

# West Virginia Rules of Practice and Procedure for Family Court

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# **West Virginia Rules of Practice and Procedure for Family Court**

## **GENERAL PROVISIONS**

### **Rule 1. Scope; conflicts.**

These rules shall govern all proceedings in Family Court with the exception of domestic violence civil proceedings unless specifically referenced in these rules. If these rules conflict with other rules or statutes, these rules shall apply.

### **Rule 2. Terminology.**

Unless otherwise indicated: the Code refers to the Code of West Virginia; any reference to a rule without identification of a set of rules, e.g., Rule 6, refers to a rule of the West Virginia Rules of Practice and Procedure for Family Court; any reference to a set of rules, e.g., the Rules of Civil Procedure, refers to the West Virginia rules of that title; supreme court of appeals refers to the Supreme Court of Appeals of West Virginia; court refers to the circuit court and or the family court; approved or required refers to a form, fee scale, order, or procedure approved or required by the supreme court of appeals; case information statement refers to a case information statement for domestic relations cases; service, served, or service of process, refers to service of process pursuant to the Rules of Civil Procedure; party indicates a self-represented party, a represented party, and/or the attorney for a party, as appropriate to the particular usage; child support enforcement agency refers to the state agency charged with child support enforcement; local child support enforcement office refers to the appropriate local office of the child support enforcement agency; family court final order refers to an appealable order entered by a family court judge; memorandum of law refers to a brief as in W. Va. Code, § 51-2A-11; and the use of the plural indicates the singular if appropriate, and the use of the singular indicates the plural if appropriate.

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### **Rule 3. Effective date.**

- (a) Effective Date. — The rules shall take effect on the 1st day of January, 2002, and shall govern all Family Court proceedings after this date.
- (b) Transfer of Cases to Family Court. — Effective January 1, 2002, all family court cases pending before the circuit court, whether on review of recommended order or otherwise, shall be transferred to the jurisdiction of the family court. In those cases where a recommended order has been previously filed, the family court shall enter a final order as soon as practical after transfer; provided, however, that if the parties have previously filed objections to a recommended order, the family court judge shall consider those objections and rule upon them as part of the family court final order. Where a circuit court has conducted evidentiary proceedings in a case prior to January 1, 2002, the circuit court may request, by January 31, 2002, pursuant to W.Va. Code § 51-2A-19(b), and taking into account the circumstances of the case, that the circuit court judge be appointed as a family court judge in such case.

## **ADMINISTRATIVE PROVISIONS**

### **Rule 4. Security.**

Upon a family court judge's request, the sheriff shall provide a bailiff for any family court proceeding. Except for such bailiffs or persons authorized by order of the circuit court, no person shall carry or permit another person to carry any weapon to a family court proceeding or upon any premises of family court. These premises shall include, but are not limited to courtrooms, offices, and associated public areas such as conference rooms, waiting rooms, hallways, and parking areas.

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### **Rule 5. Records: transcripts; fees; costs; forms.**

- (a) Records filed with the circuit clerk. — All case files, and evidence, shall be filed with and stored by the circuit clerk.
- (b) Recordings of proceedings. — Proceedings in family court shall be recorded electronically on tapes or other electronic recording media. Electronic records shall be indexed by the secretary-clerk of the family court, and shall be securely stored by the family court unless stored by the circuit clerk pursuant to the request of a family court judge. A party may obtain a copy of a recording of the proceedings in the party's case by filing with the circuit clerk a written request identifying the style of the action and the date of the hearing, and paying the required cost. The family court shall provide the copy within ten days. The family court may refuse to provide a copy of any part of a recording which includes the testimony of a child. No person except a circuit clerk, a family court judge, a circuit judge, or a member of their staffs shall have access to an original recording.
- (c) Transcripts. — A party may have a transcript of a hearing prepared by an independent court reporter or transcription service. The family court may refuse to permit the transcription of any testimony by a child. The costs of such transcriptions shall be paid by the party for whom the transcript is prepared. The transcriber shall verify the transcript as a true and accurate record, and shall state whether the transcript includes all or part of the proceeding. The party for whom the transcript is prepared shall give notice of the transcript's preparation to all other parties, and may file a copy of the transcript with the circuit clerk. When the parties are unable to agree as to the accuracy of a transcript, the court may resolve the matter.
- (d) Fees and costs. — All fees and costs shall be paid to and collected by the circuit clerk.

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- (e) Taxation of costs, fees, and attorney fees. — Costs and fees, including attorney fees, may be taxed against a party who is financially able to pay.
- (f) Forms. — All forms approved or required by the supreme court of appeals shall be available in every circuit clerk's office. The circuit clerk may charge a duplication fee for such forms, which fee shall not exceed ten cents (\$.10) per page or ten dollars (\$10.00) total. Circuit clerks, and their staffs, and the staffs of family courts shall not be required or permitted to provide legal advice regarding such forms, or any other matter.
- (g) Local rules. — Rule 1.03. of the Trial Court Rules shall apply to Family Court and govern the procedure for enacting local rules and procedures.

### **Rule 6. Court files; confidentiality; access; proceedings.**

- (a) General provisions. — All orders are public records. All pleadings, recordings, exhibits, transcripts, or other documents contained in a court file are confidential, and shall not be available for public inspection; but unless the file is sealed pursuant to this rule or access is otherwise prohibited by order, any document in the file shall be available for inspection and copying by the parties, attorneys of record, guardians ad litem, designees authorized by a party in writing, and any person with standing to modify or enforce a support order. A family court judge or circuit judge may open and inspect the entire contents of the court file in any case pending before the judge's court. When sensitive information has been disclosed in a hearing, pleading, or document filing, the court may order such information sealed in the court file. Sealed court files shall be opened only by order.
- (b) Family court proceedings are not open to the public.
- (c) Orders permitting examination or copying of file contents. — Upon written motion, for good cause shown, the court may enter an order permitting a person who is not permitted access to a court file under

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section (a) of this rule to examine and/or copy documents in a file. Such orders shall set forth specific findings which demonstrate why the interests of justice necessitate the examination and/or copying, and shall specify the particular documents to be examined and/or copied and the arrangements under which such examination and/or copying shall take place.

- (d) Obtaining confidential records. — Unless the person who is the subject of confidential records waives confidentiality in writing, such records may not be obtained by subpoena; but only by court order and upon full compliance with statutory and case law requirements. Such records include, but are not limited to: confidential medical and educational records; and confidential records of the West Virginia Department of Health and Human Resources; the Office of Social Services; the Office of Economic Services; the child support enforcement agency; West Virginia juvenile court proceedings; mental health treatment and counseling; substance abuse treatment; and domestic violence shelters.

### **Rule 7. Exhibits.**

By order, the court may make special provisions for the secure custody and disposition of any exhibit. Such orders shall provide specific instructions for custody and disposition.

### **Rule 8. Unofficial recording of proceedings.**

Unless prior permission is granted by the family court, no person shall be permitted to make photographs, video recordings, sound recordings, or any other form of recording of proceedings, or any sound, video, or other form of transmission or broadcast of proceedings; and unless prior permission is granted by the court, such activities are not permitted in areas immediately adjacent to the courtroom. With prior approval of the court, photographs, video recordings, sound recordings, other forms of



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recordings, and sound, video, or other forms of transmissions or broadcasts may be made of ceremonial proceedings in the courtroom.

