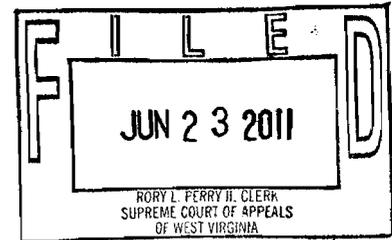


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

Shenandoah Sales and Service, Inc.  
By its agent, David C. Tabb

Petitioner

Vs) No. 11-0701



Assessor of Jefferson County, Angie Banks,  
June Bowers, Rusty Williams, the Jefferson  
County Commission, sitting as Board of Review  
and Equalization, Patsy Noland, President,  
Dale Manuel, Vice President, Walt Pellish,  
Commissioner, Lyn Widmyer, Commissioner,  
Frances Morgan, Commissioner, and Stephanie  
Grove, Jefferson County Prosecuting Attorney

Respondents

**SUPPLEMENTAL GROUND OF ERROR**

Now comes your Petitioner pursuant to the order of this Court dated April 25, 2011 and says unto the Court he will be requesting the Court to consider (1) one additional issue in his perfected Petition for Appeal that was NOT included in his NOTICE OF APPEAL filed on April 21, 2011 to wit: THAT THE CIRCUIT COURT OF JEFFERSON COUNTY, WV, THE HONORABLE DAVID SANDERS PRESIDING WAS WITHOUT AUTHORITY OR JURISDICTION TO ENTER THE ORDER OF MARCH 23, 2011 DISMISSING PETITIONER'S PETITION FOR APPEAL FROM THE ORDER OF THE JEFFERSON COUNTY COMMISSION, FILED WITH THE CIRCUIT COURT ON MARCH 18, 2011.

In making this assertion Petitioner relies on the following facts to wit:

- 1) On March 18, 2011 your Petitioner timely filed his Petition for Appeal in the Circuit Court of Jefferson County along with a Motion to Disqualify the Honorable David Sanders, Judge of the Circuit Court of Jefferson County pursuant to Trial Court Rule 17.01.
- 2) Without complying with the requirements of Trial Court Rule 17.01 Judge Sanders dismissed Petitioner's for Appeal without notice to your Petitioner or a hearing as set forth in Exhibits C and D of the Notice of Appeal.
- 3) The issue of Disqualification remained before this Court from the date of March 18, 2011 when the Motion for Disqualification was filed until the order of April 11<sup>th</sup> 2011 was entered by the Court denying Petitioners motion.
- 4) During that time correspondence was sent or received from this Court to and from Judge Sanders as well as to and from your Petitioner.

- 5) Petitioner says Judge Sanders admitted he failed to comply with Trial Code Rule 17.01 due to "inadvertence" (see letter of March 31, 2011 – attached Exhibit A)
- 6) Petitioner says on April 14, 2011 he filed a motion with Judge Sanders to retract his order of Dismissal entered while he was without jurisdiction over the matter or authority to proceed in the matter due to the filing of the motion to disqualify and no action having been taken by this Court as of that date.
- 7) Petitioners motion to retract the order of dismissal and the appeal of the original order of Dismissal entered while the motion to disqualify was pending are both based on the following language from *Myers v. Painter* 576 S.E.2d 277. (2002) to wit:

"The Supreme Court of Appeals is constitutionally empowered to enact administrative rules regarding the temporary assignment of circuit judges when another circuit judge is disqualified. We stated, in Syllabus Points 1 and 2 of *Stern Bros., Inc. v. McClure*, 160 W.Va. 567, 236 S.E.2d 222 (1977): 1. Under Article VIII, Section 8 of the Constitution of West Virginia (commonly known as the Judicial Reorganization Amendment), administrative rules promulgated by the Supreme Court of Appeals of West Virginia have the force and effect of statutory law and operate to supersede any law that is in conflict with them.[576 S.E.2d 284] 2. The administrative rule promulgated by the Supreme Court of Appeals of West Virginia, setting out a procedure for the temporary assignment of a circuit judge in the event of a disqualification of a particular circuit judge, operates to supersede the existing statutory provisions found in W.Va.Code, 51-2-9 and -10 and W.Va. Code, 56-9-2, insofar as such provisions relate to the selection of special judges and to the assignment of a case to another circuit judge when a particular circuit judge is disqualified. The Court adopted Trial Court Rule XVII [1993] to establish a formal system for the disqualification and temporary assignment of judges.<sup>5</sup> The rule established that motions by a party to disqualify a judge must be in the form of a "written motion." Rule XVII(a). If the circuit judge agreed to disqualify himself or herself in response to the written motion, and the parties agreed upon a particular replacement judge, the rule required the judge to contact the administrative director of the Supreme Court of Appeals, who would then communicate with the chosen replacement judge. Contact by the parties or circuit judge with the replacement judge was prohibited, and any assignment of the case to another judge was to be done solely by the Chief Justice. Rule XVII(a)(2) stated, in pertinent part: If concurrence can be reached ... the judge shall forthwith contact the Administrative Director, who shall then contact the judge to whom assignment is requested. Contact with the judge to whom assignment is requested by either the recused judge or the parties is prohibited. If the judge to whom assignment is requested consents, all parties shall sign a written stipulation designating a new judge. The original judge shall forthwith transmit the motion" .. and stipulation to the Chief Justice, who shall ... in writing approve or disapprove the recusal and stipulation. Conversely, if the circuit judge refused a parties' written motion to recuse him-or her-self, or the parties disagreed as to the replacement judge to whom the case should be assigned, or the chosen replacement judge declined to accept the case, the case was required to be forwarded to the Chief Justice for assignment. Again, the recused judge was prohibited from acting until the Chief Justice reviewed the case. Rule XVII(a)(3) stated, in pertinent part: If concurrence cannot be reached, if the original judge does not agree to recuse himself or herself, or if the designated judge does not consent, then the judge shall: (A)

