STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

David C. Tabb,
Plaintiff Below, Petitioner

vs) No. 17-0095 (Jefferson County CC-19-2016-AA-2)

Jefferson County Commission, sitting as the Board of Equalization and Review; Jane Tabb, in her official capacity; Patsy Noland, in her official capacity; Josh Compton, in his official capacity; Caleb Hudson, in his official capacity, *et al.*
Defendants Below, Respondents

FILED
March 23, 2018
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner David C. Tabb, pro se, appeals four orders of the Circuit Court of Jefferson County. In the first order, entered April 20, 2016, the circuit court denied petitioner's appeal of the assessments of his real property for the 2016 tax year. In the second and third orders, both entered December 30, 2016, the circuit court denied petitioner's motion to amend his appeal of the 2016 tax assessments and his motion to alter or amend the court's April 20, 2016, order denying that appeal. In the fourth order, entered December 30, 2016, the circuit court granted respondents' motion for sanctions by limiting petitioner's right to initiate a legal proceeding to those instances where petitioner gives advance notice to the prospective opposing parties and obtains the court's approval for the proceeding or initiates the proceeding through a West Virginia attorney who certifies, pursuant to Rule 11 of the West Virginia Rules of Civil Procedure, that the proceeding is neither frivolous nor meant to harass. Respondents Jefferson County Commission, sitting as the Board of Equalization and Review; Jane Tabb, in her official capacity; Patsy Noland, in her official capacity; Josh Compton, in his official capacity; Caleb Hudson, in his official capacity, *et al.* (collectively "the county commission"), by counsel Nathan P. Cochran, filed a response.[1] Petitioner filed a reply.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these

[1]Pursuant to Rule 41(c) of the West Virginia Rules of Appellate Procedure, the names of the current public officers have been substituted as the respondents in this action.

reasons, a memorandum decision affirming the circuit court's orders is appropriate under Rule 21 of the Rules of Appellate Procedure.

Petitioner lives and owns real property in Jefferson County, West Virginia. For the 2016 tax year, the Assessor of Jefferson County assessed values for three parcels owned by petitioner: $76,200 for parcel 1 on Map 2, $289,000 for parcel 8 on Map 10, and $44,000 for parcel 8.4 on Map 10. Petitioner appealed these assessments to the county commission. However, at a February 16, 2016, hearing before the county commission, petitioner failed to present any evidence supporting a reduction in the assessments. Rather than presenting his evidence, petitioner requested that all members of the county commission recuse themselves from hearing his appeal because of ongoing litigation between petitioner and the commission. One commissioner was absent, and one commissioner recused herself. But, the other three commissioners denied petitioner's motion for their recusal. As a result, petitioner informed the county commission that he would be "wasting" his time if he presented his evidence and walked out of the hearing. Thereafter, the three county commissioners who did not recuse themselves voted to uphold the three assessments given petitioner's failure to present any evidence that the assessments were wrong.

On March 16, 2016, petitioner appealed the county commission's decision upholding the assessments. Attached to the appeal were certified copies of the orders entered by the county commission with regard to the three parcels. The certified record did not include documents petitioner left with the county commission's secretary during the hearing given that they were never admitted into evidence because petitioner did not request their admission before walking out of the hearing. Accordingly, in an April 20, 2016, order denying petitioner's appeal, the circuit court found that it legally could not rule in petitioner's favor because the record was devoid of any evidence that the assessments were wrong.

On April 26, 2016, the county commission filed a motion for sanctions against petitioner. The county commission invoked both Rule 11 of the West Virginia Rules of Civil Procedure and the circuit court's inherent power to ask that the court limit petitioner's right as a pro se litigant to initiate any "new actions or appeals in any court, other tribunal, commission, or administrative agency." In its motion, the county commission alleged that petitioner had a pattern of engaging in serious litigation misconduct over the course of seven proceedings since 2009. Petitioner subsequently filed a response to the motion for sanctions on May 9, 2016. The county commission filed a reply to the response on May 24, 2016.

On April 27, 2016, petitioner filed a motion to alter or amend the April 20, 2016, order denying his appeal. Finally, on June 30, 2016, petitioner filed a motion to amend his appeal to add the claim that one of the commissioners was morally unfit to hold office on February 16, 2016,[2] when the county commission voted to uphold the tax assessments.

