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IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

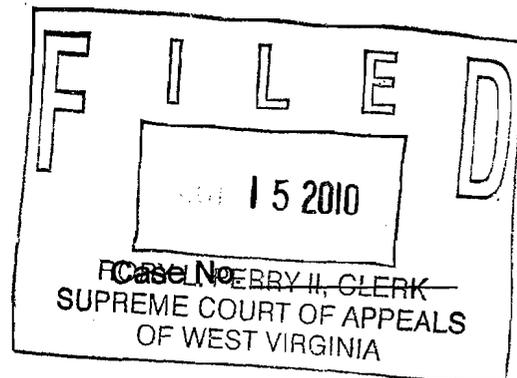
State of West Virginia ex rel.  
ASHLEIGH and DANIEL JURKOVICH,

Petitioners,

vs.

RUSSELL W. GOODWIN,  
Magistrate of Roane County; and  
BRENDA M. WHITE,  
Clerk of the Magistrate Court  
of Roane County,;

Respondents.



PETITION FOR WRIT OF MANDAMUS

I. INTRODUCTION

1. Petitioner Ashleigh Jurkovich seeks a Writ of Mandamus to compel the Magistrate Court of Roane County to allow her to file an appeal without payment of Circuit Court filing fees, pursuant to WV Code § 59-2-1. On September 29, 2010 petitioner was informed by magistrate court staff that the WV Code § 59-2-1 Financial Affidavit did not apply to appeals and could not be used for that purpose.

II. STATEMENT OF FACTS

A) Facts Regarding the Underlying Landlord/Tenant Dispute

2. Petitioners Ashleigh and Daniel Jurkovich previously occupied residential rental premises owned by landlord Clark Crider, beginning October 2009.

3. On August 26, 2010 the Jurkoviches filed suit in the Magistrate Court against landlord Clark Crider, seeking compensation for loss of use of the rental premises due to flea infestation caused by neighbors and due to the effects of

extermination efforts; and seeking damage to personal property resulting from the effort to exterminate fleas caused by the pets of a neighboring tenant. Petitioners were permitted to use a Financial Affidavit under WV Code § 59-2-1 to waive the payment of filing fees for the Complaint.

4. Landlord Crider filed an answer denying the complaint, and a counterclaim alleging damage to a door, and seeking reimbursement for the landlord's costs in traveling from his home in Pennsylvania to West Virginia. The landlord also filed a separate case in Magistrate Court against the petitioners, alleging damage to a carpet and seeking reimbursement for extermination costs of dealing with the neighbor's fleas.

5. Both cases were combined for hearing held on September 27, 2010, after which the Magistrate Court issued judgment in favor of the defendant landlord in the amount of \$1,298.60, which amount included \$910.60 for defendant's "milage" expenses in traveling from his home in Chambersburg, PA to Spencer, WV for the case.

B) Facts Relating to Magistrate Court Handling of Requested Appeal

6. On September 29, 2010 petitioner Ashleigh Jurkovich went to the Magistrate Court of Roane County and attempted to file an appeal from the Magistrate Court judgment. She was directed by the Magistrate Clerk staff to speak with Janet Murphy, magistrate's assistant to respondent Goodwin.

7. Ms. Murphy informed petitioner Ashleigh Jurkovich that a \$146.00 appeal filing fee would be required to file the appeal.

8. Ms. Jurkovich asked if the Financial Affidavit she had used for the Complaint filing fee would also cover the appeal filing fee. Ms. Jurkovich was told by

the magistrate assistant that the fee waiver procedure could not be used for an appeal.

9. Petitioner at no time spoke directly with respondent Goodwin, but only with the magistrate assistant assigned to respondent Goodwin.

10. Petitioners on September 29, 2010 were denied the opportunity to file an appeal from the judgment of the Magistrate Court.

11. The statutory time limit to appeal from the September 27, 2010 judgment of the Magistrate Court will expire on Monday, October 18, 2010.

### III. CLAIMS FOR RELIEF

12. The Magistrate Court had no authority to require payment of the appeal filing fee since petitioners had filed a Financial Affidavit pursuant to WV Code § 59-2-1 and were approved to proceed without prepayment of costs.

13. The actions of the Magistrate Court are a clear error as a matter of law.

14. The actions of this Magistrate Court are not unusual in the magistrate courts of this state, and are encountered throughout the state in persistent disregard of procedural law.

15. If petitioner is prevented by the magistrate court from filing an appeal, she will have no other adequate means to obtain relief.

### IV. PRAYER

WHEREFORE, petitioners Ashleigh and Daniel Jurkovich ask this Court:

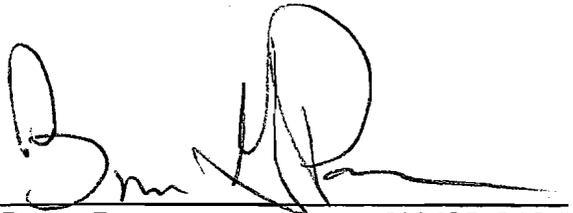
A. To issue immediate temporary relief, directing the Magistrate Court and Magistrate Court Clerk of Roane County to permit petitioners to file thier appeal within the statutory appeal deadline of 20 days, without payment of the ordinary appeal filing

fee;

B. To issue a Writ of Mandamus directed to the Magistrate Court and the Magistrate Clerk of Roane County, mandating those officers to file the appeal petition of Ashleigh & Daniel Jurkovich; and

C. For such other and further relief as this Court may deem just and appropriate.

ASHLEIGH & DANIEL JURKOVICH,  
Petitioners,  
By counsel.

A handwritten signature in black ink, appearing to read 'Bruce Perrone', written over a horizontal line.

