

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 23rd day of November, 2010, the following order was made and entered:

IN RE: Second Request for Public Comment on Proposed Amendments to Rules of Practice and Procedure for Domestic Violence Civil Proceeding

On this day a former day to wit, June 22, 2010, the Court published for comment the proposed amendments to the Rules of Practice and Procedure for Domestic Violence Proceedings. Comments were received and reviewed by the Court.

Further revisions, based upon the comments filed, were made to the Rules. The Courts is therefore of the opinion and does hereby approve an additional period of public comment on the proposed amendments, as set forth herein, to conclude on December 15, 2010, with comments to be filed in writing with the Clerk of this Court. Deletions are indicated by strikethrough and insertions are indicated by underscoring.

RULES OF PRACTICE AND PROCEDURE FOR DOMESTIC VIOLENCE CIVIL PROCEEDINGS

Rule 1. Scope; conflicts.

Rule 2. Terminology.

Rule 3. Effective date.

Rule 4. Fees.

Rule 5. Waiver of fees and costs for indigents.

Rule 6. Confidentiality of court files.

Rule 7. Persons allowed to be present during hearing; unofficial recording of domestic violence civil proceeding prohibited.

Rule 8. Filing of petitions and other pleadings.

Rule 9. Answer.

Rule 9a. Protective orders entered pursuant to a divorce action.

Rule 9b. Automatic extensions of protective orders.

Rule 10. Notice of family court final hearing.

Rule 10a. Protective orders and child custody.

Rule 10b. Protective orders and firearms.

Rule 11. Service.

Rule 11a. Order of publication.

Rule 12. Filing and service by facsimile transmission.

Rule 13. Judicial economy and consolidation.

Rule 14. Continuances.

Rule 15. Amended pleadings.

Rule 16. Transfer of case file from magistrate to circuit court when emergency protective order granted.

Rule 16a. Child Abuse and Neglect.

Rule 17. Termination of emergency protective order.

Rule 18. Appeal of denial of emergency order.

Rule 19. Appeal of family court order.

Rule 20. Disqualification of Family Court Judge.

Rule 21. Domestic violence ~~resistry~~ registry.

Rule 22. Domestic violence support orders.

Rule 23. Testimony of children.

Rule 23a. Minors and incapacitated family or household members as parties.

Rule 24. Domestic violence civil contempt bond.

Rule 24a. Compliance hearings.

Rule 25. Concurrent jurisdiction.

Rule 25a. Child Protection Investigations.

Rule 26. Appointments of guardians ad litem.

Rule 27. Telephonic and videoconference hearings.

Rule 28. Time computation.

Rule 1. Scope; conflicts.

(a) These rules shall govern domestic violence civil proceedings in the circuit courts, family courts, and magistrate courts of the State of West Virginia. If these rules conflict with other rules or statutes, these rules shall apply. The purpose of these rules is to help resolve cases in a just, speedy, and inexpensive manner.

(b) Rule 6 of the Rules of Civil Procedure shall govern computation of time in domestic violence civil proceedings.

Rule 2. Terminology.

(a) “Emergency protective order” refers to the temporary protective order entered after a W. Va. Code, §48-27-203 emergency hearing.

(b) “Domestic violence protective order” refers to the ninety (90), ~~or one~~ hundred eighty (180) day, one year or longer order entered after a W. Va. Code, §48-27-205 final hearing.

(c) “Protective order,” as referred to in the West Virginia Code and these rules unless specifically stated otherwise, shall mean the order entered pursuant to W. Va. Code §48-27-203 and W. Va. Code §48-27-205.

(d) “Law Enforcement Agency” refers to all agencies provided in W. Va. Code §48-27-206, provided, however, that when the code or these rules require service of orders and pleadings filed in domestic violence proceedings, “law enforcement agency” does not include any federal agency or the department of health and humans resources.

Rule 3. Effective date.

These rules shall take effect on the first day of January 2002, and shall govern all domestic violence civil proceedings.

Rule 4. Fees.

(a) Assessment of court costs and fees when emergency protective order denied. If the petition is denied, court costs and fees shall be assessed by the magistrate against the petitioner at the conclusion of the emergency hearing and shall be paid to the magistrate clerk as follows, unless a fee waiver affidavit has been filed:

- (1) Magistrate Court Fund: \$10.00;
- (2) Court Security Fund: \$5.00; and
- (3) Regional Jail Authority: \$10.00.

Costs and fees may not be assessed against a prevailing party. Partial payments of costs and fees shall be applied by the magistrate clerk in the following order: Magistrate Court Fund, Court Security Fund, Regional Jail Fund, and other costs, if any. If the denial of the petition is appealed, payment of costs shall be stayed until resolution of the appeal.

(b) Assessment of court costs and fees when petitioner fails to appear or present evidence. No court costs and fees shall be assessed against the petitioner for failure to appear or failure to present evidence at the final hearing in circuit or family court.

(c) Assessment of court costs and fees when petitioner moves to terminate protective order. No court costs or fees shall be assessed against a petitioner who moves to terminate a protective order, whether the court grants or denies the motion.