[2]After the February 16, 2016, hearing, that commissioner, who voted to affirm the tax assessments, was charged with criminal violations relating to his personal conduct.

Accordingly, the circuit court entered three orders on December 30, 2016. First, the circuit court denied petitioner's motion to amend his appeal to add the claim that one of the commissioners was morally unfit to hold office. The circuit court found that the claim was time-barred pursuant to West Virginia Code § 11-3-25(a), which gives the taxpayer thirty days to appeal the county commission's decision, and that the claim did not relate back to any previous claim because it was a new allegation not based on any facts asserted in petitioner's appeal. Next, the circuit court denied the motion to alter or amend the April 20, 2016, order denying the appeal, reiterating that it legally could not rule in petitioner's favor because the record was devoid of any evidence that the tax assessments were wrong.

Finally, in its third December 30, 2016, order, the circuit court found that a sufficient basis existed, given petitioner's misconduct in this and six prior proceedings, to limit his right as a pro se litigant to initiate any "new civil or administrative actions or appeals in any court, commission, administrative body, agency[,] or other tribunal." The circuit court ordered that, before petitioner initiates a new proceeding, he must give advance notice to the prospective opposing parties and obtain the court's approval for the proceeding or initiate the proceeding through a West Virginia attorney who certifies, pursuant to Rule 11, that the proceeding is neither frivolous nor meant to harass.

Petitioner now appeals the various orders entered by the circuit court on April 20, 2016, and December 30, 2016. In syllabus point one of *In re Tax Assessment of Foster Foundation's Woodlands Retirement Community*, 223 W.Va. 14, 672 S.E.2d 150 (2008), we held that circuit court orders are reviewed under the following standard:

> "This Court reviews the circuit court's final order and ultimate disposition under an abuse of discretion standard. We review challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*." Syllabus point 4, *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996).

On appeal,[3] petitioner argues that the circuit court erred in denying his appeal of the tax

[3]As a preliminary mater, petitioner argues that there is a pending "motion to reconsider," filed January 9, 2017, that has yet to be ruled on by the circuit court. We note that a motion asking the circuit court "to reconsider" previous rulings is not recognized by the modern Rules of Civil Procedure. *See James M.B. v. Carolyn M.*, 193 W.Va. 289, 294, 456 S.E.2d 16, 21 (1995). On the other hand, a timely filed Rule 59(e) motion to alter or amend the December 30, 2016, order imposing sanctions on petitioner would suspend the finality of that order and make it unripe for appeal under syllabus point seven of *James M.B. Id.* at 291, 456 S.E.2d at 18. However, petitioner's motion does not purport to be a Rule 59(e) motion. Rather, petitioner filed the motion pursuant to Rule 24.01 of the West Virginia Trial Court Rules which governs the preparation and submission of orders. We find that the pendency of a "motion to reconsider" purportedly based on Rule 24.01 does not prevent us from considering this appeal in its current posture. Moreover, to the extent that petitioner objects to the drafting of the December 30, 2016, orders by the county commission's attorney, we previously rejected such an argument in *State ex rel. Cooper v.* (Continued . . .)

assessments, in denying his motions to amend the appeal and to alter or amend judgment, and in limiting his right to proceed as a pro se litigant. The county commission counters that the circuit court's orders should be affirmed. We agree with the county commission.