### **PREHEARING PROCEDURES**

#### **Rule 9. Commencement of actions.**

- (a) Commencement of actions. — All actions for divorce, annulment and separate maintenance shall be filed as family court cases except at the discretion of the circuit court or the petitioner, any action for divorce, annulment or separate maintenance filed pursuant to W. Va. Code § 51-2A-2(b) shall be filed as a circuit court case and shall be assigned to a circuit court judge. A proceeding filed pursuant to W.Va. Code § 51-2A-2 shall be commenced by filing a verified petition with the circuit clerk. The petition shall be accompanied by three copies of a completed case information statement and a financial statement completed on the form approved by the supreme court of appeals. In cases which may involve spousal support, child support, allocation of custodial responsibility, visitation, or paternity, the petition shall also be accompanied by a completed application for child support enforcement services pursuant to the Social Security Act, Title Chapter 42, 7, Subchapter IV, Part D of the United States Code, hereafter referred to as a Bureau for Child Support Enforcement Application Income Withholding Form. Within five days of the filing of a petition the circuit clerk shall send the family court a copy of the case information statement
- (b) Service on respondent. — The circuit clerk shall forthwith issue a summons to be served within 20 days of filing of the petition. The petitioner shall choose a method of service in accordance with the Rules of Civil Procedure. In addition to the summons the respondent shall be served a copy of the petitioner's petition and financial statement. If the

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respondent is the parent of minor children subject to the action, a parent education notice shall be served with the summons.

- (c) Respondent's answer. — The respondent shall file the answer with the circuit clerk and serve a copy upon the petitioner within the time required by Rule 12 of the Rules of Civil Procedure. In addition to the answer, the respondent shall file the following: three copies of a completed case information statement and a financial statement completed on the form approved by the supreme court of appeals. The respondent shall also serve the petitioner a copy of all of the foregoing at the same time of filing his or her answer. In cases which may involve spousal support, child support, allocation of custodial responsibility, visitation, or paternity, the answer shall also be accompanied by a completed Bureau for Child Support Enforcement Application Income Withholding Form. Within five days of the filing of the answer the circuit clerk shall send the family court a copy of the case information statement.
- (d) Payment of parent education fees. — Parents with minor children subject to the action shall pay the required parent education fee to the circuit clerk, except for those parents who file financial affidavits with the circuit clerk and receive fee waivers.
- (e) Requirements relating to Bureau for Child Support Enforcement Application Income Withholding Form for child support enforcement services. — Within five days of the filing the circuit clerk shall send a copy of the Bureau for Child Support Enforcement Application Income Withholding Form and the filing party's case information statement to the local child support enforcement office.

### **Rule 10. Pleadings.**

- (a) All pleadings filed in office of the circuit clerk. — All pleadings shall be filed in the office of the circuit clerk. The filing of pleadings prepared

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without the assistance of counsel, including legible handwritten pleadings, shall be permitted.

- (b) Identifying information required; circumstances in which identifying information may be withheld. — All pleadings, forms, and document filings shall include the name, address, telephone number and state bar identification number of counsel; or if the party is self- represented, the party's contact information such as name, address, and a telephone number at which the party can be reached during normal business hours. Upon the filing of an affidavit asserting that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, or upon a finding by the court, which may be made ex parte, that such a risk may exist, such information shall be withheld from all persons except court personnel.
- (c) Service when a party's identifying information has been sealed in the file. — When a party's identifying information has been sealed in the case file, and the opposing party needs to make service on the party whose identifying information has been sealed in the case file, the party seeking to serve a pleading shall direct the circuit clerk to make service. Service shall be made by the circuit clerk upon a party whose identifying information has been sealed in the case file.
- (d) Proposed parenting plans. — Parenting plans proposed by the parties are pleadings.
- (e) Effect of service on child support enforcement agency. — Service on the child support enforcement agency shall not constitute service on or notice to any other party.
- (f) Filing and service by facsimile transmission. — Pleadings and other documents may be filed and served by facsimile transmission pursuant to Trial Court Rule 12.02(b)-(f), 12.03 (a)-(p), and 12.04.

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### **Rule 11. Signing of pleadings, motions and other papers; representations to court; sanctions.**

- (a) Signature. — Every pleading, motion and other paper shall be signed by at least one attorney of record in the attorney's individual name, or if the party is not represented by an attorney shall be signed by the party. Each paper shall state the signer's address and phone number, if any, and The West Virginia State Bar identification number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.
- (b) Representations to court. — By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances,
- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
  - (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
  - (3) the allegations and other factual contentions have evidentiary support or, of specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
  - (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

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- (c) Sanctions. — If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated.

(A) By motion. – A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, Rules of Civil Procedure, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On court's initiative. – On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

- (2) Nature of sanction; limitations. – A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, and

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order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, and order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or who's attorneys are, to be sanctioned.

(3) Order. When imposing sanction, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) In applicability to discovery. — Subdivisions (a) through (c) of this rule do not apply to discovery requests, discovery responses, discovery objections, and discovery motions.

### **Rule 12. Discovery.**

As the interest of justice requires, discovery pursuant to Rules 26 through 37 of the Rules of Civil Procedure may be ordered by the court at any time, or may be allowed by the court upon motion demonstrating a particular need.

### **Rule 13. Financial disclosure.**

(a) Required financial information on motions for relief. — The petitioner and respondent shall file completed financial statements with the circuit clerk as provided in Rule 9 herein. Any updates or amendments to financial statements shall be filed with the circuit clerk and served on all parties pursuant to the date specified by the scheduling order of the

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Court or no later than five days prior to any hearing, whichever first occurs, that deals with the establishment or modification of support. In cases which may involve spousal support, child support, allocation of custodial responsibility, visitation, or paternity, the petitioner and respondent shall file the following documentation in support of the required financial statement pursuant to the date specified by the scheduling order of the Court or no later than five days prior to any scheduled hearing, whichever first occurs:

1. A copy of the party's three (3) most recent wage or salary stub showing gross pay, deductions for taxes and other items, and net pay for a normal pay period, and for the year-to-date;
2. Copies of the party's complete income tax returns for the two years immediately preceding the date the petition was filed, together with copies of the federal Form W-2 for those years; and a copy of the Form W-2 for the most recent year for which that form is available, even if a tax return has not yet been filed for that year;
3. For a self-employed party, a copy of a current financial statement showing gross income, expenses, and net income;
4. Copies of any invoices or receipts showing the cost of any extraordinary medical expenses for the party or the children, of any child care expenses, and of any expenses necessitated by the special needs of the children.

(b) Failure to file required financial information and supporting documentation; sanctions. — The failure to file or untimely filing of any required financial information shall not be grounds for a continuance. If a party fails to file or untimely files any required financial information, the court may refuse to grant requested relief to that party, and/or may accept the financial information of the other party as accurate.

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### **TEMPORARY RELIEF**

#### **Rule 14. Temporary relief motions.**

Filing and service of motion for temporary relief. — A party seeking temporary relief must file a motion for temporary relief at least 10 days prior to any scheduled hearing. A motion for temporary relief filed fewer than 10 days before any scheduled hearing shall be heard within the sound discretion of the court. A motion for temporary relief shall be filed with the circuit clerk with a copy served on all parties unless ex parte relief is sought. Any motion for temporary relief relating to the allocation of custodial responsibility or decision making authority for minor children shall be accompanied by a proposed temporary parenting plan.

#### **Rule 15. Temporary support orders.**

- (a) Temporary support orders. — At the conclusion of every hearing in which temporary support is granted or modified the court shall enter an order by the next business day. A temporary support order is not subject to appeal.
- (b) All other temporary relief orders. — A temporary order addressing temporary relief other than support shall be entered by the Court within 20 days of the temporary hearing. The temporary order is not subject to appeal.

#### **Rule 16. Presentation of evidence by proffer.**

Unless otherwise ordered by the court, all temporary relief hearings shall be conducted by the presentation of evidence by proffer. When evidence is presented by proffer the parties shall be present, or may participate as provided by Rule 18, and may be placed under oath to confirm or modify the evidence proffered in their behalf. Parties shall be given an opportunity to proffer rebuttal evidence. The Court has the discretion to



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limit the duration of temporary relief hearings.