(d) Assessment of court costs and fees when protective order granted by circuit or family court. Except as in subsection (a) of this rule, court costs and fees shall be assessed by the family or circuit court at the conclusion of a proceeding, and shall be paid to the circuit clerk within ten (10) days by Respondent as follows, unless a fee waiver affidavit has been filed:

- (1) Family Court Fund: \$25.00;
- (2) Magistrate Court Fund: \$10.00;
- (3) Court Security Fund: \$5.00; ~~and~~
- (4) Regional Jail Authority: \$10.00.

Court costs and fees may not be assessed against a prevailing party. Partial payments of fees and costs shall be applied by the circuit clerk in the following order: Family Court Fund, Magistrate Court Fund, Court Security Fund, Regional Jail Fund, and other costs, if any as provided in subsection (e).

(e) Assessment of other costs and fees. The following fees shall be assessed by the Court when pleadings and orders have been served by the sheriff and/or the circuit clerk: For service of process by the sheriff, the sum of \$25.00 as provided in W. Va. Code §59-1-14. For service of process by the circuit clerk by certified mail, restricted delivery, return receipt requested, the sum of \$20.00 as provided in Rule 4(d)(1) of the Rules of Civil Procedure.

(f) Payment of court costs and fees. The court shall require a party to appear before the court or show proof of payment of any costs and fees ordered by the court within ten (10) days of the entered order, unless the party qualifies for a fee waiver after review by the court pursuant to Rule 5 of these rules.

Rule 5. Waiver of fees and costs for indigents.

A person seeking waiver of fees, costs, or security pursuant to W. Va. Code §59-2-1, shall execute before the clerk where the matter is pending a fee waiver affidavit which shall be kept confidential. An additional fee waiver affidavit shall be filed whenever the financial condition of the person no longer conforms to the

financial condition established by the Supreme Court of Appeals for determining inability to pay fees or whenever an order has been entered directing the filing of a new affidavit. The fee waiver affidavit shall be reviewed pursuant to W. Va. Code §59-2-1(d) by the presiding court to determine whether the person seeking the waiver qualifies as established by the West Virginia Supreme Court. If the court determines that the person does not qualify, the court shall assess the costs and fees in Rule 4 of these rules.

Rule 6. Confidentiality of court ~~files~~ records.

(a) Rule 6 of the Rules of Practice and Procedure for Family Court shall govern the confidentiality of court ~~files~~ records in domestic violence civil proceedings.

(b) Subpoena *duces tecum*, ~~Q~~ orders ~~P~~ permitting ~~E~~ examination or copying of ~~F~~ file ~~C~~ contents. Pursuant to W. Va. Code §48-27-312, any record in a domestic violence civil proceeding shall be supplied to any person presenting a subpoena *duces tecum* issued by a state or federal court in any criminal action or any domestic violence civil proceeding. Any record obtained under this rule shall be used only in the context of the case in which the subpoena was issued and not for any other purpose.

(c) **West Virginia domestic violence database.** The information and records contained on the West Virginia domestic violence database pursuant to W. Va. Code §51-1-21 shall not be open for public inspection. The West Virginia domestic violence database shall contain such information and records that the West Virginia Supreme Court deems necessary for the service and enforcement of domestic violence protective orders issued by the court. The West Virginia Supreme Court may in its discretion provide access to the information and records contained on the West Virginia domestic violence database to any and all authorized court personnel, state and federal law enforcement agencies, the department of health and human resources, or other state and federal agencies the court deems necessary in the furtherance of enforcement of the orders of the court and improvement of the database and response to domestic violence.

Rule 7. Persons allowed to be present during hearing; unofficial recording of domestic violence civil proceeding prohibited.

(a) No person or domestic violence advocate accompanying a person who is seeking to file a petition is precluded from being present if his or her presence is desired by the person seeking a petition, W. Va. Code, §48-27-307, and no person or domestic violence advocate requested by a party to be present during a hearing on a petition for a protective order shall be precluded from being present unless such person is a witness in the proceeding and a motion for sequestration has been made

and such motion has been granted. Any person or domestic violence advocate shall be permitted to sit with the petitioner during the hearing. Any person or domestic violence advocate found by the court to be disruptive may be precluded from being present. W. Va. Code, §48-27-403(f). Rule 8 of the Rules of Practice and Procedure for Family Law shall govern the unofficial recording of domestic violence civil proceedings. For purposes of this rule, a domestic violence advocate means an employee or representative of a licensed program for victims of domestic violence.

(b) Rule 8 of the Rules of Practice and Procedure for Family Law shall govern the unofficial recording of domestic violence civil proceedings.

Rule 8. Filing of petitions and other pleadings.

(a) Commencement of action. To commence an action for a protective order, a verified petition shall be filed in the magistrate court.

(b) Petition. The petition shall contain a short and plain statement of the facts showing that the petitioner is entitled to relief, and it shall contain a demand for the relief the petitioner seeks.

(c) Firearms. The petition shall contain information regarding the use, possession and ownership of firearms by the respondent which shall include a description and location, if known by the petitioner, of each firearm owned and/or possessed by the respondent.

