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Supreme Court of  
Appeals  
State of West Virginia

## News

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## Supreme Court issues final version of Revised Rules of Appellate Procedure

**CHARLESTON, W.Va.** - Chief Justice Robin Jean Davis today announced that the Supreme Court of Appeals of West Virginia has promulgated the Revised Rules of Appellate Procedure and that the rules incorporate many changes suggested by the public.

The rules will go into effect on December 1, Chief Justice Davis announced during a press conference in the Supreme Court Chamber.

Revisions to the rules were placed for a sixty-day period of public comment in May, after which Supreme Court Clerk Rory Perry conducted ten public seminars at locations around the state. More than six hundred attorneys, court officials, and members of the public attended those seminars, and the Court received forty-two written sets of comments on the rules.

"The final version of the rules incorporates many changes suggested by attorneys and citizens who submitted thoughtful and substantive comments," Chief Justice Davis said. "The Court wishes to thank the hundreds of citizens who attended the informational seminars and those who read the proposed rules online and then took the time to tell us what they thought."

Citizens appealing a circuit court decision will have an appeal of right instead of an appeal by permission under the new rules.

The rules provide a complete, expeditious, and effective method of proving a full review and decision on the merits in all properly prepared appeals. Decisions will be issued in the form of a full opinion or memorandum decision.

The Court no longer will issue no-reason refusal orders. "Those days are gone,"

Chief Justice Davis said.

The Court will more than triple the number of decisions it issues now. This is manageable because the Court has always thoroughly reviewed cases, it was simply done internally. The revised rules make that process more transparent.

“Can we do it? Absolutely we can do it because we have five members of the Court and we work hard,” Chief Justice Davis said. “There is not a member of this Court who is not willing to put in the hours.”

Every circuit court appeal will be fully briefed by both sides before the Court considers the case, a change that will reduce delay and court costs for both sides.

“All of this is being accomplished without a vast increase in personnel, without any new judges, and without a new layer of government that would delay justice. The Supreme Court will maintain a small, efficient judicial branch to work harder and smarter for the citizens of West Virginia,” Chief Justice Davis said.

The rules posted on the Supreme Court website today contain detailed “Clerk’s Comments” written by Clerk Perry. Those comments explain each rule, how it differs from existing appellate process, and how it differs from proposed rules the Court released for public comment on May 12.

The major changes from the proposed rules released for public comment follow.

- The Court recognized that it would be difficult for all appellate issues to be fully defined within thirty days of the filing of an appealable order. Therefore, the Court has eliminated language that would have required the Court to approve any changes to the issues listed in the notice of appeal. Also, a respondent’s brief will not have to follow the order of assignments of error laid out in a petitioner’s brief, however, doing so to the extent practicable is encouraged.
- The Court has responded to concerns about the cost and potential animosity associated with preparing an appendix record by embracing the federal court model which requires parties to agree on what is in the appendix. Costs may be divided at the end of the case at the discretion of the Court. Also, instead of requiring the filing of an original and five copies of the appendix, the Court will require the filing of an original and one copy. (Petitioners currently can designate an entire record for appeal, which is then indexed by a circuit clerk and sent to the Supreme Court. This makes it difficult for attorneys to cite to specific places in the record and transcript in their briefs. Under the revised rules, only material necessary and relevant for the Courts decision should be included in the appendix record.)
- The Court clarified the rules governing scheduling orders to be issued by the Clerk’s Office to make it more apparent that the orders will have deadlines in each case for when a transcript is due and ensure that the petitioners will have adequate time following the completion of the transcripts to properly prepare

an appeal.

- The Court made several adjustments to certain timelines in response to reasonable questions raised about their practicality. For example, the time for oral argument was expanded from five minutes to ten minutes per side for Rule 19 cases and from fifteen minutes to twenty minutes per side for Rule 20 cases. Also in response to public comment, the Court will allow petitioners in Rule 19 cases to make rebuttal arguments. (Under the revised rules, the current Motion Docket is eliminated. The Court will have Rule 19 and Rule 20 Dockets, each with its own selection criteria. Memorandum decisions will be issued in some of those and other cases.)
- The Court clarified that cases on the Rule 20 Docket will be decided by memorandum decision only in exceptional or compelling circumstances.
- The Court added a new subsection to Rule 18 that provides criteria for when oral argument is not necessary. The criteria were adapted from the federal courts and should assist parties in preparing briefs.
- The rule governing memorandum decisions now requires the Court to include within each such decision a concise statement of the reason for issuing a memorandum decision instead of an opinion. That statement will be in addition to the Court's decision on the merits in the case. A memorandum decision that reverses a decision of a circuit court will be issued only in limited circumstances.
- The prohibition on citing memorandum decisions was removed. Memorandum decisions may be cited. They will be posted on the Court's website and therefore will be available for review and to provide guidance to other courts on West Virginia law. Where practicable, in cases in which a circuit court decision is affirmed by a memorandum decision, that circuit court decision also will be posted on the website, if the Court so directs.
- Several other technical and editorial changes were made as a result of public comments which were perceptive and specific.

"Without question, the revisions to the appellate process are comprehensive and unprecedented in scope," Chief Justice Davis said.

"No court of last resort in the country allows full oral argument in every case that is appealed, and no court of last resort issues a full opinion in every appeal. The revised rules are consistent with this general national practice," Chief Justice Davis said.

Currently, there are no written criteria for why the Court decides to put a case on the Argument Docket. The revised rules adapt criteria for Rule 20 Docket arguments from the Final Report of the Independent Commission on Judicial Reform and spell out that the Court will put a case on the Rule 20 Docket if it involves an issue of first impression; if it involves an issue of fundamental public importance; if it involves a constitutional question regarding the validity of a statute, municipal ordinance, or court

ruling; or if it involves inconsistencies or conflicts among the decisions of lower tribunals.

Under the revised rules, for cases on the Rule 19 Docket, the Court can issue a memorandum decision, issue a full written opinion, refer those cases to the Rule 20 Docket for another argument and a full opinion, or issue an appropriate order (for example, if the appeal is premature or the case has settled).

The Rule 19 Docket affords a more expanded opportunity for oral argument. A case can be put on the Rule 19 Docket if the assignments of error involve the application of settled law; the case claims an unsustainable exercise of discretion where the law governing that discretion is settled; the case claims insufficient evidence or a result against the weight of the evidence; the case involves a narrow issue of law; or if a hearing is required by law, as in a case involving an appeal from a Public Service Commission decision.

Under the revised rules, the Court also may issue memorandum decisions affirming the decision of a lower court in cases in which no substantial question of law is presented and the Court does not disagree with the decision of the lower tribunal; if upon consideration of the applicable standard of review and the record presented, the Court finds no prejudicial error; or if other just cause exists for the Court to affirm or reverse the case summarily.

The rules will be applicable in their entirety to all appeals and certified questions arising from orders entered on or after December 1. For original jurisdiction cases, the rules are applicable to filings made on or after December 1. For cases arising from orders made before that date, the Court may enter an order directing parties to comply with the rules in whole or in part; those decisions will be made on a case-by-case basis.

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