### **HEARINGS**

#### **Rule 17. Testimony of children.**

- (a) Procedures for taking the testimony of children. — Rules 8 and 9 of the Rules of Procedure for Child Abuse and Neglect Proceedings shall govern the taking of testimony of children.
- (b) Motion to offer the testimony of a child. — A motion to offer the testimony of a child under the age of 14 shall be in writing; and shall be filed with the circuit clerk, provided to the court, and served on all parties not less than 20 days before the hearing. The court shall rule on the motion no later than five days prior to the hearing.
- (c) Response to a motion to offer the testimony of a child. — Any response to a motion to offer the testimony of a child under the age of 14 shall be in writing, and shall be filed with the circuit clerk, provided to the court, and served on all parties within not less than ten days before the hearing.

#### **Rule 18. Telephonic and videoconference hearings.**

The court may conduct any hearing, including an evidentiary hearing, telephonically or by videoconference, and may permit any witness to testify or be deposed by such methods. In telephonically conducted proceedings the official record shall be made in the manner prescribed by the court. Videoconference proceedings shall be conducted in accordance with the requirements established by the Supreme Court of Appeals.

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### **Rule 19. Continuances, scheduling conflicts and consolidation.**

- (a) Requirements for motion for continuance. — A motion for a continuance shall be in writing and shall concisely state the grounds. The motion shall be filed with the circuit clerk, and provided to the court and served on all parties not less than seven days before the hearing. A motion for continuance filed with the court less than seven days before the hearing shall be granted only in exigent circumstances that could not have been anticipated prior to seven days before the hearing.
- (b) Action on the motion. — No continuance shall be granted except for good cause shown, and absent exigent circumstances, no motion for a continuance shall be granted unless all parties have been accorded an opportunity to respond. The failure of a client to adhere to financial arrangements with an attorney does not constitute good cause for a continuance. The grant or denial of a motion for a continuance rests with the sound discretion of the court, except that a party shall not be granted more than one continuance. The order granting a continuance shall set the continued proceeding for a date certain, within 75 days from the date of the hearing being continued.
- (c) Continuances on court's initiative. — A court may continue a hearing on its own motion for good cause. The court shall issue the order of such continuance for a date certain, no more than 75 days from the date of the hearing being continued. In addition to setting the hearing date, the order of continuance must state the following: that the cause of continuance is lack of service and the steps that will be taken to try to effect service (if applicable); or the specific grounds for the continuance.
- (d) Sanctions. — Costs, expenses, and attorney's fees may be assessed against the moving party if good cause is not shown for a continuance, if the motion is filed late, or if the party has moved to continue any hearing more than once.

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- (e) Resolution of scheduling conflicts. — Scheduling conflicts shall be resolved pursuant to Rule 5 of the Trial Court Rules.
- (f) Consolidation of simultaneous proceedings. — When two or more family court actions between the same two parties are pending before different family court judges, the court in which the first action was commenced shall order all of the actions transferred to it or any other family court in which such action is pending. The court to which the actions are transferred may order a joint hearing or trial of any or all of the matters in issue in any of the actions; it may order all of the actions consolidated; and it may make such other orders concerning proceedings as may tend to avoid unnecessary costs or delay.

### **Rule 20. Presentation of evidence by proffer; limitation.**

With the exception of hearings on temporary relief, no hearing shall be conducted exclusively by the presentation of evidence by proffer.

### **Rule 21. Contempt, modification and final hearings.**

- (a) Contempt/show cause and modification petitions and hearings. — A party may file a petition for contempt/order to show cause or modification of any order of the court. If grounds pled warrant a contempt/show cause and modification hearing, the hearing shall take place within 45 days of the filing of a petition for contempt/order to show cause or modification. If grounds pled not warrant a hearing then the court shall enter a dismissal order within 20 days.
- (b) Conversion of hearing to final hearing. — By agreement of all parties placed on the record, any hearing may be converted to a final hearing if sufficient evidence is presented to sustain the cause of action and resolve all issues.
- (c) Time for final hearing. — Except for good cause shown and placed on the record, a final hearing shall not be conducted prior to expiration of the

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time in which the respondent is required to serve an answer. A final hearing must take place within 220 days from the date of the filing of the initial pleading. The Court has the discretion to limit the duration of final hearings.

### **ORDERS**

#### **Rule 22. Orders; general provisions.**

- (a) Requirements for timeliness and content. — All orders shall be entered by the court within 20 days of the hearing, except a temporary support order must be entered within one business day of the hearing, and shall contain a provision directing the circuit clerk to provide certified copies to all parties.
- (b) Preparation of orders and findings. — In proceedings in which both parties are self-represented, the court shall prepare all orders and findings of fact. In proceedings in which one or both parties are represented by attorneys, the court may assign one or more attorneys to prepare an order or proposed findings of fact. An attorney assigned to prepare an order or proposed findings shall deliver the order or findings to the court no later than ten days after the conclusion of the hearing giving rise to the order or findings. Within the same time period the attorney shall send all parties copies of the draft order or findings together with a notice which informs the recipients to send written objections within five days to the court and all parties. If no objections are received, the court shall enter the order and findings no later than three days following the conclusion of the objection period. If objections are received, the court shall enter an order and findings no later than ten days after the receipt of the objections.

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- (c) Family court final orders. — A family court final order shall contain language explicitly informing the parties (1) that it is a final order; (2) that any party aggrieved by the final order may take an appeal either to the circuit court or directly to the supreme court of appeals; (3) that a petition for appeal to the circuit court may be filed by either party within thirty days after entry of the final order; and (4) that in order to appeal directly to the supreme court both parties must file, either jointly or separately within fourteen days after entry of the final order, a joint notice of intent to appeal and waiver of right to appeal to circuit court.
- (d) Sanctions against attorneys for untimely preparation of orders. — If an attorney assigned to prepare an order or proposed findings fails to prepare the order or findings in a timely manner, or otherwise fails to comply with the provisions of this rule, the court may direct one or more attorneys for other parties to prepare the order or findings; and may require the attorney initially assigned to prepare the order or findings to pay reasonable attorney fees. If, after providing notice and a reasonable opportunity to respond, the court finds that an attorney is still willfully noncompliant with the provisions of this rule, the court may file a complaint with the Office of Disciplinary Counsel, with a copy of the complaint provided to the parties.
- (e) Dismissal. — In any action which is pending for more than one year where there has been no order or proceeding, or the petitioner has failed to pay accrued court costs, the court may, in its discretion, order such action to be stricken from its docket; and it shall thereby be discontinued. The court may direct that the order be published in such newspaper named by the court. The court may, on motion, reinstate on its docket any action dismissed under this rule, within one year after entry of the dismissal order; but an order of reinstatement shall not be entered until the accrued costs are paid. Before a court may dismiss an

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action under this Rule, notice and an opportunity to be heard must be given to all parties of record.

### **Rule 23. Retroactivity of child support and spousal support orders.**

Except for good cause shown, orders granting relief in the form of spousal support or child support shall make such relief retroactive to the date of service of the motion for relief.

### **Rule 24. Scheduling orders.**

- (a) Scheduling orders. — An initial scheduling order shall be entered within 45 days after the filing of the initial pleading.
- (b) Content of scheduling orders. — A scheduling order shall contain a notice that any hearing may be converted to a final hearing, and shall include dates for the temporary hearing, if applicable, final hearing, and submission and/or completion of any of the following matters which have not been submitted or completed at the time the order is entered: statements of the issues; updated financial disclosures completed on the form approved by the supreme court of appeals; updated and/or proposed parenting plans; separation agreements; witness and exhibit lists; discovery, investigations, appraisals, tests, or evaluations; premediation screening; parent education courses; and such other matters as the Court shall deem appropriate.
- (c) Any final hearing held by the Court that is not a hearing resolving all issues in the case shall require a subsequent scheduling order to be entered within 20 days of the hearing. The content of the scheduling order shall comply with subsection (b) of this rule.
- (d) Sanctions for noncompliance with orders. — If a party or attorney fails to comply with an order, fails to attend a scheduled hearing/conference, is substantially unprepared to participate in a scheduled hearing/conference, or fails to participate in good faith, the court may

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make any of the orders or impose any of the sanctions provided by Rule 16 of the Rules of Civil Procedure.