We first address the denial of petitioner's motion to amend his appeal. Pursuant to Rule 15(a) of the Rules of Civil Procedure, "[l]eave to amend should be freely given when justice so requires, but the action of a trial court in refusing to grant leave to amend a pleading will not be regarded as reversible error in the absence of a showing of an abuse of the trial court's discretion[.]" Syl. Pt. 4, *Bowyer v. Wyckoff*, 238 W.Va. 446, 796 S.E.2d 233 (2017) (internal quotations and citations omitted). In this case, the circuit court found that petitioner's new claim was time-barred pursuant to West Virginia Code § 11-3-25(a), which gives the taxpayer only thirty days to appeal the county commission's decision. In *Tax Assessment Against Purple Turtle, LLC v. Gooden*, 223 W.Va. 755, 762, 679 S.E.2d 587, 594 (2009), we reiterated that the thirty-day deadline for filing an appeal from a decision upholding a tax assessment is a "mandatory statutory jurisdictional requirement[ ]." (footnote omitted). Based on our review of the record, we concur with the circuit court's finding that the claim set forth in the motion to amend did not relate back to any previous claim given that it was a new allegation not based on any facts asserted in petitioner's appeal. *See* Syl. Pt. 7, *Dzinglski v. Weirton Steel Corp.*, 191 W.Va. 278, 445 S.E.2d 219 (1994) (holding that an amendment will not relate back to the original pleading pursuant to Rule 15 if it is based on different facts than those previously alleged), *modified on other grounds*, *Tudor v. Charleston Area Med. Ctr., Inc.*, 203 W.Va. 111, 506 S.E.2d 554 (1997). Therefore, we conclude that the circuit court did not abuse its discretion in denying petitioner's motion to amend his appeal.

Next, we address together the denials of petitioner's appeal and his motion to alter or amend judgment. *See* Syl. Pt. 1, *Wickland v. American Travellers Life Ins. Co.*, 204 W.Va. 430, 513 S.E.2d 657 (1998) (holding that the denial of a motion to alter or amend judgment is reviewed under the same standard as the underlying judgment). In syllabus point 5 of *Foster Foundation*, we held that "[a] taxpayer challenging an assessor's tax assessment must prove by clear and convincing evidence that such tax assessment is erroneous." 223 W.Va. at 16, 672 S.E.2d at 152.

In *Foster Foundation*, we rejected arguments similar to ones that petitioner raises here in holding that West Virginia Code § 11-3-24, "which establishes the procedure by which a county commission sits as a board of equalization and review and decides taxpayers' challenges to their property tax assessments, is facially constitutional." 223 W.Va. at 16, 672 S.E.2d at 152, syl. pt. 4. In *Mountain America, LLC v. Huffman*, 224 W.Va. 669, 683, 687 S.E.2d 768, 782 (2009), we rejected an as-applied challenge to the constitutionality of the same statutory procedure including the contention that the taxpayer was denied a fair hearing before an impartial tribunal given that "the county commission has appeared as a party litigant adverse to its appeal." We explained that:

Caperton, 196 W.Va. 208, 214, 470 S.E.2d 162, 168 (1996), where we stated that we concern ourselves not with the manner in which an order was drafted, "but with whether the findings adopted by the circuit court accurately reflect the existing law and the trial record."

> [w]hen balancing the circuit court's interest in acquiring necessary information from the [c]ounty [c]ommission regarding its review of tax appeals, with the general due process interests of the taxpayers to be provided an avenue of appeal from a property tax assessment, we do not believe that this procedure necessarily demonstrates a level of bias constituting a deprivation of the Appellant's due process.

Id. at 684, 687 S.E.2d at 783.

Petitioner's arguments that the county commission was not an impartial tribunal are somewhat broader than those presented in *Foster Foundation* and *Mountain America* in that, viewing himself as a concerned citizen, petitioner has been the plaintiff in numerous actions against the county commission regarding such matters as the holding of a special excess levy election and the location of the commission's meeting place.[4] However, in *Mountain America*, we rejected one of the taxpayer's due process claims because it failed to show that it suffered any prejudice. *Id.* at 685, 687 S.E.2d at 784. Similarly, we find that petitioner cannot show any prejudice given that his challenge to the tax assessments failed not because of any perceived bias against him on the part of the county commission, but because he chose to walk out of the February 16, 2016, hearing without presenting his case and without moving his documentary evidence into the record. As found by the circuit court, it legally could not rule in petitioner's favor given that the record was devoid of any evidence that the tax assessments were wrong.[5] *See Foster Foundation*, 223 W.Va. at 16, 672 S.E.2d at 152, syl. pt. 5. Therefore, we conclude that the circuit court did not err in denying petitioner's appeal and his motion to alter or amend judgment.[6]

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[4]In *Tabb v. Jefferson County Board of Education*, No. 16-0533, 2017 WL 2417111, at *3 (W.Va. June 2, 2017) (memorandum decision), we affirmed the circuit court award of summary judgment to the board of education and the county commission regarding petitioner's claim that they failed to comply with statutory requirements for the holding of a special excess levy election. In *Tabb v. County Commission of Jefferson County*, No. 15-1155, 2016 WL 6819047, at *3 (W.Va. November 18, 2016) (memorandum decision), *cert. denied*, __ U.S. __, 138 S.Ct. 202, 199 L.Ed.2d 114 (2017), we determined that petitioner was precluded from arguing that the county commission must hold its meetings at the Jefferson County Courthouse because he previously agreed, in a settlement agreement, that the Charles Town Library was a lawful and proper place for the commission's meetings.