(d)(e) Pleadings filed after original petition. All pleadings filed after the original petition, except as provided in Rule 9 herein, including petitions for criminal contempt shall be filed with the circuit clerk. Misdemeanor complaints for violation of protective orders shall be filed in the magistrate court.

(e) (d) Other required documents. The original petition, and petitions for contempt or modification of a protective order, shall be accompanied by a completed domestic violence civil case information statement.

(f) (e) Petitioner's identifying information. At petitioner's request, the magistrate court shall immediately seal within the file the portion of the domestic violence civil case information statement and any other document containing the address or other identifying information for the petitioner such as the petitioner's phone number, facsimile number, or e-mail address, until further order. The petitioner's identifying information shall remain sealed in the court file unless the court in a final hearing orders the release of the information and makes a finding that the release of the petitioner's identifying information does not increase the risk of harm or the threat of harm to the petitioner or other protected individuals, provided, however, that the court may provide access to the petitioner's identifying information to a law enforcement agency.

Rule 9. Answer; Counterclaim by Respondent treated as a petition for protective order.

(a) An answer ~~and/or a counterclaim~~, which need not be verified, may be filed and served by the respondent prior to the family court hearing. If the answer is filed thereafter, it shall be filed with the circuit clerk pursuant to Rule 8(e d) of these rules.

(b) A counterclaim shall be treated as a petition for protection and shall be filed by the respondent in magistrate court on the domestic violence petition form approved by the West Virginia Supreme Court and assigned a new magistrate and family court case number. Upon the showing of clear and convincing evidence of domestic violence, as defined in Chapter 48, Article 27, Section 202, magistrate court shall enter a protective order, provided, however, that any permissive relief granted shall not contradict the relief previously granted in a protective order by magistrate court involving the same parties and prior to a final hearing before family court. The counterclaim for protection and subsequent protective order may be heard by the court at the designated time set for the original petition so long as proper service has been obtained upon the opposing party. The court shall issue a separate order for each case.

Rule 9a. Protective orders entered pursuant to a divorce action.

A protective order entered pursuant to West Virginia Code §48-5-509(b) and (c) or §48-5-608(b) and (c) shall be issued on the domestic violence protective order form approved by the West Virginia Supreme Court. Separate protective orders shall be issued by the court for each party requesting protective relief. The protective order shall refer to the party requesting relief as the petitioner. The court shall immediately upon issuance of the protective order place the protective order on the national domestic violence registry and the statewide domestic violence database pursuant to Rule 21 of these rules.

Rule 9b. Automatic extensions of protective orders.

A party filing a Chapter 48 action or reopening a Chapter 48 action shall notify the circuit clerk that the party has a protective order in effect issued by a court in this state. Upon verifying that a protective order is in effect involving the same parties to the Chapter 48 action, the circuit clerk shall issue a notice of automatic extension of protective order on the form approved by the West Virginia Supreme Court and shall file the notice in the case file of the domestic violence action and the Chapter 48 action. The circuit clerk shall immediately by hand-delivery or facsimile forward the notice of automatic extension of protective order to magistrate court for inclusion in the national domestic violence registry and the statewide domestic violence database pursuant to Rule 21 of these rules. Service of the notice of automatic extension of protective order shall be pursuant to Rule 11 of these rules.

Rule 10. Notice of family court final hearing.

(a) Magistrate court shall serve notice of family court final hearing. At the conclusion of the hearing during which an emergency protective order or a temporary emergency protective order has been granted, the magistrate court shall cause the parties to be served with notice of the family court final hearing. If personal service is unsuccessful, the circuit clerk shall cause service to be made in accordance with Rule 11(a).

(b) Scheduling information. Domestic violence proceedings shall be given priority on the family court docket. The family court shall provide the magistrate court with dates and times each week during which family court final hearings may be scheduled in accordance with Rule 1(b) of these rules.

Rule 10a. Protective orders and child custody.

When a protective order awards custody of minor children and said children are in the physical custody of the other party, the other party's family members, or other individuals, then the magistrate, family or circuit court may, for the safety of the parties, order a law enforcement officer to accompany the party awarded custody to obtain the initial custody of the minor children.

Rule 10b. Protective orders and firearms.

(1) Magistrate Court. If the petition for protection provides information regarding firearms pursuant to Rule 8(c) of these rules, magistrate court, in order to protect the physical safety of the petitioner and other protected individuals, shall provide in the protective order that the respondent shall surrender any and all firearms and ammunition to the law enforcement officer serving the protective order or shall allow the respondent to transfer any and all firearms and ammunition to a qualified third party, provided, however, that in a third party transfer, the law enforcement officer serving the protective order shall be required to determine, prior to the respondent transferring any firearms or ammunition to a third party, if the third party is qualified to possess firearms and is not otherwise prohibited by law from possessing firearms.