### **Rule 25. Motion for reconsideration of family court order.**

Any party may file a motion for reconsideration of a family court order as provided in W. Va. Code, § 51-2A-10. If an appeal has been filed within the time period for filing a motion for reconsideration, the time for filing a motion for reconsideration will be suspended during the pendency of the appeal.

## **APPEALS**

### **Rule 26. Waiver of appeal to circuit court.**

- (a) Filing Notice and Waiver. — If, within fourteen days after entry of a family court final order, both of the parties file, either jointly or separately, a notice of intent to appeal directly to the supreme court of appeals and waiver of the right to appeal to the circuit court, either party aggrieved by a final order of a family court judge may file a petition for appeal to the supreme court of appeals. The notice of intent to appeal and waiver shall be in the same or substantially similar form as that contained in Appendix A.
- (b) Effect of Notice and Waiver. — If only one party files a notice and waiver, any petition for appeal filed shall be treated as a petition for appeal to the circuit court.

### **Rule 27. Stay of proceedings pending appeal.**

- (a) Motion for Stay. — Any person desiring to file a petition for appeal from a final order of the family court may file a motion for a stay of proceedings in the family court in which the order was entered. The motion for a stay

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shall be filed with the circuit clerk and served upon the respondent in accordance with Rule 5 of the Rules of Civil Procedure.

- (b) **Effect of Stay.** — Either on its own motion or upon motion by a party, the family court may order a stay of all or part of a final order, for the period of time allowed for filing of a petition for appeal to the circuit court or for any additional period of time pending disposition of the appeal. Provided, however, that an order granting a motion for stay may not include a stay of an award for the payment of spousal support or child support pending the appeal, except that an award of past-due child support may be stayed pending disposition of the appeal.
- (c) **Application in Circuit Court.** — If the family court should refuse to grant a stay, or if the relief afforded is not acceptable, the party desiring to file the petition for appeal in the circuit court may file a motion for a stay of the proceedings in the circuit court. The motion for a stay shall be filed with the circuit clerk and served upon the respondent in accordance with Rule 5 of the Rules of Civil Procedure. The circuit court may order a stay of all or part of a final order, for the period of time allowed for filing of a petition for appeal to the circuit court, or for any additional period of time pending disposition of the appeal. Provided, however, that an order granting a motion for stay may not include a stay of an award for the payment of spousal support or child support pending the appeal, except that an award of past-due child support may be stayed pending disposition of the appeal.
- (d) **Effect of Order Refusing Petition for Appeal.** — If the circuit court enters an order refusing the petition for appeal, any stay of the family court final order is vacated. A party desiring an additional stay must make an application for stay in the supreme court of appeals as provided in Rule 28 of the Rules of Appellate Procedure.



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### **Rule 28. Petition for appeal to circuit court.**

- (a) Time for petition. — A party aggrieved by a final order of a family court may file a petition for appeal to the circuit court no later than thirty days after the family court final order was entered in the circuit clerk's office. If a motion for reconsideration has been filed within the time period to file an appeal, the time period for filing an appeal is suspended during the pendency of the motion for reconsideration.
- (b) Filing with clerk. — An original and two copies of the petition for appeal shall be filed in the office of the circuit clerk where the final order being appealed was entered. The circuit clerk shall note clearly on each copy the date on which the petition for appeal was filed.
- (c) Form of petition. — The petition for appeal shall be prepared in the same or substantially similar form as that set forth in Appendix A of these rules. The party filing the petition for appeal may file a memorandum of law in support of the petition for appeal at the time the petition is filed. Except by permission of the circuit court, the petition for appeal, together with the memorandum of law in support, if any, shall not exceed fifty pages, inclusive of any addendum.
- (d) Service of petition. — The petition for appeal and memorandum of law, if any, shall be served in accordance with Rule 5 of the Rules of Civil Procedure.
- (e) Response to petition. — The respondent may file an original and two copies of a response to the petition for appeal with the circuit clerk within fifteen days after the filing of the petition for appeal. Except by permission of the circuit court, the response shall not exceed fifty pages, inclusive of any addendum.
- (f) Cross-petition for appeal. — Within fifteen days after the filing of the petition for appeal, the respondent may file a cross-petition for appeal. The cross-petition may be filed in addition to any response. The cross-petition for appeal shall be prepared in the same or substantially similar

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form as that set forth in Appendix A of these rules. The party filing the cross-petition for appeal may file a memorandum of law in support of the cross-petition for appeal at the time the cross-petition is filed. Except by permission of the circuit court, the cross-petition for appeal, together with the memorandum of law in support, if any, shall not exceed fifty pages, inclusive of any addendum.

- (g) Reply to response. — No reply to a response to a petition for appeal shall be filed.

### **Rule 29. Insufficient record for appeal.**

If essential portions of the recording of proceedings before a family court are inaudible or unavailable, the circuit court may recommit the case to the family court. The family court may then take evidence; and/or may accept from any party a proposed statement of the pertinent facts. Such statements shall include the maker's certification the facts are accurately presented to the best of that person's knowledge and belief, and shall be served on all parties. Any party may object to a proposed statement of facts by filing written objections with the family court within ten days of the date of service of the statement upon them.

### **Rule 30. Motions to Dismiss the Appeal.**

- (a) By party. — At any time following the filing of a petition for appeal, either party to an appeal may move the circuit court to dismiss an appeal on any of the following grounds: (1) a joint agreement of the parties to the dismissal; (2) failure to properly perfect the appeal; (3) failure to obey an order of the family court or circuit court; (4) lack of an appealable order; or (5) lack of jurisdiction. Such motion shall be filed with the circuit clerk and served in accordance with Rule 5 of the Rules of Civil Procedure.
- (b) Hearing. — No oral argument shall be held on a motion to dismiss unless requested by the circuit court.

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### **Rule 31. Granting or refusing the appeal.**

- (a) Review by circuit court. — As soon as practical after the last day a response to a petition for appeal is filed, if any, the circuit court shall enter an order granting or refusing the petition for appeal.
- (b) Refusal order. — If a petition for appeal is refused, the circuit court shall enter an order refusing the petition for appeal within 60 days from the last day a response to the petition for appeal could have been filed. A refusal order shall explicitly inform the parties that it is a final order disposing of the appeal. Motions for reconsideration of a refusal order, or renewal of a petition for appeal that has been refused, are not permitted.
- (c) Granting order. — If a petition for appeal is granted, the circuit court shall enter an order granting the petition for appeal. If oral argument was requested in writing by either of the parties, or if the circuit court desires oral argument, the granting order shall set forth a date and time for oral argument. The clerk of the circuit court shall immediately serve the granting order upon the parties by mailing a copy to counsel of record for each party via first-class mail, or if there is no counsel of record, to the party at the last known address for that party. Service shall be complete upon mailing.

### **Rule 32. Extensions of time.**

The circuit court may, for good cause shown in a written motion, extend the time prescribed by these rules for doing any act related to the appeal before it, or may permit an act to be done after the expiration of such time. Provided, however, that any extension of time granted by the circuit court may not exceed a period of ten days.

### **Rule 33. Oral argument.**

- (a) Scheduling argument. — If requested in writing by either party, or if the circuit court wishes to hold argument without request, the circuit court

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shall set forth a date and time for oral argument in the granting order as required by Rule 31(c).

