

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: FILINGS THAT DO NOT COMPLY WITH THE RULES OF APPELLATE PROCEDURE

The Court promulgated a substantial revision to the Rules of Appellate Procedure (Rules) on December 1, 2010. The Rules made significant changes not only to the way cases are handled by the Court, but also to the way cases are prepared by the parties who appear before the Court. It has now been two years since the implementation of the Rules. In that time, the Court has observed that many litigants have worked very hard to file documents that fully comply with the Rules. However, the Court has also observed that there are numerous documents filed in support of appeals and original jurisdiction filings that do not comply with the Rules. Examples of this non-compliance include:

- (1) Briefs that appear to be pieced together in a hurried manner by cutting and pasting memoranda previously submitted to a circuit court, the Workers' Compensation Board of Review, or some other tribunal that does not have the same briefing requirements as this Court;
- (2) Briefs that lack citation of authority, fail to structure an argument applying applicable law, fail to raise any meaningful argument that there is error, or present only a skeletal argument;

- (3) Appendices that are disorganized, fail to contain a table of contents, and are not "clearly numbered in a sequential fashion to permit each page to be located by reference to a single page number" as required by Rule 7(b);
- (4) Briefs that do not include a table of contents or a table of authorities as required by Rules 10(c)(1) and (2);
- (5) Briefs that do not contain a summary of argument as required by Rule 10(c)(5), or, in those instances where a summary of argument is included, the brief does not adhere to the requirement that the summary "should be a concise, accurate, and clear condensation of the argument made in the body of the brief";
- (6) Briefs that set forth rambling assignments of error that are essentially statements of facts with a conclusion that the lower tribunal was "clearly wrong" rather than "a list of the assignments of error that are presented for review, expressed in the terms and circumstances of the case but without unnecessary detail" as required by Rule 10(c)(3);
- (7) Briefs with arguments that do not contain a citation to legal authority to support the argument presented and do not "contain appropriate and specific citations to the record on appeal, including citations that

pinpoint when and how the issues in the assignments of error were presented to the lower tribunal" as required by rule 10(c)(7);

- (8) Briefs by respondents that do not "specifically respond to each assignment of error, to the fullest extent possible" as required by Rule 10(d);
- (9) Filing of summary responses in cases where the waiver of oral argument is clearly not appropriate;
- (10) Filing of briefs and motions in cases where personal identifiers or other sensitive information is present without complying with the requirements of Rule 40(e);
- (11) Repeated late filings by guardians ad litem in violation of Rule 11(h);
- (12) Briefs by all parties in abuse and neglect cases that do not set forth the information about the current status of the children that is required by Rule 11(j);
- (13) Original jurisdiction filings that are noncompliant in the manner described in paragraphs (1) through (10);
- (14) Original jurisdiction filings and other filings that seek expedited relief but fail to comply at all with the requirements of Rule 29(c), which requires a separate motion, contemporary service on all opposing parties, and which further notes that "[t]he mere fact that a litigation

deadline is approaching is not a sufficient basis for requesting expedited relief";

(15) Filing of requests for expedited relief from an order entered more than two weeks prior to the filing of the motion without setting forth the extraordinary reasons why the motion should be granted as required by Rule 29(c); and

(16) Repeated filing of motions for extension of time without setting forth adequate good cause as required by Rule 39(b).

The Court has carefully considered these recurring problems with filings. The Court recognizes that implementation of the Rules has required adjustments by litigants, and that these adjustments take time. However, having provided two years for litigants in this Court to acquaint themselves with the requirements of the Rules, the Court is of the opinion that as of January 1, 2013, all of the requirements of the Rules must be strictly observed by litigants. The Rules are not mere procedural niceties; they set forth a structured method to permit litigants and this Court to carefully review each case. "Judges are not like pigs, hunting for truffles buried in briefs." *State Dept. of Health v. Robert Morris N.*, 195 W.Va. 759, 765, 466 S.E.2d 827, 833 (1995). In addition, litigants before this Court must recognize that "an appellate remedy should not be pursued unless counsel believes in good faith that error has been committed and

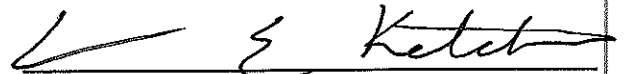
there is a reasonable basis for the extension, modification, or reversal of existing law." Syl. Pt. 3, in part, *State v. McGill*, 2012 WL 5834573 (W.Va Sup. Ct. No. 11-0261, November 15, 2012).

Accordingly, litigants before this Court **are hereby provided notice that all filings after January 1, 2013 must carefully comply with the Rules.** Pursuant to Rule 10(j), failure to file a compliant brief "may result in the Supreme Court refusing to consider the case, denying argument to the derelict party, dismissing the case from the docket, or imposing such other sanctions as the Court may deem appropriate." In addition, pursuant to Rule 27(b), "[t]he Court may, on its own motion, send a notice to the parties of its intent to dismiss an action for failure to comply with the Rules of Appellate Procedure or for other just cause, and may thereafter dismiss the action if the interests of justice so require."

The Clerk is directed to post a copy of this order on the Court's website at www.courtswv.gov, and to provide a copy to: The West Virginia State Bar to be distributed via the "Bar Blast"; the West Virginia Association for Justice; The Defense Trial Counsel of West Virginia; The West Virginia Employment Lawyers Association; West Virginia Public Defender Services; The West Virginia Prosecuting Attorney's Institute; the Office of the Attorney General; and the

legal division of the of the West Virginia Department of Health and Human Resources.

Entered this 10th day of December, 2012

A handwritten signature in black ink, appearing to read "Menis E. Ketchum", written over a horizontal line.

MENIS E. KETCHUM
Chief Justice