(2) Family Court. If the petition for protection provides information regarding firearms pursuant to Rule 8(c) of these rules, family court during the final hearing shall require the respondent to provide proof that he or she has surrendered or transferred any and all firearms and ammunition owned or possessed by the respondent. If the respondent is unable to provide the required proof of surrender or transfer of firearms and ammunition, the court, to protect the physical safety of the petitioner and other protected individuals, shall order the respondent to surrender any and all firearms and ammunition to a law enforcement agency or shall allow the respondent to transfer any and all firearms and ammunition to a qualified third party,

provided, however, that in a third party transfer, the court shall require a law enforcement agency to determine, prior to the respondent transferring any firearms or ammunition to a third party, if the third party is qualified to possess firearms and is not otherwise prohibited by law from possessing firearms. The respondent shall be ordered to appear before the court at a date and time set by the court to show proof of compliance with the court's order of firearm surrender or transfer.

(3) Return of Firearms. Upon the termination, dismissal or expiration of a protective order, the respondent shall petition the court on the form approved by the West Virginia Supreme Court of Appeals for the return of any and all firearms and ammunition surrendered or transferred pursuant to the order of the court. The court shall by separate order provide for the return of all firearms and ammunition surrendered to law enforcement or transferred to a third party by the respondent, provided, however, that prior to the return of respondent's firearms and ammunition, the court shall be provided a criminal background check, completed by a law enforcement agency, to determine whether the respondent is qualified to possess firearms and is not otherwise prohibited by law from possessing firearms and ammunition.

Rule 11. Service.

(a) Service of the petition and emergency protective orders or temporary emergency protective order. If the respondent is present at the emergency hearing, the order shall be served by the magistrate or magistrate designee upon the respondent at the conclusion of the hearing. If the respondent is not present at the hearing, the petition and emergency protective order or temporary emergency protective order shall be immediately served by law enforcement. The law enforcement agency shall file the return of service with the circuit clerk within five (5) days of service. If the court finds that personal service by law enforcement has been unsuccessful and continues the scheduled final hearing, the court shall instruct the circuit clerk in the order of continuance to serve the respondent by certified mail, restricted delivery, return receipt requested, to the last known address of the respondent. If return of service is not received by the clerk within twenty (20) days or service by mail is unsuccessful, then the court shall continue the final hearing and instruct the circuit clerk to serve the respondent ~~shall be served~~ through publication in the last known county of residence in accordance with W. Va. Code, §48-27-311, provided, however, that in the discretion of the court, the respondent may be served by certified mail and publication simultaneously to expedite the proceeding.

(b) Service of domestic violence protective order. If a party is present at the family court hearing where a domestic violence protective order has been entered, the domestic violence protective order shall be served by the family court judge or the judge's designee upon the party at the conclusion of the final hearing. If a party is not present at the final hearing, then the domestic violence protective order shall be immediately served by law enforcement upon the party who was not present and in the discretion of the circuit clerk, the clerk may serve the respondent by certified

mail simultaneously to expedite service. The law enforcement agency shall file the return of service with the circuit clerk within five (5) days of service. If the clerk does not receive the return of service from law enforcement within five (5) days of the entry of the order by the court, then personal service of the domestic violence protective order upon a party has been unsuccessful; ‡ The party shall be served by the circuit clerk by certified mail, restricted delivery, return receipt requested, to the last known address of the party. If the return of service is not received by the clerk within twenty (20) days or service by mail is unsuccessful, then the party shall be served by the circuit clerk in the last known county of residence through publication in accordance with W. Va. Code; §48-27-311.

(c) Service of an order continuing an emergency protective order, an extension of a protective order, an order of contempt of a protective order, an order of modification of a protective order, a petition for the contempt of a protective order, or an order to show cause. ~~modification of a protective order.~~

An order of contempt of a protective order or order of modification of a protective order shall be served by the family court judge or the judge's designee upon the party at the conclusion of the final hearing. If a party is not present at the final hearing, then the order shall be served by law enforcement as provided herein. An order continuing an emergency protective order, an order extending a protective order for an additional ninety days, and a petition for the contempt or ~~modification of an protective order to show cause,~~ shall be served immediately by ~~the sheriff~~ law enforcement. The law enforcement agency shall file the return of service with the circuit clerk within five (5) days of service. ~~or~~ If the court finds that personal service by law enforcement has been unsuccessful and continues the scheduled hearing, the court shall instruct the circuit clerk to serve the respondent by certified mail, restricted delivery, return receipt requested, to the last known address of respondent. If the return of service is not received by the clerk within twenty (20) days or personal service is unsuccessful by mail, the court shall continue the hearing and instruct the circuit clerk to serve the respondent through publication in accordance with W. Va. Code §48-27-311, provided, however, that in the discretion of the court, the respondent may be served by certified mail and publication simultaneously to expedite the proceeding.

(d) Service of order terminating protective order or denying a protective order. The ~~An~~ order terminating or denying a protective order shall be served on the parties in person by the judge or the judge's designee or by first class mail by the circuit clerk if the parties are not present at the hearing.