- (b) Argument. — Counsel for appellant, or appellant unrepresented by counsel, shall be entitled to open and close the argument, and shall be allotted twenty minutes to open and ten minutes to close. Counsel for appellee, or appellee unrepresented by counsel, shall be allotted twenty minutes. A party is not obliged to use all of the time allotted, and the circuit court may terminate argument whenever in its judgment further argument is unnecessary. The family court judge shall not be required to attend oral argument. Oral argument proceedings shall not be open to the public.

### **Rule 34. Final decisions.**

- (a) Entry of final decision. — The circuit court shall enter a final decision order within 60 days from the last day a response to the petition for appeal could have been filed, or shall enter an order stating just cause why a final decision has not been timely entered. The circuit clerk shall notify the family court judge of the entry of a final decision.
- (b) Contents of final decision. — A final decision may refuse the petition for appeal, may affirm or reverse the family court final order, or may affirm or reverse in part. A circuit court's final decision may be appealed to the Supreme Court of Appeals in the manner set forth in the Rules of Appellate Procedure. A remand order entered pursuant to Rule 35(a) is not a final decision for purposes of appeal.

### **Rule 35. Remand to family court judge.**

- (a) Remand orders. — An order remanding a case to a family court judge shall be entered within 60 days from the last day a response to the petition for appeal could have been filed. A remand order shall particularly identify any inadequacies in the evidentiary record; and shall

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indicate the specific actions to be taken by the family court judge upon remand, including the particular evidence to be taken. At the time a case is remanded the circuit court shall enter such temporary orders as the circumstances require. All remand orders shall direct the circuit clerk to provide a copy to the family court judge.

- (b) Proceedings on remand. — All proceedings in cases remanded to a family court judge shall be concluded within 30 days of the date of the remand order.

### **Rule 36. Motions.**

- (a) Content of motions; response; reply. — Unless another form is elsewhere prescribed by these rules, a motion for an order or other relief from the circuit court shall be made by filing a written motion for such order or relief with the circuit clerk, with service upon the other party in accordance with Rule 5 of the Rules of Civil Procedure. The motion shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by a memorandum of law, affidavits or other papers, they shall be served along with the motion. A party may file a response to a motion. A reply to a response to a motion may not be filed.
- (b) Determination of motions for procedural orders. — Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders may be acted upon by the circuit court at any time, without awaiting a response. Any party adversely affected by such action may request reconsideration, vacation, or modification of such action.
- (c) Hearing. — No oral argument shall be held on such motion, unless requested and scheduled by the circuit court.

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### PARENT EDUCATION

#### **Rule 37. Parent education; course content; mandatory attendance; information reporting.**

- (a) Course content. — All parent education courses shall be subject to approval by the Supreme Court of Appeals, and shall educate and instruct parents about the following matters: (1) how to prepare a parenting plan; (2) mediation and other non-judicial methods available to assist parents in achieving agreement on a parenting plan; (3) the negative effects on children of divorce and family dissolution, and the ways in which parents can lessen those negative effects; (4) the negative effects on children of domestic abuse; (5) resources available for dealing with domestic abuse.
- (b) Mandatory attendance. — In proceedings involving minor children the parents shall be required to complete parent education, and shall file with the circuit clerk a certificate of completion. For good cause shown, parent education may be waived if the court places on the record a finding attendance is not necessary, and states the specific reasons for the finding. In the absence of such a waiver, parent education shall be completed by both parents prior to any mediation or other non-judicial dispute resolution undertaken to achieve agreement on a parenting plan. If mediation or other non-judicial dispute resolution is not required, parent education shall be completed by both parents prior to the final hearing. If one or both parents have failed to timely complete parent education, the court may halt proceedings, and in such circumstances shall enter a scheduling order setting the next hearing for a date certain and requiring the parents to complete parent education prior to that hearing. For good cause shown the court may conduct proceedings despite the failure of one or both parents to timely complete parent education.

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- (c) Information reporting. — All court personnel and providers of parent education shall provide the Supreme Court of Appeals such information as the court determines to be necessary for assessing these programs.

### **Rule 37a. Advanced Child-focused Parent Education.**

- (a) Course format and content. — In addition to the mandatory parent education class described in Rule 37, family courts in regions designated by the supreme court of appeals may order parties in proceedings involving minor children to attend advanced child-focused parent education classes sponsored by the supreme court of appeals. The advanced child-focused parent education classes shall include six sessions and educate parties on reducing parental conflict, focusing on their children's best interests, and effectively negotiating parenting plans. Parties in a particular case shall attend the class together, unless otherwise ordered by the court.
- (b) Mandatory attendance. — Family courts in designated advanced child-focused parent education regions may order parties to attend advanced child-focused parent education classes for reasons including, but not limited to, the following: repeated court appearances on modification and/or contempt issues related to parenting time and decision-making authority; parties' apparent inability or unwillingness to resolve conflict effectively; or parties' communicating inappropriate messages through the children or speaking negatively about the other party or the other party's family in the presence of the children. Only by order of the court may parties attend the advanced child-focused parent education classes approved by the supreme court of appeals.
- (c) Screening. — Before parties may attend advanced child-focused parent education classes together, the family court shall consider whether domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements would

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adversely affect the safety of a party or the ability of a party to participate meaningfully, freely, and voluntarily in the parent education class. If the family court determines that it is inappropriate for the parties to attend the class together, then it may require the parties to attend separate classes.

- (d) Fees. — The Fee for each party to attend is \$60, which includes \$10 for each of the six advanced child-focused parent education sessions, classes. The fee for each class shall be paid in full prior to attending for a total of \$60 and is payable to the circuit clerk in the county in which the case is pending. The clerk of the circuit court shall, on the or before the tenth day of each month, shall transmit all fees collected under this rule to the state treasurer for deposit in the state treasury to the credit of the special revenue fund known as “parent education fund” established by West Virginia Code, Chapter 48, Article 9, Section 104. The order requiring parties to attend an advanced child-focused parent education class shall specify the fee each party shall pay prior to attending the advanced child-focused parent education class. A party who has filed a financial affidavit and received a fee waiver shall not be required to pay a fee. The family court may review any fee waiver in accord with W. Va. Code 51-2A-8(e). The family court, in its sound discretion, may waive or reduce the fee for a party who has not filed a financial affidavit or the family court may require one party to pay the fees for both parties.
- (e) Presenters and Security. — Presenters of the advanced child-focused parent education classes shall be selected by the family courts and approved by the supreme court of appeals. Presenters shall use a class format approved by the supreme court of appeals. Each child-focused parent education session shall have a security guard in attendance.
- (f) Confidentiality. — Advanced child-focused parent education sessions shall be considered confidential settlement negotiations subject to Rule 25.12 of the Trial Court Rules. An advanced child-focused parent



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education presenter shall maintain the confidentiality of all parent education sessions and records. The only information that a presenter shall provide to the court is the number of sessions that a party completes. An advanced child-focused parent education presenter shall not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information.

- (g) Information Reporting. — All court personnel and providers of advanced child focused parent education shall provide the supreme court of appeals such information as the court determines necessary for assessing these programs.
- (h) Immunity. — Advanced child-focused parent education presenters shall have immunity in the same manner and to the same extent as a family court judge.

## **MEDIATION**

### **Rule 38. Mediator panels; training and qualifications; information reporting.**

- (a) Panels; training and qualifications. — Each family court shall establish a panel of mediators meeting the qualifications and training requirements established by the supreme court of appeals. All panel members shall be subject to approval by the Supreme Court of Appeals.
- (b) Information reporting. — All court personnel and all persons providing premediation screening or mediation shall provide the supreme court of appeals such information as the Court determines necessary for assessing these programs.

### **Rule 39. Premediation screening.**

- (a) Orders requiring premediation screening. — No later than five days after the scheduling conference or other hearing at which the court first

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determines that the parties do not have an agreed parenting plan, the court shall order both parties to complete a premediation screening process for the purposes set forth in W. Va. Code, § 48-9-202(b). The order shall require the parties to undergo premediation screening within 14 days of the date of the conference or hearing; inform the parties of the dates, times, and places at which premediation screening will be held; and require the parties to meet separately and privately with a screener.

