

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on November 4, 2016, the following order was made and entered:

### **IN RE: RULE 33 OF THE WEST VIRGINIA RULES OF APPELLATE PROCEDURE, Docket No. 16-RULES-20**

On this day, November 4, 2016, the Court, on its own motion, amends Rule 33 of the West Virginia Rules of Appellate Procedure. The amendments are necessary to properly cite to the Code of Judicial Conduct, as amended by order entered November 12, 2015, effective December 1, 2015. Because this order only amends the Rule to properly cite to the Code of Judicial Conduct, no public comment period is necessary. Upon consideration, the Court is of the opinion to and does hereby approve the following amendments. Additions are shown by underlining, and deletions are shown by strikethrough, as follows:

#### **Rule 33. Disqualification of a Justice.**

- (a) **Duty to inform.** Upon appearance in any case in this Court, counsel of record must inform the Clerk, by letter with a copy to the opposing parties, of any circumstance presented in the case in which a disqualifying interest of a Justice may arise under Canon ~~3(E)(1)~~ 2, Rule 2.11 of the Code of Judicial Conduct.
- (b) **Grounds for disqualification.** A Justice shall disqualify himself or herself, upon proper motion or sua sponte, in accordance with the provisions of Canon ~~3(E)(1)~~ 2, Rule 2.11 of the Code of Judicial Conduct or, when sua sponte, for any other reason the Justice deems appropriate.

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- (d) **Contents of motion.** The motion shall be addressed to the Justice whose disqualification is sought and shall state the facts and reasons for disqualification, including the specific provision of Canon ~~3(E)(1)~~ 2, Rule 2.11 of the Code of Judicial Conduct asserted to be applicable, and shall be accompanied by a verified certificate of counsel of record or unrepresented party that: (1) he has read the motion and that to the best of his knowledge, information, and belief formed after reasonable inquiry that it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; and (2) that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

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A True Copy

Attest: //s// Edythe N. Gaiser  
Deputy Clerk of Court