(e) Service of notice of automatic extension of protective order. A notice of automatic extension of a protective order shall be served in person by the circuit clerk or the clerk's designee. If a party cannot be served in person by the clerk, then the notice of automatic extension of protective order shall be served immediately by law enforcement; and in the discretion of the circuit clerk, the clerk may serve the respondent by certified mail simultaneously to expedite service. The law enforcement agency shall file the return of service with the circuit clerk within five (5) days of service. If the clerk has not received the return of service from law enforcement within five (5) days of issuance, the clerk shall serve the respondent by

certified mail, restricted delivery, return receipt requested, to the last known address of the respondent. If the return of service is not received by the clerk within twenty (20) days, service by mail is unsuccessful, or the clerk has not received the return of service from law enforcement, the respondent shall be served by the clerk through publication in accordance with W. Va. Code §48-27-311.

(e f) Service of other documents. Every document other than as provided in this rule the original petition, emergency, temporary emergency, or domestic violence protective orders, petitions for the contempt or modification of a protective order, or an order extending, or terminating, a protective order, shall be served upon each party as follows: ~~I~~ if a party is represented by an attorney, service shall be made upon the attorney pursuant to Rule 5(b) of the West Virginia Rules of Civil Procedure. Otherwise, service shall be made by mailing a copy by ~~certified~~ first class mail, ~~restricted delivery, return receipt requested,~~ to the party's last-known address. ~~If personal service has been unsuccessful, the respondent shall be served by publication in accordance with W. Va. Code, 48-27-311.~~

(f g) Service by respondent when petitioner's identifying information has been sealed in the file. When the petitioner's address and other identifying information have been sealed in the file pursuant to these rules, and the respondent needs to make service on the petitioner, the respondent shall file any pleadings with the circuit clerk and direct the circuit clerk to make service upon the petitioner. Service shall be made by the circuit clerk if the petitioner's identifying information is sealed in the case file. No court employee shall reveal to anyone other than a court official or law enforcement officer the petitioner's address or other identifying information.

(g h) Service allowing direct contact between the parties is strictly prohibited.

(h i) Service by law enforcement may properly be accomplished by a process server employed by a sheriff's office, or by a process server employed by a law enforcement agency, both of whom shall provide returns on forms to be provided by the Supreme Court of Appeals and filed with the clerk's office within five (5) days of service.

(i j) Out-of-state service is permissible in accordance with Rule 4 of the Rules of Civil Procedure.

Rule 11a. Order of publication.

The order of publication shall contain the following information: the name and last known address of the respondent, the magistrate court case number and civil action number, the county where the domestic violence action has been filed, any scheduled hearing date, and the location of the office where the respondent can obtain a copy of the petition and order. The order of publication shall not contain the petitioner's name or any other identifying information of the petitioner.

Rule 12. Filing and service by facsimile transmission.

Pleadings and other documents, including requests for hearings, may be filed with the circuit clerk and served upon law enforcement authorities by facsimile transmission in accordance with Rules 12.03, 12.04 and 12.05 of the Trial Court Rules for Trial Courts of Record.

Rule 13. Judicial economy and consolidation.

(a) Transfer by magistrate to family court judge before whom the parties have a case pending. If the petitioner indicates that the parties to the protective order proceeding are also parties in a case pending before a family court judge in the same county, then the magistrate shall notice the final hearing before that family court judge.

(b) Transfer by family court judge to another family court judge before whom the parties have a family court case pending. If a family court judge learns that the parties to a protective order proceeding have a family court case pending before another family court judge, then the family court judge before whom the domestic violence proceeding is pending shall transfer the case to the family court judge before whom the family court case is pending, if venue is proper.

(c) Consolidation. If a family court judge learns that the parties to a protective order proceeding have a second protective order proceeding pending before another family court judge, then the family court in which the first such action was commenced shall order both protective order proceedings transferred before it or any other family court in which another protective order proceeding is pending, if venue is proper. The court to which the actions are transferred may order a joint hearing of the matters in issue, and may make such other orders as may tend to avoid unnecessary cost or delay-, provided, however, that the court shall enter a separate order for each action.

(d) Transfer from county to county. When a domestic violence case is transferred between counties, the domestic violence case shall be closed in family court from the originating county and assigned a new family court case number in the county receiving the case. Upon holding the final hearing, the family court shall fax the order to the magistrate clerk's office of the originating county and the clerk shall immediately place the family court order on the national domestic violence registry and the statewide domestic violence database, provided, however, that the original case file shall remain in the county where the final hearing is held.

Rule 14. Continuances.

(a) Filing of motion for continuance. A movant may file a motion for continuance with the circuit clerk, or with the court, at the convenience of the court.

(b) Requirements for a continuance. A continuance may be granted upon a showing of good cause.

(c) **Notice requirements.** A motion for continuance may be heard after such reasonable notice to the opposing party as required by the court.

(d) **Continuance of a final hearing.** A final hearing may be continued on motion of the respondent at the convenience of the court. A final hearing continued for failure to obtain personal service by law enforcement shall be rescheduled no more than twenty (20) days from the scheduled hearing date. Otherwise, ~~the a~~ a continuance of a final hearing may be continued by the court shall be rescheduled no more than seven days from the scheduled hearing date. If a hearing is continued, the court may modify the emergency protective order as it deems necessary.