- (b) Premediation screening procedures. — All premediation screening shall employ the required premediation screening forms; and shall be conducted by individuals, who may be family court personnel, meeting the qualifications and training requirements established by the supreme court of appeals. Screeners may report suspected child abuse or neglect as provided by W. Va. Code, § 49-6A- 2 and shall so inform the party being screened prior to the commencement of screening. Other than the abbreviated premediation screening report, no notes or other documents used in premediation screening are part of the record.
- (c) Report of premediation screening. — No later than five days after the conclusion of premediation screening the screener shall send a copy of the abbreviated premediation screening report to the court and the parties. The report shall be made on the required form; identify the existence of any of the elements listed in W. Va. Code, § 48-9-11--202(b); and set forth the screener's recommendations.

### **Rule 40. Procedure following receipt of abbreviated premediation screening report.**

- (a) Parties assigned to mediation. — Within five days of receiving the abbreviated premediation screening report the court shall enter an order assigning a mediator to parties recommended for mediation. The assignment order shall (1) set the mediation fees in accord with the approved sliding scale; (2) require the mediator to contact the parties and

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arrange for mediation to begin by a date certain; (3) require that parties subject to court-ordered mediation discuss only matters relating to the development of a parenting plan; (4) set the next hearing date; (5) set the date all mediation related to the development of a parenting plan shall be completed the date should be within 45 days of the assignment order or before the next hearing date, whichever is sooner; (6) direct that each party be provided a copy of the approved mediation process document; and (7) notify the parties they are required to read that document or have it read to them, sign the acknowledgment, and bring the acknowledged document to the first mediation session. The assignment order shall not order the parties to discuss matters related to distribution of property, spousal support, child support (other than the effect of the parenting plan on the choice of child support formula) or any other financial matters.

- (b) Subsequent mediation for parties assigned to mediation. — Once a parenting plan or a partial parenting plan has been presented to the court, or the court-appointed mediator notifies the court that the parties have failed through mediation to develop a parenting plan, the parties may, of their own accord, attend subsequent mediation sessions related to the distribution of property, spousal support, child support or other financial matters. The parties shall select their own mediator. That mediator shall not be subject to the Supreme Court's approved sliding fee scale for mediators.
- (c) Parties screened out of mediation. — If the abbreviated premediation screening report reveals the existence of any of the elements listed in W. Va. Code, § 48-9-202(b), and/or recommends that the screened parties should not be required to mediate, the court shall dispense with mediation; but as provided in section 202(b), the court may consider alternatives which may aid the parties in establishing a parenting plan. The court shall not order the parties to participate in any alternative

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which is not conveniently available and affordable to the parties. If the court orders the parties' participation in any such alternative it shall follow the premediation and mediation procedures and all time limits shall apply. If the court dispenses with mediation, within five days a scheduling order shall be entered and sent to the parties informing the parties that they have been screened out of mediation, and setting a date certain for the next hearing.

### **Rule 41. Mediation fees.**

Mediation services shall be ordered at hourly fees which are affordable to the parties and consistent with the approved sliding scale. The court may apportion the costs of mediation between the parties based on their abilities to pay. No mediator may charge a fee for court ordered mediation greater than the fee provided by the approved sliding scale.

### **Rule 42. Procedure for mediator disqualification.**

All mediators shall be subject to Canon 3 of the Code of Judicial Conduct regarding disqualification. Any party may file a written motion to disqualify a mediator for good cause. The court shall rule on the motion within ten days of the date the motion was filed. If the motion is granted, the court shall enter an order within five days which assigns another mediator.

### **Rule 43. Mediation procedures.**

- (a) General provisions. — All parties shall be prepared to negotiate. Counsel may attend mediation. No party shall be compelled to consent to a mediated agreement.
- (b) Procedure prior to the commencement of mediation. — If a party arrives at the first mediation session without having read the mediation process document, or having had it read to them, the mediator shall read the

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document to that party and require the party to sign an acknowledgment to that effect. Prior to the commencement of mediation the mediator shall inform the parties the mediator may report suspected child abuse or neglect as provided by W. Va. Code, § 4-6A-2.

- (c) Procedure upon conclusion of mediation. — If a mediated agreement is reached, the mediator shall inform the parties that the agreement has no binding legal effect until it is adopted by court order, and that either party may withdraw from the agreement prior to the court's adoption of the agreement. Within five days of the conclusion of mediation, the mediator shall reduce any mediated agreement to writing on the required form; prepare a Mediation Outcome Report on the required form; file the agreement with the circuit clerk; send copies of the agreement to the parties; and send a copy of the report to the court.
- (d) Confidentiality. — All mediation proceedings, including premediation screening, are confidential settlement negotiations subject to Rule 25.12 of the Trial Court Rules. All persons involved in premediation screening and mediation shall preserve the confidentiality of negotiations, of all written materials utilized in the processes, of all information obtained in the processes, and of all agreements; and with the exception of the abbreviated premediation screening report, the Mediation Outcome Report, and any mediated agreement, shall keep such matters confidential from the court. No premediation screener or mediator may be subpoenaed, called to testify, or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the dispute mediated.

### **Rule 44. Court's consideration of mediated agreement.**

Upon receipt of a mediated agreement the court shall review the agreement to determine if it is knowing, voluntary, and in the best interests of the parties' children. The court shall cause the child support

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formula to be calculated based on the allocation of custodial responsibility in the parenting plan contained in the mediated agreement; and by way of comparison, shall cause the child support formula to be calculated in accordance with W. Va. Code, §§ 48-13-401 to 404, 501, and 502. After being informed on the record of the mediated agreement's child support implications, if the parties assent to the agreement on the record, and if the court determines there is no impediment to the validity of the agreement, the court shall incorporate the mediated agreement in an order.

### **Rule 45. Prohibition of dual relationships in mediation and parent education.**

No individual may serve in the same case in more than one of the following roles: parent educator, attorney, guardian ad litem, screener, mediator, custody investigator. An organization may provide more than one of these services in the same case if the services are provided by different individuals, the organization has established written procedures to prohibit the exchange of information between such individuals, and the court approves of these procedures; however, no organization may provide more than one of these services in the same case if the arrangement violates the code of ethics, conduct, or professional responsibility of the organization or the individuals providing the services.

### **Rule 46. Immunity.**

Mediators and premediation screeners shall have immunity in the same manner and to the same extent as a family court judge.

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### SPECIAL PROCEEDINGS AND PROCEDURES

#### **Rule 47. Attorneys and guardians ad litem for children.**

- (a) Appointed attorney. — A court-appointed attorney's services are provided to the child. An appointed attorney acts as an independent legal advocate for the best interests of the child and takes an active part in the hearing, ranging from subpoenaing and cross-examining witnesses to appealing the decision, if warranted.
- (b) Appointment of guardian ad litem. — Rule 21 of the West Virginia Trial Court Rules for Trial Courts of Record, Rule 47 of the Rules of Practice and Procedure for Family Court and the Guidelines for Guardians Ad Litem in Family Court set forth in Appendix B of these rules shall govern the appointment of guardians ad litem in family court cases. The order appointing a guardian ad litem shall specify the terms of the appointment, including the guardian's role, duties and scope of authority, as well as the specific reasons for the appointment and the expectations of the court for the guardian ad litem's report, including the date by which the written report is due. If the Guidelines for Guardians Ad Litem in Family Court conflict with other rules or statutes, the Guidelines shall apply.
- (c) Guardians ad litem. — A guardian ad litem shall be an attorney licensed to practice law. A court-appointed guardian ad litem's services are provided to the court on behalf of the child. The guardian ad litem acts as an independent fact finder, investigator and evaluator as to what furthers the best interests of the child. The guardian ad litem submits a written report to the court and is available to testify.
- (d) Investigations by guardians ad litem. — West Virginia Code § 48-9-301, § 48-9-302, and the Guidelines for Guardians Ad Litem in Family Court set forth in Appendix B of these rules shall govern investigations by

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guardians ad litem. If the Guidelines for Guardians Ad Litem in Family Court conflict with other rules or statutes, the Guidelines shall apply.

