

STATE OF WEST VIRGINIA

At the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on July 23, 2020, the following order was made and entered **in vacation**:

RE: ADOPTION OF PROPOSED AMENDMENTS TO RULE 38 OF THE RULES OF APPELLATE PROCEDURE

On June 15, 2020, the Court published proposed amendments to Rule 38 of the Rules of Appellate Procedure for public comment for a period of thirty days. The Court has jurisdiction under Article VIII, §§ 1 and 3 of the West Virginia Constitution. The Court acknowledges the comments submitted by Alex A. Tsiatsos, Esq; Joseph V. Schaeffer, Esq., Spilman, Thomas, & Battle; Teresa J. Dumire, Esq., Defense Trial Counsel of West Virginia; and Crystal L. Walden, Esq., Public Defender Services. The comments are generally in support of the proposed amendments.

Upon consideration, the Court is of the opinion to, and hereby does, adopt the proposed amendments to Rule 38 of the Rules of Appellate Procedure **effective September 1, 2020**. The amendments are set forth as follows (additions indicated by underscoring; deletions indicated by strike-throughs):

Rules of Appellate Procedure

* * *

Rule 38. General rule on form and filing of documents.

* * *

(e) ~~Facsimile~~ Electronic mail filing. ~~In accordance with Rule 12 of the West Virginia Trial Court Rules, the~~ The Clerk may permit certain filings required under these Rules to be made by ~~facsimile transmission~~ electronic mail delivered to [scawv.filing@courtsv.gov]. Even with the consent of the Clerk, documents ~~necessary to docket or perfect an action before the Court~~ may not be filed by ~~facsimile~~ electronic mail unless accompanied by a motion for leave to file by ~~facsimile~~ electronic mail, setting forth good cause. ~~In extraordinary circumstances, the Clerk may provide prior consent to exceed the twenty page limit for facsimile filings set forth in Trial Court Rule 12.03(c).~~ If a ~~facsimile~~ an electronic mail filing is accepted by the Clerk, ~~the Clerk will provide by return facsimile a notice of acceptance, and a statement of the photocopying charges that apply under Trial Court Rule 12.03(l).~~ If a ~~facsimile~~ filing is accepted by the Clerk, the filing of the original and the number of copies set forth elsewhere in this Rule shall not be required unless ordered by the Court or directed by the Clerk.

CLERK'S NOTES ON APPENDIX A

These amendments eliminate facsimile filings and will eliminate the necessity for a facsimile machine in the Office of the Clerk.

A True Copy

Attest: /s/Edythe Nash Gaiser
Clerk of Court