(e) **Continuance of final hearing when personal service unsuccessful.** If a hearing is continued by the court for lack of personal service by law enforcement, the court shall instruct the circuit clerk to serve the pleading and order by certified mail, restricted delivery, return receipt requested, to the last known address of respondent and may in the court's discretion require the circuit clerk simultaneously to serve the respondent by publication in accordance with W. Va. Code §48-27-311.

Rule 15. Amended pleadings.

Upon request by any party and at any stage of the proceedings, a pleading may be amended for good cause shown upon such terms as the court may require.

Rule 16. Transfer of case file from magistrate to circuit court when emergency protective order granted.

(a) **Transfer to the circuit clerk.** Following the emergency hearing, the magistrate clerk shall cause the court file to be delivered to the circuit clerk ~~forthwith~~ immediately.

(b) **Facsimile machine.** The circuit clerk and all family court staff shall leave the facsimile machine on 24-hours-a per-day every day.

Rule 16a. Child Abuse and Neglect.

At any stage of domestic violence proceedings, if a family court judge has reasonable cause to suspect that any minor child involved in the proceedings has been abused or neglected, ~~in addition to mandatory reporting duties~~ the judge shall follow the written referral procedures set forth in Rule 47 ~~48(b)~~ of the Rules of Practice and Procedure for Family Court and Rule 25a herein

Rule 17. Termination of emergency protective order.

An emergency protective order is terminated by the entry of a domestic violence protective order or an order denying a domestic violence protective order.

Rule 18. Appeal of denial of emergency order.

(a) **Time periods.** A person whose petition was denied by the magistrate court may, as a matter of right, present a petition for appeal to the family court by filing a petition for appeal in the magistrate court clerk's office within five (5) days of entry of the order denying the petition in the magistrate court, ~~which~~ The petition for appeal shall be transferred to the family court immediately forthwith. The petition for appeal shall be heard by the family court within ten (10) days from the date of filing of the petition. No bond shall be required to appeal.

(b) **Hearing.** At the family court hearing on the petition for appeal, the family court judge shall enter an order either affirming the magistrate's denial of an emergency protective order or granting an emergency protective order. If an emergency protective order is granted, the family court judge shall enter the emergency protective order and set the matter for final hearing within ten (10) days of the date of entry of the emergency protective order and serve the order in accordance with Rule 11 herein.

Rule 19. Appeal of family court order.

(a) **Time periods.** Within ten (10) days following the entry of a family court order granting or refusing a domestic violence protective order, ~~any either~~ party may appeal the order of the family court by filing a petition for appeal to in the circuit clerk's office ~~out~~. The circuit court shall hear the petition for appeal within ten (10) days after the petition is filed. No bond shall be required for a petition for appeal.

(b) **Order in effect pending appeal.** The family court order shall remain in effect pending an appeal unless stayed by the circuit court.

~~(c) **Bond.** No bond shall be required for a petition for appeal.~~ **Appeal hearing.** The petition for appeal is on the record established in family court. The circuit court shall enter an order immediately upon the conclusion of the hearing on a form approved by the West Virginia Supreme Court.

Rule 20. Disqualification of Family Court Judge.

Rule 17 of the West Virginia Trial Court Rules for Trial Courts of Record shall govern the disqualification of family court judges. ~~appointment of guardians ad litem in domestic violence civil proceedings. Motions to disqualify family court judges shall proceed in accordance with Rule 17.01 of the West Virginia Trial Court Rules for Trial Court of Record which govern disqualification procedures.~~ Disqualification appointments in domestic violence civil proceedings may be handled on an emergency basis.

Rule 21. Domestic violence registry national registry and the West Virginia domestic violence database.

By the next judicial day following **(a) Domestic violence national registry.** The magistrate court shall cause any domestic violence-related order entered by magistrate court to be entered in the domestic violence national registry forthwith. Immediately upon the entry of any domestic violence-related order by the family or circuit court, the court shall provide the original order to the circuit clerk. The court and/or circuit clerk shall immediately provide a copy of the order by hand-delivery or facsimile to the magistrate clerk. The magistrate clerk and/or the magistrate assistant shall immediately, upon receipt of the order by family or circuit court, cause the order to be entered in the domestic violence national registry.

(b) The West Virginia domestic violence database. The magistrate, family court or circuit court shall immediately enter all domestic violence-related orders on the West Virginia domestic violence database.

Rule 22. Domestic violence support orders.

(a) When a case is dismissed in which an order of support has been entered. When a domestic violence protection order case is dismissed in which an order of child and/or spousal support has been entered, an order shall be entered by the next judicial day stating the date that the support obligation shall end.

(b) Documentation to local child support enforcement office. Any family or circuit court domestic violence-related order or order of extension imposing, modifying, or terminating child and/or spousal support shall be delivered, along with a copy of the completed IV-D application, by hand or by facsimile to the local child support enforcement office by the next judicial day following the hearing at which the order was made. The order shall state the date that the support obligation shall begin or end.