- (e) Timing of written report. — A guardian ad litem shall submit a written report to the court and a copy to all parties on the date specified by the court not to exceed sixty (60) days from the date of entry of the order appointing the guardian ad litem. Upon proper petition of the guardian ad litem, the court, in its discretion, may seal the report or redact information that may place a child or other individual in danger.
- (f) Training of guardians ad litem. — On or after January 1, 2013, the court shall only appoint a guardian ad litem that has completed the required training provided by the West Virginia Supreme Court.

### **Rule 48. Child Abuse and Neglect.**

- (a) Reports by Family Court. — If a family court has reasonable cause to suspect any minor child involved in family court proceedings has been abused or neglected, that family court shall immediately report the suspected abuse or neglect to the state child protective services agency, pursuant to W. Va. Code §§ 49-6A-2, and the circuit court.
- (b) Written Referrals. — In addition to any oral communication made by the family court to the state child protective services agency pursuant to subdivision (a), the family court shall forthwith prepare and submit a written referral to the agency office in the county where the family court proceeding is pending and, at the same time, transmit copies of the referral to the appropriate circuit court in that county, as determined by the chief judge, and to the prosecuting attorney. Such written referral shall set forth the specific allegations or information that led to the family court's determination of reasonable cause to suspect that a child or children involved in family court proceedings has been abused or neglected.



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- (c) Reports of Investigations of Child Abuse and Neglect. — The state child protective services agency shall promptly provide the family court, and the circuit court, and the prosecuting attorney copies of any report of any investigation regarding the abuse and neglect of any minor child involved in family court proceedings, including those investigations conducted pursuant to subsection (b) above and Rule 3a of the Rules of Procedure for Child Abuse and Neglect Proceedings.
- (d) Jurisdiction of Proceedings. — The family court shall retain full jurisdiction of proceedings until an abuse or neglect petition is filed. If an abuse or neglect petition is filed and the family court has entered an order regarding the allocation of custodial and decision-making responsibility between the parents, orders of the circuit court shall supercede and take precedence over any order of the family court regarding the allocation of custodial and decision-making responsibility between the parents. If the family court has not entered an order for the allocation of custodial and decision-making responsibility between the parents, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility between the parents and defer to the orders of the circuit court.
- (e) Material Change of Circumstances Reports. — While the Department of Health and Human Resources is under no duty to monitor cases for family courts, the Department shall advise the family court of any material change of circumstances involving the child or services to the child's family in any pending family court case in which the Department is involved but has not filed a petition pursuant to W. Va. Code §§ 49-6-1, et seq. The family court shall notify the Department of the closure or pendency of any such cases.

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### **Rule 48a. Infant guardianship proceedings.**

- (a) Removal by family court to circuit court of infant guardianship cases involving child abuse and neglect. — If a family court learns that the basis, in whole or part, of a petition for infant guardianship brought pursuant to W.Va. Code §§ 44-10-3, is an allegation of child abuse and neglect as defined in W.Va. Code §§ 49-1-3, then the family court before whom the guardianship proceeding is pending shall remove the case to the circuit court for hearing. Should the family court learn of such allegations of child abuse and neglect during the hearing, then the family court shall continue the hearing, subject to an appropriate temporary guardianship order, and remove the case to the circuit court for hearing to be conducted within 10 days, for determination of all issues. Once removed, the case (or any portion) shall not be remanded to family court. At the circuit court hearing, allegations of child abuse and neglect must be proven by clear and convincing evidence. Immediately upon removal, the circuit clerk shall forthwith send the removal notice to the circuit court. Upon receipt of the removal notice, the circuit court shall forthwith cause notice to be served in accordance with W. Va. Code §§ 44-10-3 and to the Department of Health and Human Resources who shall be served with notice of the petition, including a copy of the petition, and of the final hearing to be conducted before the circuit court. Such notice to the Department of Health and Human Resources shall constitute a report by the family and circuit courts pursuant to W. Va. Code §§ 49-6A-2.
- (b) Investigation of Abuse and Neglect. — Upon removal of the infant guardianship petition, the circuit court may utilize the investigative and mandamus process and related procedures set forth in Rule 3a of the Rules of Procedure for Child Abuse and Neglect Proceedings if the court deems it necessary or appropriate under the circumstances presented. The circuit court shall allow the petitioner for infant guardianship to

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appear as a co-petitioner on the petition filed by the Department of Health and Human Services pursuant to W. Va. Code §§ 49-6-1, et seq., if both so agree. Nothing herein shall be construed as either a requirement that the petitioner for infant guardianship be a co-petitioner under W. Va. Code §§ 49-6-1, et seq., or a prohibition against the filing of a W. Va. Code §§ 49-6-1, et seq., petition by the petitioner for infant guardianship should the Department show cause why it will not file such a petition.

### **Rule 49. Paternity.**

- (a) Commencement of action. — A paternity action shall be instituted by filing and serving a petition in the manner provided by these rules. If the action was not instituted by the child support enforcement agency, within five days of filing the circuit clerk shall send a copy of the case information statement to the local child support enforcement office.
- (b) Case management conference/hearing. — Upon receipt of the petitioner's case information statement the court shall set a case management conference/hearing for a date certain. If paternity is not admitted prior to or during the case management conference/hearing, the court shall order the parties and the subject child to undergo genetic blood testing within a stated time period. Within three days of the conclusion of the case management conference/hearing the court shall enter a scheduling order setting a final paternity hearing for a date certain.
- (c) Denial of paternity in specified cases. — In cases in which there is no paternity affidavit on record acknowledging the respondent's paternity of the child or in which the child was not conceived or born during the parties' marriage, if there is a denial of paternity in the responsive pleading, an order requiring the parties to submit to genetic blood testing shall be entered. In such cases, any hearing set pursuant to these rules may be continued until genetic blood test results are available. Within

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five days of the filing with the clerk of the genetic blood testing results an order shall be entered setting the case for a date certain.

- (d) Actions required by respondent. — If genetic blood tests do not exclude the respondent, or if the respondent admits paternity, the respondent shall provide a completed financial statement for all years subsequent to the birth of the child, up to a maximum of three years preceding the filing of the paternity petition; and shall provide the information required by Rule 12(a)(1)-(3). Financial statements and other required information shall be filed with the circuit clerk and sent to all parties no later than 14 days before the final hearing. If the respondent fails to provide or timely provide the required information the court may impose the sanctions provided by Rule 13(b).
- (e) Paternity established by default. — If the respondent has been properly served and has failed to appear, answer, or otherwise defend within the time required, paternity shall be established by default.
- (f) Appointment of guardian ad litem. — A guardian ad litem shall be appointed for the child if paternity is contested, and: (1)there is a paternity affidavit on record acknowledging the respondent's paternity of the child; or (2)the child was conceived or born during the parties' marriage.
- (g) Parent education required. — If a determination of paternity is made, each parent or custodian shall be ordered to complete parent education by a date certain and file a certificate of completion with the circuit clerk.

### **Rule 50. Petitions for modification.**

Leave of court shall not be required for filing a petition for modification. A petition for modification shall be in writing, specify facts which demonstrate good cause for relief, be filed with the circuit clerk, and sent to all parties. Within five days of the filing of a petition for modification the circuit clerk shall notify the family court. If a petition for modification

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is filed in a closed case, the petition shall be filed with three copies of a case information statement, and served on all parties. Within five days of receipt of a petition for modification the family court shall send a scheduling order to all parties.