Bruce Perrone (WVSB 2865)  
Legal Aid of West Virginia  
Counsel for  
922 Quarrier Street, 4th Floor  
Charleston, WV 25301  
343-4481 ext 27

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Petitioner,

vs.

Case No. 10C-161

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JANET MURPHY, Magistrate Assistant  
of Roane County; and  
BRENDA M. WHITE,  
Clerk of the Magistrate Court  
of Roane County; and  
CLARK CRIDER, landlord,

Respondents.

VERIFICATION

Ashleigh Jurkovich, petitioner named in the foregoing Petition for Writ of Mandamus,  
after being first duly sworn, says that the facts and allegations contained therein are true, except  
insofar as they are stated to be on information and belief, and that insofar as they are therein  
stated they are believed to be true.

10-14-10

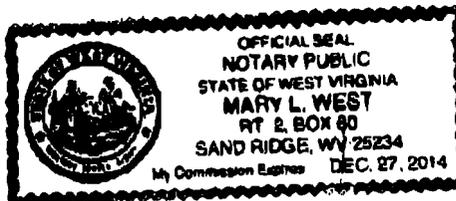
Date

Ashleigh Jurkovich  
Ashleigh Jurkovich

Taken, sworn to and subscribed before me this 14<sup>th</sup> Day of October, 2010.

My commission expires: Dec 27, 2014

Mary L. West  
Notary Public



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Clerk of the Magistrate Court  
of Roane County; and  
CLARK CRIDER, landlord,

Respondents.

MEMORANDUM OF LAW  
IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

1. ARGUMENT

1. Standard for Issuance of Extraordinary Writ Relief

This Court's standard for issuing a writ of prohibition was well-established when the Court held that "the writ lies as a matter of right whenever the inferior court (a) has not jurisdiction or (b) has jurisdiction but exceeds its legitimate powers and it matters not if the aggrieved party has some other remedy adequate or inadequate." State ex. rel. Valley Distributors, Inc., v. Oakley, 153 W.Va. 94, 99, 168 S.E.2d 532, 535 (1969).

In State ex. rel. Shepard v. Holland, 633 S.E.2d 255, (2006) the Court quoted syllabus point four of State ex. rel. Hoover v. Berger, 199 W.Va. 12, 483 S.E.2d 12 (1996):

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syllabus point one of Hinkle v. Black, 164 W.Va. 112, 262 S.E.2d 744 (1979), also provided the following guidance in the evaluation of a request for a writ of prohibition:

In determining whether to grant a rule to show cause in prohibition when a court is not acting in excess of its jurisdiction, this Court will look to the adequacy of other available remedies such as appeal and to the over-all economy of effort and money among litigants, lawyers and courts; however, this Court will use prohibition in this discretionary way to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance.

Syllabus Pt. 1, Hinkle v. Black, 164 W.Va. 112, 262 S.E.2d 744 (1979).

2. The Magistrate Court Has No Authority to Require Payment of Fee by an Appellant Who Files a Financial Affidavit of Inability to Pay Fees Under WV Code § 59-2-1

The right to file an appeal from a civil case originally heard in Magistrate Court is defined by WV Code § 50-5-12. That code provision requires that ordinarily, the appellant shall be required to pay the circuit court filing fee ... at the time the appeal is

filed. WV Code § 50-5-12(a).

However, W.Va. Code § 59-2-1 provides that:

A natural person who is financially unable to pay the fees or costs attendant to the commencement, prosecution or defense of any civil action or proceeding, or an appeal therein, is permitted to proceed without prepayment in any court of this state, after filing with the court an affidavit that he or she is financially unable to pay the fees or costs or give security therefor.

W.Va. Code § 59-2-1(a) [emphasis added].

In the present case the magistrate staff who interacted with Ms. Jurkovich appear to have been unaware of this statutory directive. Magistrate staff did provide Ms. Jurkovich with a Financial Affidavit to fill out when she instituted her original case. Nonetheless, the magistrate staff believed that the fee waiver statute did not apply to appeals, and insisted to Ms. Jurkovich that she would have to pay the circuit court filing fee.

Petitioner emphasizes that she does not believe the magistrate staff were acting in bad faith or ill will. The magistrate staff were forthcoming in providing the Financial Affidavit to the Jurkoviches for the original institution of the action. That their mistaken understanding was held in good faith, however, does not change the fact that it is mistaken. The provisions of WV Code § 59-2-1(a) could not be more clear in this regard.

### 3. Conclusion

It is absolutely clear that the actions and instructions of the Magistrate Court staff of Roane County in this matter were erroneous. Section 59-2-1 is explicit that its fee

waiver provisions apply to any civil action or proceeding "ir ab appeal therein."  
Unfortunately, that clarity has not prevented a frequent misunderstanding among  
magistrate courts in this state regarding the handling of landlord/tenant residential rental  
cases. These errors continue to arise throughout the state. While they can be  
addressed from time to time in the localities in which they arise, history has shown that  
the errors will recur even in those same localities. Petitioner therefore asks this Court  
to address the issues in this case, in order to provide direct guidance to the judicial  
system for the handling of appeals from magistrate court in landlord/tenant disputes.

RHONDA Jurkovich,  
Petitioner,  
By Counsel.



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Bruce Perrone (WVSB 2865)

Legal Aid of West Virginia  
Counsel for  
922 Quarrier Street, 4th Floor  
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MEMORANDUM OF Persons Upon Whom Rule to Show Cause Would Be Served

Honorable Russell W. Goodwin  
Magistrate of Roane County  
201 Main Street  
Spencer, WV 25276

Brenda M. White  
Clerk of the Magistrate Court of Roane County  
201 Main Street  
Spencer, WV 25276