[5]West Virginia Code § 11-3-25(c) authorizes the circuit court to remand a tax assessment to the county commission for the further development of an inadequate record, but also provides that this option is not available when the record's inadequacy is attributable to the party raising it as an issue. In this case, we agree with the circuit court's finding that the inadequacy of the record is wholly attributable to petitioner's decision to walk out of the February 16, 2016, hearing.

[6]To the extent that petitioner still argues for the disqualification of the circuit court judge and any of this Court's justices, we find that those requests were resolved by prior orders. By administrative order, entered March 22, 2016, the circuit court judge was directed to continue (Continued . . .)

Finally, we address the December 30, 2016, order imposing sanctions. Petitioner argues that the circuit court lacked the authority to enter such an order because this is a tax assessment appeal rather than a civil action. We disagree. "A court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction." Syl. Pt. 3, *State ex rel. Richmond American Homes of West Virginia, Inc. v. Sanders*, 226 W.Va. 103, 697 S.E.2d 139 (2010) (quoting Syl. Pt. 3, *Shields v. Romine*, 122 W.Va. 639, 13 S.E.2d 16 (1940)) (internal quotations and citations omitted). The county commission invoked the circuit court's inherent power and the court found that a sufficient basis existed, given petitioner's misconduct in this and six prior proceedings, to limit his right to initiate various proceedings (defined in the court's order) on his own behalf. Therefore, we conclude that the circuit court possessed the inherent power to sanction petitioner in this proceeding.

Petitioner further argues that the circuit court erred in limiting his right to initiate various proceedings as a pro se litigant without a hearing. "[W]e review imposition of sanctions under an abuse of discretion standard." *Richmond American Homes*, 226 W.Va. at 112, 697 S.E.2d at 148. In syllabus points three and four of *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006), we held as follows:

> 3. "Under West Virginia Constitution art. III, § 17, the right of self-representation in civil proceedings is a fundamental right which cannot be arbitrarily or unreasonably denied." Syllabus Point 1, *Blair v. Maynard*, 174 W.Va. 247, 324 S.E.2d 391 (1984).
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> 4. "The fundamental right of self-representation recognized in West Virginia Constitution art. III, § 17 may not be denied without a clear showing in the record that the *pro se* litigant is engaging in a course of conduct which demonstrates a clear intention to obstruct the administration of justice." Syllabus Point 1, *Blair v. Maynard*, 174 W.Va. 247, 324 S.E.2d 391 (1984).

In *Mathena*, the circuit court required a litigant to communicate with the court only through a West Virginia attorney after an implied threat of a "flood" of additional motions in a single letter to the court clerk. *Id.* at 420-21, 633 S.E.2d at 774-75. We reversed the circuit court's order, finding that the pro se litigant's statement, standing alone, did not provide a sufficient basis to limit his right to proceed on his own behalf. *Id.* at 424, 633 S.E.2d at 778. However, we did not find that a hearing was necessary, but only that the litigant must be given "an opportunity to show cause why such a limitation should not be imposed." *Id.* We find that petitioner was provided with such an opportunity because the County Commission put in its motion that it was seeking to limit his right to initiate proceedings as a pro se litigant giving him specific notice of the argument to which he needed to respond in his response.

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presiding in this case. By scheduling order, entered February 23, 2017, this Court advised petitioner that, if he desired to seek the disqualification of the justices, he was required to file the appropriate motion pursuant to Rule 33 of the West Virginia Rules of Appellate Procedure and no motion was subsequently filed.