Rule 23. Testimony of children.

Rules 8 and 9 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings shall govern the taking of testimony of children.

Rule 23a. Minors and incapacitated family or household members as parties.

(1) Minor as a party. An individual under eighteen (18) years of age may file a domestic violence petition on his or her own behalf without a parent/guardian, next friend, or guardian *ad litem*. If a minor is a party to a domestic violence action, the magistrate shall immediately appoint a parent/guardian, next friend, or guardian *ad litem* to protect the interest of the minor child.

(2) Individuals filing on behalf of a person in need of protection. If an adult family or household member is filing on behalf of a minor child or physically or mentally incapacitated family or household member and not requesting protection for himself or herself, then the petitioner shall be the individual in need of protection. The adult family or household member shall be recognized on the petition as the parent/guardian or next friend. The adult family or household member shall attend any hearing scheduled to protect the interest of the minor child or physically or mentally incapacitated family or household member.

(3) Minor removed from household. If the minor child is the petitioner or respondent and the other party is a parent or household member and the minor child cannot return to his or her residence due to concerns regarding the safety of the minor child or household members, the magistrate shall immediately appoint a guardian *ad litem* for the minor child and contact the department of health and human resources child protective services. If no responsible and appropriate family member or adult can be found into whose custody the minor child can be delivered, then the magistrate shall proceed under W. Va. Code Chapter 49, Article 5, and the petition shall be treated as both a juvenile proceeding and a domestic violence proceeding.

(4) Family court hearing. The family court at the final hearing shall ensure that the minor child or incapacitated adult is properly represented prior to conducting an evidentiary hearing. If the minor child or incapacitated adult is not properly represented, the family court shall continue the hearing and appoint a guardian *ad litem* to represent the minor child or incapacitated adult. If the minor child is the petitioner or respondent and a proceeding pursuant to W. Va. Code Chapter 49, Article 5, has been conducted, the family court shall enter an order of protection and refer the issues of custody, visitation and support as provided in Rules 25a herein.

Rule 24. Domestic violence civil contempt bond.

~~(a) W. Va. Code, 48-27-901 shall govern domestic violence civil contempt bond proceedings.~~ **Petition for Contempt.** The court, upon review of the petition for civil contempt, may issue an order to show cause without holding a hearing, as provided in W. Va. Code §48-27-901, if the petition is sufficient on its face and no further testimony of the party filing the petition is needed. The order to show cause shall be issued immediately upon the conclusion of the hearing or within five (5) judicial days of filing the petition, provided, however, that the failure of the court to issue the order within the time provided shall not divest the court of jurisdiction of the contempt proceeding or void the contempt-related orders of the court.

~~(b) **Personal recognizance bond.** If granted a fee waiver pursuant to W. Va. Code, 59-2-1, a respondent held in contempt for violation of a domestic violence protective order may post a personal recognizance bond.~~ **Hearing on order to show cause.** The order to show cause shall provide for the hearing date not to exceed ten (10) judicial days from the date the order to show cause is issued. Upon the finding of contempt, the court may require the offending party to post a cash

performance bond to ensure future compliance with the court's order. If payment of the bond is not made within ten (10) days of entry of the contempt order and proof of payment is not provided to the court by the contemnor, the court shall order the offending party to appear before the court and may take such action as the court deems necessary to enforce the order of the court. Failure of the court to hold the hearing within the time period provided shall not divest the court of jurisdiction of the contempt proceeding or void the contempt-related orders of the court.

(c) Forfeiture of a bond. Bond posted pursuant to these rules may be forfeited upon the court's finding that a party has failed to comply with a contempt order. In that case, the court shall render a judgment of default and order forfeiture of the bond amount. Upon collection, the circuit clerk shall deposit the proceeds with the state auditor, unless the Court orders that the amount forfeited shall be paid to the party not held in contempt. ~~If payment of a bond is not made within 20 days of entry of the forfeiture order, the clerk shall undertake execution against the obligor(s) for recovery of the judgment amount.~~

Rule 24a. Compliance Hearings.

The family court may, in the court's discretion without a contempt action by a party, schedule as needed compliance hearings to monitor and enforce the protective order entered by the court. During the compliance hearings, the court may take such action as necessary to enforce the court's order. The court may require one or both parties to appear at the compliance hearings to provide evidence and testimony regarding compliance with the court's protective order.

Rule 25. Concurrent jurisdiction.

The circuit courts may assist family court judges in the disposition of their case loads when and where the family courts and circuit courts deem appropriate by utilizing the provisions of: (a) W. Va. Code, §48-27-301 to conduct protective order proceedings; (b) W. Va. Code, §51-2A-2(b) to conduct actions for divorce, annulment or separate maintenance which do not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and do not require an award or any payment of child support and, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties; or (c) W. Va. Code, §48-8-102 to conduct actions for spousal support only.

Rule 25a. Child Protection Investigations.

