demanded. A form indicating the simplified nature of the extraordinary writ practice as provided for by this provision is contained in the Appendix as Form 32.

(3) *Verification.* – The complaint shall be verified.

(d) *Appearance or answer.* – (1) *Right to relief conceded.* – If a defendant agency, entity, or individual concedes the appropriateness of the writ requested, that defendant may serve notice of the concession and the court shall enter a writ granting appropriate relief and may substitute the concession for findings of fact on the need for and the appropriateness of the relief demanded if justice requires.

(2) *Answer.* – If a defendant agency, entity, or individual contests the plaintiffs’ right to the writ demanded, the defendant shall answer within the time and in the form specified by the applicable provisions of this rule.

(3) Default. – If a defendant agency, entity, or individual fails to answer or otherwise appear, the court shall declare the defendant in default pursuant to Rule 55(a). The court may not enter default judgment pursuant to Rule 55(b) but shall hold a hearing or hearings on the relief demanded and award a writ or writs as justice requires.

(4) Jurisdiction and venue unaffected. – Jurisdiction and venue requirements for writ proceedings are unaffected by this rule.”

A True Copy

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