Proceed no further in the matter; and (B) Transmit forthwith to the Chief Justice a copy of the motion ... asking that the Chief Justice rule on the motion[.]” 576 S.E.2d at 283-284

“ The Court further held...The circuit court in the instant habeas case concluded that the transfer of the case to Judge Steptoe was proper because the appellant's criminal case was merely reassigned within a multi-judge circuit, in accordance with Rule XVII(d). This reasoning, however, overlooks the circuit court's own finding of fact that "[t]he State and [appellant] jointly moved at hearing for Judge Wilkes' recusal," and overlooks Rule XVII's requirement that once a motion was made for Judge Wilkes to recuse himself from the appellant's case, he was bound to follow the procedures contained in Rule XVII(a) and (b). However, this action would have been proper, had the recusal been sua sponte without any motion by a party. As we made clear in Stern Brothers, Judge Wilkes' appointment of Judge Steptoe, made in a manner contrary to the dictates of Rule XVII, was void and beyond Judge Wilkes' authority. While Judge Steptoe was not guilty of any impropriety, his appointment was contrary to the established rules designed to ensure that judicial decisions are both free from bias, and free from all appearance of bias. The circuit court was therefore incorrect in its finding that there was no error.” 576 S.E.2d at 284-285



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Shenandoah Sales and Service, Inc.  
By David C. Tabb  
Vice President and agent

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David C. Tabb, Pro se Agent  
107 Tabb Lane  
Harpers Ferry, WV 25425

Petitioner,

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Commissioner, Lyn Widmyer, Commissioner,  
Frances Morgan, Commissioner, and Stephanie  
Grove, Jefferson County Prosecuting Attorney

Respondent,

**CERTIFICATE OF SERVICE**

I, David C. Tabb, do hereby certify that on this 17 day of June 2011, that I have served a true copy of the foregoing *Supplemental Ground of Error* upon the following by

U. S. Mail addressed as follows:

West Virginia Supreme Court of Appeals  
Rory L. Perry, II  
Clerk of Court  
State Capitol, Rm. E-317  
Charleston, WV 25305



David C. Tabb, Vice-President  
Shenandoah Sales & Service, Inc.  
107 Tabb Lane  
Harpers Ferry, WV 25425

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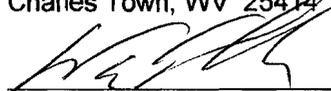
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U. S. Mail addressed as follows:

Circuit Clerk of Jefferson County  
100 E. Washington Street  
Charles Town, WV 25414



David C. Tabb, Vice-President  
Shenandoah Sales & Service, Inc.  
107 Tabb Lane  
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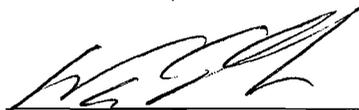
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U. S. Mail addressed as follows:

THE HONORABLE JUDGE DAVID SANDERS  
Jefferson County Court House  
100E. Washington Street  
Charles Town, WV 25414



David C. Tabb, Vice-President  
Shenandoah Sales & Service, Inc.  
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JEFFERSON COUNTY PROSECUTING ATTORNEY  
Stephanie Grove  
P O Box 729  
Charles Town, WV 25414



David C. Tabb, Vice-President  
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ASSESSOR OF JEFFERSON COUNTY WEST VIRGINIA  
Angie Banks  
104 East Washington Street  
Charles Town, WV 25414

  
\_\_\_\_\_  
David C. Tabb, Vice-President  
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June Bowers  
104 East Washington Street  
Charles Town, WV 25414



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THE JEFFERSON COUNTY COMMISSION SITTING AS BOARD OF REVIEW AND  
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Patsy Noland, President  
124 E. Washington Street  
Charles Town, WV 25414



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