(a) Administrative order regarding investigation. Upon receiving a written referral of possible child abuse and neglect from a family court pursuant to Rule 48(b) of the Rules of Practice and Procedure for Family Courts, a circuit court shall forthwith cause to be entered and served an administrative order in the name of and regarding the affected child or children directing the ~~D~~ department of H ~~health and H~~ human R ~~resources~~ to submit to the court an investigation report or appear before the court in not more than forty-five (45) days, at a scheduled hearing, to show cause

why the D department's investigation report has not been submitted to the circuit court and referring family court. If a circuit court, based upon a review of the written referral from family court, determines that the allegations or other information present reason to believe a child may be in imminent danger, the circuit court may shorten the time for the D department to act upon the referral and appear before the circuit court. The scheduled hearing may be mooted by the D department's earlier submission of the investigation report or, in the alternative, the filing of an abuse and neglect petition under Chapter 49 of the West Virginia Code relating to the matters which were the subject of the family court referral and circuit court administrative order. The duties of the D department under this rule shall be in addition to the D department's obligations pursuant to W. Va. Code §49-6A-2a regarding notification of disposition to persons mandated to report suspected child abuse and neglect.

(b) Mandamus relief. Following review of an investigation report in which the D department concludes that a child abuse and neglect petition is unnecessary, if the circuit court believes that the information in the family court's written referral and the D department's investigation report, considered together, suggest circumstances upon which the D department would have a duty to file a such a petition, the court shall treat the written referral as a petition for a writ of mandamus in the name of and regarding the affected child or children. A show-cause order shall issue by the court setting a prompt hearing to determine whether the respondent D department has a duty to file a child abuse and neglect petition under the particular circumstances set forth in the written referral and investigation report. If it is determined by the court that the D department has a nondiscretionary duty pursuant to W. Va. Code § 49-6-5b to file a petition seeking to terminate parental rights, the D department shall be directed by writ to file a child abuse and neglect petition within a time period set by the court. If it is determined that the circumstances bring the filing decision within the D department's discretionary authority, no such writ shall issue unless the court specifically finds aggravated circumstances, consistent with the meaning and usage of that term in W. Va. Code §49-6-3(d)(1), and that the D department acted arbitrarily and capriciously in the exercise of its discretion.

(c) Service and notice. Orders issued pursuant to this rule shall be served on the D department by mail or facsimile transmission directed to the D department's local child protective services office. Copies of such orders shall also be delivered to the prosecuting attorney.

(d) Confidentiality. All orders and other documents pertaining to matters arising under this rule, and docket entries regarding the same, shall be treated as confidential records concerning a child consistent with W. Va. Code §49-7-1; and any hearings conducted pursuant to this rule may be attended by those persons provided notice under subsection (c) above, but shall be closed to the general public except that persons whom the circuit court determines have a legitimate interest in the proceedings may attend. If the case in family court that gave rise to the referral to the department was a domestic violence proceeding, staff from any involved licensed family protection program is entitled access to circuit court proceedings under this rule to the same extent such access is afforded under statutes and rules pertaining to domestic violence proceedings.

(e) Abuse and neglect co-petitions for child protection. The petitioner for the protective order may appear as a co-petitioner on the child abuse and neglect petition filed by the D department pursuant to W. Va. Code §49-6-1, *et seq.*, if both so agree. Nothing herein shall be construed as either a requirement that the petitioner for the protective order be a co-petitioner under W. Va. Code §49-6-1, *et seq.*, or a prohibition against the filing of a petition pursuant to W. Va. Code §49-6-1, *et seq.*, by the petitioner for the protective order should the D department show cause why it will not file such a petition.

(f) Transfer of Administrative Proceedings. Within ten (10) days following service of an administrative order issued by a circuit court pursuant to subdivision (a), the D department may file a motion with the issuing court seeking transfer of the administrative proceedings to the circuit court of another county based upon reasons relating to a more appropriate venue for the administrative proceedings and any abuse and neglect case which may result from such proceedings. Unless the court finds the basis for the motion to be clearly unreasonable under the particular circumstances presented, the administrative proceedings shall be transferred as requested. If the administrative proceedings are transferred, the D department's obligations pursuant to W. Va. Code §49-6A-2a and Rule 48(c) of the Rules of Practice and Procedure for Family Court regarding the investigation and providing a copy of any investigative report remain applicable to the referring family court. The circuit clerk shall send certified copies of the order granting or denying the transfer motion to the referring family court and the prosecuting attorney. If the order grants the motion, certified copies shall also be sent to the circuit court and prosecuting attorney in the county where the administrative proceeding is transferred.

Rule 26. Appointments of guardians ad litem.

Rule 21 of the West Virginia Trial Court Rules for Trial Courts of Record shall govern the appointment of guardians ad litem in domestic violence civil proceedings.

Rule 27. Telephonic and videoconference hearings.

Rule 18 of the Rules of Practice and Procedure for Family Court shall govern the telephonic and videoconference hearings in domestic violence civil proceedings.

Rule 28. Time Computation. Rule 6 of the Rules of Civil Procedure shall govern the computation of any period of time. The computation of the time period of a protective order issued by family or circuit court shall begin on the day immediately following the issuance of the order by family or circuit court. The last day of the order shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

A True Copy

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