

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 9th day of September, 2010, the following order was made and entered:

+

**RE: ADOPTION OF TECHNICAL AMENDMENT TO RULE 37 OF THE
RULES OF CIVIL PROCEDURE**

On this day came the Court, on its own motion and proceeded to consider the proposed technical amendment to Rule 37(a)(2), Rules of Civil Procedure. Upon consideration whereof, the Court is of opinion to and does hereby adopt said amendment. Deletions are indicated by strikethroughs and insertions are indicated by underscoring, to read as follows:

Rule 37. Failure to cooperate in discovery; sanctions.

(a) *Motion for order compelling discovery.*—A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate court.—An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the circuit court of the county where the deposition is being taken. An application for an order to a person who is not a party shall be made to the circuit court of the county where the discovery is being, or is to be, taken.

(2) Motion. — If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) (7) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant in good faith has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or action without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

* * *

A True Copy

Attest: //s// Edythe Nash Gaiser, Deputy Clerk