



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: ZOLOFT LITIGATION**

**Civil Action No. 14-C-7000**

**THIS DOCUMENT APPLIES TO ALL CASES**

**ORDER MEMORIALIZING THE COURT'S RULINGS  
DURING THE MARCH 4, 2014 STATUS CONFERENCE**

On March 4, 2014, the Presiding Judges and the Resolution Judges assigned to the Zoloft Litigation held a status conference. Having conferred with one another to insure uniformity of their decisions, the Panel makes the following unanimous rulings:

**Liaison Counsel**

The Panel appointed Bert Ketchum as Liaison Counsel for the Plaintiffs, and Michael J. Farrell as Liaison Counsel for the Defendants.

**Motions for Admission Pro Hac Vice**

Consistent with the Mass Litigation Panel's treatment of cases referred to it since Rule 3(a) of the West Virginia Rules of Civil Procedure was amended, effective November 10, 2008, the Panel **ORDERS** the 25 civil actions filed in the Zoloft Litigation to be treated as separate civil actions.<sup>1</sup> The Panel notes at the outset that Rule 3(a) is, on its face, a substantive rule of civil procedure, not an "administrative rule." As such, the plain meaning of Rule 3(a) must be read in conjunction with the other rules of civil procedure, as well as Rule 8.0 of the Rules for Admission to the Practice of Law.

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<sup>1</sup> In 2008, the Mass Litigation Panel proposed the following amendment to Rule 3(a) of the West Virginia Rules of Civil Procedure:

**Rule 3. Commencement of Action**

(a) *Complaint.* – A civil action is commenced by filing a complaint with the court. For a complaint naming more than one individual plaintiff not related by marriage, a derivative or fiduciary relationship, each plaintiff shall be assigned a separate civil action number and be docketed as a separate civil action and be charged a separate fee by the clerk of a circuit court.

The rule was amended by order adopted October 9, 2008, effective November 10, 2008.

The Panel proposed the amendment to Rule 3(a) after extensive discussions regarding Rule 3, and after reviewing numerous public comments regarding the proposed amendment of Rule 3. The Panel's proposed amendment to Rule 3(a) was then adopted by the Supreme Court. The Panel's purpose in proposing the amendment was to achieve consistent treatment of multi-plaintiff complaints filed in the circuit courts of West Virginia, and in litigation assigned to this Panel, where the plaintiffs were not related by marriage or a derivative or fiduciary relationship.

It is irrelevant whether separate complaints are filed, or whether a single complaint is filed naming multiple plaintiffs who are not related by marriage or a derivative or fiduciary relationship. In either instance the result is the same, that is, all plaintiffs not related by marriage or a derivative or fiduciary relationship must be assigned separate civil action numbers. Each separately assigned civil action number constitutes a separate civil action for any and all substantive purposes, as opposed merely for administrative purposes, such as fee collection. Without this substantive rule, a circuit court, or this Panel, was unable, and but for the amendment to Rule 3(a), would still be unable to manage individual civil actions, or conduct hearings pertaining to individual plaintiffs among the multitudes of civil actions in multi-plaintiff complaints. A circuit court or this Panel must be able to analyze individual civil actions for such issues as jurisdiction, venue and the statute of limitations, among other things. Furthermore, a circuit court, or this Panel, must be able to track individual civil actions in multi-plaintiff complaints to their ultimate conclusions, whether they end in trial, dismissal or settlement.

Since 2008, the Panel has consistently applied Rule 3(a), as plainly written, to all cases assigned to it. Accordingly, the Panel **FINDS** and **ORDERS** that the October 18, 2012 order consolidating Wayne County Civil Action Numbers 12-C-146 through 12-C-164 into Wayne County Consolidated Civil Action Number 12-C-146, the October 28, 2013 order consolidating

Wayne County Civil Action Numbers 13-C-229 through 13-C-234 into Wayne County Consolidated Civil Action Number 12-C-146, and any other prior orders that are inconsistent with the Panel's prior application of Rule 3(a), as plainly written, are **VACATED**.

Attorney Santana McMurrey's motion for admission pro hac vice on behalf of the Plaintiffs is **GRANTED**, subject to filing a motion for admission pro hac vice in each civil action and payment of the \$350.00 fee to the West Virginia State Bar in each civil action. Attorney Marina Schwarz's motion for admission pro hac vice on behalf of the Defendants is also **GRANTED**, subject to filing a motion for admission pro hac vice in each civil action and payment of a fee of three-hundred fifty dollars (\$350) to the West Virginia State Bar in each civil action.<sup>2</sup> Pro hac vice counsel who were previously admitted to practice in Wayne County Consolidated Civil Action No. 12-C-146 shall have two weeks from March 4, 2014, to submit the applicable fee to the West Virginia State Bar for each civil action in the Zoloft Litigation.

#### **Prior Scheduling Orders**

Prior scheduling orders entered by the Wayne County Circuit Court are **ORDERED VACATED**. The Panel takes under advisement Defendants' proposed scheduling order submitted on March 4, 2014. The Panel's ruling does not in any way impede the ability of the parties to proceed with discovery in this litigation.

The Panel notes and preserves the objections and exceptions of any party aggrieved by this order. It is so **ORDERED**.

ENTER: March 11, 2014

/s/ James P. Mazzone  
Lead Presiding Judge  
Zoloft Litigation

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<sup>2</sup> Rule 8.0(b) of the Rules for Admission to the Practice of Law in the State of West Virginia requires separate pro hac vice admission, "in every case in which the applicant seeks to act as counsel. For purposes of this rule, each civil action with a case number shall constitute a single case."