

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 26th day of November, 2002, the following order was made and entered:

IN RE: PROPOSED AMENDMENTS TO RULE 4.09 OF THE WEST VIRGINIA TRIAL COURT RULES

On a former day, to-wit, October 11, 2001, came the Honorable Michael Thornsby, Judge of the Circuit Court of Mingo County, and presented to the Court, pursuant to Trial Court Rule 1.03, a proposed local rule for approval. Upon consideration whereof, the Court is of opinion to and doth hereby decline to adopt the proposal as a local rule, and doth hereby provisionally adopt the following amendment to Rule 4.09 of the West Virginia Trial Court Rules, effective immediately. The Court doth hereby approve a period for public comment on the provisionally approved rule, said comment period to conclude on the 14th day of February, 2003, with comments to be filed with the Clerk of this Court. Justice Maynard would adopt the local rule as proposed. Deletions are indicated by strikethroughs and insertions are indicated by underscoring, to read as follows:

“THE WEST VIRGINIA TRIAL COURT RULES

Rule 4.09. Contact with Jurors.

No party, nor his or her agent or attorney, shall communicate or attempt to communicate with any member of the jury or any member of the juror’s immediate family until after that juror has been excused from further service for a particular term of court, without first applying for (with notice to all other parties) and obtaining an order allowing such communication. The application shall contain a description of the proposed contact, and an executed certificate by each person involved that no inappropriate contact will be made. The circuit court shall liberally grant the request.”

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 26th of November, 2002, the following order was made and entered:

IN RE: PROPOSED AMENDMENT TO SECTION 14 OF THE WEST VIRGINIA TRIAL COURT RULES

On this day came the Court, on its own motion, and proceeded to consider proposed amendments to section fourteen of the West Virginia Trial Court Rules, to govern use of videoconferencing in the courts. Upon consideration whereof, the Court is of opinion to and doth hereby approve a period of public comment on said proposed rules to conclude on February 28, 2002. Comments are to be filed with the Clerk of this Court. The proposed amendments read as follows:

“WEST VIRGINIA TRIAL COURT RULES

14. VIDEOCONFERENCING

Rule 14.01. General Provisions

(a) Proceedings conducted by videoconferencing shall be conducted in the same manner as if the parties had appeared in person, and the presiding judicial officer may exercise all powers consistent with the proceeding.

(b) Any document filed in a proceeding conducted by videoconferencing may be transmitted by electronic facsimile; signatures on a document transmitted by electronic facsimile shall have the same force and effect as original signatures.

(c) The presiding judicial officer shall begin all proceedings conducted by videoconferencing by stating on the record identities of all counsel, parties, witnesses, and members of the media present in the courtroom and at the remote site.

(d) Any system used for conducting proceedings by videoconferencing shall meet the following standards:

(1) The persons communicating must be able to simultaneously see and speak to one another;

(2) The signal transmission must be live;

- (3) The signal transmission must be secure from unauthorized acquisition;
- (4) Any other standards established by the Supreme Court of Appeals.

Rule 14.02. Civil Proceedings in Circuit Courts

The Court may utilize videoconferencing to conduct any evidentiary or non-evidentiary hearing, and may permit any witnesses to testify or be deposed by videoconferencing.

Rule 14.03. Criminal Proceedings in Circuit Courts

(a) *Pretrial Proceedings* - The Court may utilize videoconferencing to take a plea of not guilty at arraignment, to consider pretrial motions, to conduct pretrial status conferences, to permit a witness to testify at a pretrial hearing, to take and preserve the testimony of a prospective witness for use at trial, and to conduct any non-evidentiary hearing.

(b) *Testimony of Child Witnesses* - If a child of age twelve or less is called to testify as a witness at the trial of a person charged with violation of chapter 61, article 8B, sections 3,4,5, or 7; and the prospective child witness is an alleged victim, the court shall appoint as an adviser to the court a psychiatrist, a doctoral level psychologist, or a licensed social worker with at least five years of significant clinical experience in the treatment and evaluation of children. After holding an evidentiary hearing, and considering the age and maturity of the child; the facts and circumstances of the alleged offence; whether the alleged offense involves the infliction of bodily injury to the child or the threat of bodily injury to the child or another; and any mental or physical handicap of the child, the court may utilize videoconferencing to take the child's testimony if the court determines expert testimony has established the following four circumstances with a reasonable degree of professional certainty: (1) Testifying in the physical presence of the defendant would cause the child serious emotional distress and preclude the child from testifying truthfully and accurately; (2) Testifying by videoconferencing would reduce the child's emotional distress and substantially enhance the truthfulness and accuracy of the testimony; (3) The absence of the child's testimony would significantly impair the state's ability to try the case; and (4) The child shows no signs of being subjected to undue influence or coercion.

Rule 14.04. Proceedings in Magistrate Court

(a) *Non-evidentiary hearings* - In civil and criminal cases, the court may conduct any non-evidentiary hearing by videoconferencing.

(b) *Domestic Violence Proceeding* - In proceedings pursuant to Article 27 of Chapter 48 of the Code, the court may utilize videoconferencing to take testimony in ex parte proceedings relating to petitions for temporary orders.

(c) *Criminal proceedings* - The court may utilize videoconferencing to take a plea of not guilty, and to conduct pretrial status conferences.

Rule 14.05. Mental Hygiene Proceedings

The presiding officer may utilize videoconferencing to conduct any evidentiary or non-evidentiary hearing, and may permit any witness to testify or be deposed in this manner.”

A True Copy

Attest: _____
Clerk, Supreme Court of Appeals