### **Rule 51. Expedited modification of child support.**

- (a) Filing procedure. — An expedited modification petition, any supporting documents, a completed Bureau for Child Support Enforcement A Information Worksheet Form, and a case information statement shall be filed with the circuit clerk. The circuit clerk shall collect the filing fee, provide the filing party with a copy of the current child support order and the child support calculations accompanying that order, and within five days of filing shall send a copy of the case information statement to the family court. After filing the petition with the circuit clerk the filing party shall take or mail to the family court a copy of the petition, any supporting documents, and a copy of the current child support order together with the child support calculations accompanying that order
- (b) Actions by family court upon receipt of petition. — The family court shall review the petition and any supporting documents, and tentatively recalculate the amount of support by application of current child support guidelines. The family court shall summarily deny the petition unless the tentative recalculation results in a support change of at least 15%. If the tentative recalculation results in a support change of at least 15%, but the circumstances set forth in the petition fail to meet the other expedited modification requirements in W. Va. Code, § 48-11-106, the family court may treat the petition as a non-expedited petition for modification. If the petition for expedited modification meets all of the requirements in W. Va. Code, § 48-11-106, the family court shall prepare a notice on the required form; and upon receipt of satisfactory proof that the fee for service by certified mail has been paid or waived, shall serve

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copies of the notice, the petition, and any supporting documents on the other parent and the local child support enforcement office by certified mail, return receipt requested.

- (c) Time allowed to request a hearing. — A party receiving notice has 14 days from the date of the certified mailing to provide the family court judge with a written request for a hearing.
- (d) Hearing requested; preparation of scheduling order. — Within five days of receiving a timely request for a hearing the family court judge shall enter a scheduling order setting a hearing for a date and time certain.
- (e) No hearing requested; preparation of default order. — If no party makes a timely request for a hearing, the family court judge shall enter an order for a judgment by default setting child support at the recalculated amount.
- (f) Fees for certified mail service. — Fees for certified mail service required by this rule shall be paid to the circuit clerk, and the circuit clerk shall pay all such fees into the Family Court Fund.

### **Rule 52. Relocation of a parent.**

A parent with responsibilities under a court ordered parenting plan who changes or intends to change residence for more than 90 days shall file with the circuit clerk and provide to the other parent a notice of relocation which complies with the requirements of W. Va. Code, § 48-9-403. Either parent may request a hearing on the relocation by filing a written request with the circuit clerk and sending a copy of the request to the family court. Within five days of receiving the request for hearing, the family court shall send the parties a scheduling order setting a relocation hearing. Either party may request an expedited hearing, which shall have priority over matters not designated by rule or statute as expedited matters.

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### **Rule 53. Bifurcation.**

The court shall not bifurcate a divorce proceeding unless there is a compelling reason to grant the divorce prior to resolving issues related to spousal support, child support, and distribution of property; no party will be prejudiced by the bifurcation; and a temporary order has been entered granting spousal support, child support, and any other necessary relief. If a case is bifurcated, the final order shall be entered within six months of the entry of the bifurcation order.

### **Rule 54. Authority to accept waivers.**

The court may accept a written waiver or an oral waiver made on the record of the appointment of a committee for a convict, or the application of the Soldier's and Sailor's Civil Relief Act.

### **Rule 55. Agreements.**

Agreements between parties shall be reduced to writing, signed by all parties, and incorporated in an order. Agreements reached on the date of a hearing, if not in writing, shall be dictated into the record at the hearing in the presence of all parties. The court shall hold a hearing to review all agreements with child support provisions.

### **Rule 56. Interpreters.**

The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law.

### **Rule 57. Withdrawal and substitution of counsel.**

- (a) Withdrawal of counsel. — Rule 4.03(b) of the Trial Court Rules shall govern the withdrawal of counsel.

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- (b) Substitution of counsel. — Rule 4.04 of the Trial Court Rules shall govern the substitution of counsel by stipulation.

### **DISQUALIFICATION OF FAMILY COURT JUDGES**

#### **Rule 58. Motions to Disqualify.**

- (a) The procedure for disqualification of family court judges shall be the same as that set forth in Trial Court Rules for Trial Courts of Record, Rule 17.
- (b) Assignments to hear emergency matters pending a ruling; assignments in the event of disqualification. The chief justice of the Supreme Court of Appeals may assign another family court judge, a former family law master or family court judge, circuit court judge or senior status circuit court judge to hear emergency matters pending a ruling. In the event a disqualification motion is granted the chief justice shall promptly assign another family court judge, a former family law master or family court judge, circuit court judge or senior status circuit court judge to preside over the case.

### **TIME STANDARDS**

#### **Rule 59. Compliance with Time Standards.**

- (a) Purpose. — The time standards contained in these rules are intended to ensure that "justice shall be administered without sale, denial or delay," in accordance with Article III, Section 17 of the West Virginia Constitution; that judges "dispose of all judicial matters promptly, efficiently, and fairly," in accordance with Canon 3B(8) of the Code of Judicial Conduct; and that "the court, not the lawyers or litigants, should control the pace of litigation," in accordance with Section 2.50 of



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the American Bar Association Standards Relating to Court Delay Reduction.

- (b) Time for completion of all cases. — For cases filed after July 1, 2007 a final order shall be entered in every case within 240 days of filing of the initial pleading. All cases filed prior to July 1, 2007 shall have a final order entered by July 1, 2008.
- (c) Implementation. — By July 1, 2008, the percentage of cases that each circuit shall have in compliance with section (b) above is seventy-five (75) percent.
- (d) Reporting. — The Administrative Director of Courts shall receive a monthly report from the circuit clerk in each county on compliance with section (b) above.

### **Rule 60. Peer Review Board.**

- (a) Non-compliance with time standards. — Failure to comply with these standards may result in the Administrative Director of Courts making a referral to the peer review board, which shall submit a report with recommendations for remedial actions to the Administrative Director of Courts within forty-five (45) days of the referral. Following receipt of the peer review board report, the Administrative Director of Courts, with the approval of the Chief Justice of the Supreme Court of Appeals, shall take action as necessary to bring the court into compliance with these rules, including, but not limited to, recall of senior status judges, the reassignment of judges from other circuits, and/or the implementation of case management procedures, in accordance with W. Va. Code §51-2A-19. In his or her discretion, the Administrative Director of Courts may report repeated non-compliance with these standards to the Judicial Investigation Commission.
- (b) Impaneling peer review board. — The Administrative Director of Courts shall select three family court judges to serve on the peer review board.

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In order to stagger the terms of the peer review board members, the first set of three judges selected shall serve one-year, two-year, and three-year terms, respectively. Thereafter, each family court judge selected shall serve a two-year term.

- (c) Duties and authority of peer review board. — The peer review board shall promptly investigate referrals from the Administrative Director of Courts and make a written report, including its findings and recommendations, within forty-five (45) days of the referral. The Board shall have the authority: to review the docket and cases of the Judge, interview the Judge and Judge's staff; and obtain records and documents from the circuit clerk and/or the Judge.
- (d) Failure to cooperate with the peer review board may result in a complaint to the Judicial Investigation Commission.
- (e) Confidentiality. — The referral of the Administrative Director of Courts, investigation, documents obtained and recommendations of the peer review board shall be confidential.
- (f) Privilege and immunity. — All information provided, documents filed or testimony given with respect to any investigation or proceeding under Rules 59 and 60 herein shall be privileged in any action for defamation. All members of the peer review board, and their employees, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this state for any conduct in the course of their official duties.

*Information was taken from the West Virginia Judiciary, Court Rules online.*

*It is up to date as of October 2016*

*Please visit the West Virginia Judiciary's [website](#) for the most accurate version of these rules.*