Moreover, unlike the limitation imposed in *Mathena*, the circuit court did not absolutely bar petitioner from acting on his own behalf. Under the circuit court's order, petitioner still may proceed pro se as long as he gives advance notice to the prospective opposing parties and obtains the court's approval for the proceeding. Moreover, having reviewed the December 30, 2016, "Order Granting Motion For Sanctions," we hereby adopt and incorporate the circuit court's well-reasoned findings and conclusions which we find clearly show that petitioner has engaged in a course of conduct which demonstrates a clear intention to obstruct the administration of justice (as he did in the instant case by choosing to walk out of the February 16, 2016, hearing). The Clerk is directed to attach a copy of the December 30, 2016, "Order Granting Motion For Sanctions" to this memorandum decision. We conclude that the circuit court did not abuse its discretion in limiting petitioner's right to initiate proceedings on his own behalf as set forth in that order.

For the foregoing reasons, we affirm the circuit court's April 20, 2016, order denying petitioner's appeal of the assessments of his real property for the 2016 tax year and its three orders, entered December 30, 2016, that (1) denied his motion to amend his appeal of the 2016 tax assessments; (2) denied his motion to alter or amend the April 20, 2016, order denying the appeal; and (3) granted the county commission's motion for sanctions by limiting petitioner's right to initiate a legal proceeding to those instances where petitioner gives advance notice to the prospective opposing parties and obtains the court's approval for the proceeding or initiates the proceeding through a West Virginia attorney who certifies, pursuant to Rule 11 of the West Virginia Rules of Civil Procedure, that the proceeding is neither frivolous nor meant to harass.

Affirmed.

ISSUED: March 23, 2018

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Menis E. Ketchum
Justice Allen H. Loughry II
Justice Elizabeth D. Walker

In the Circuit Court of Jefferson County, West Virginia
Division 1

DAVID C. TABB,	)	
Plaintiff,	)	
	)	
vs.)	)	Case No. CC-19-2016-AA-2
	)	
JEFFERSON COUNTY COMMISSION,	)	
JANE TABB,	)	
PATSY NOLAND,	)	
DALE MANUEL,	)	
WALT PELLISH ET AL,	)	
Defendants	)	
	)	

Order Granting Motion for Sanctions

ORDER GRANTING MOTION FOR SANCTIONS

On or about April 26, 2016, the Defendants / Respondents, Jefferson County Commission, sitting as the Board of Review and Equalization, Jane Tabb, in her official capacity, Patsy Noland, in her official capacity, Dale Manuel, in his official capacity, Walt Pellish, in his official capacity, Eric Bell, in his official capacity, and Angie Banks, in her official capacity as the Assessor of Jefferson County, (Commission or Respondents herein) by and through counsel, Nathan P. Cochran, Assistant Prosecuting Attorney, filed a Motion for Sanctions in this case.
Respondents move this Court to find that the Petitioner's Appeal and his Petition for Mandamus are frivolous within the meaning of W.Va.R.Civ.P 11 and extant case law.
The Court entered a briefing schedule Pursuant to Trial Court Rule 22 and directed Petitioner to file a Response to the Motion, if desired, within 15 days and Respondents to file a Reply, if desired, within 10 days from the Response.
The Matter is now fully briefed and, based on the Motion, Response, Reply, all arguments and proceedings thereon, and the whole record, the Court now makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

I. FINDINGS OF FACT

A. Procedural History in This Case

On the 16th day of February, 2016, the Plaintiff, David C. Tabb, appeared before the Jefferson County Commission, sitting as the Board of Review and Equalization, purportedly to challenge his tax assessment.[1]
However, instead of participating in the hearing, Tabb made a Motion to Recuse and Disqualify the Board, and then failed to present evidence before the Board in the hearing.[2] No evidence was entered by Tabb at the hearing, based on the Board's Orders that Petitioner Tabb filed contemporaneously as exhibits to the Petition (*See* the Board's Orders filed in the Jefferson County Circuit Clerks *efile* dated March 16, 2016 and titled "errors of law, attachmnts"(sic))

Tabb did leave some documents with the Board's secretary, however, he did not present the documents as evidence and did not engage in the hearing save to move to disqualify the Board. The Order from the February 16th, 2016 hearing states in part that "Mr. Tabb refused to have the Board of Review and Equalization hear evidence regarding his appeal based upon Motion to Recuse and Disqualify provided to the Assessor on this same date" and that "Mr. Tabb left the room before the Board heard any evidence regarding this appeal of his assessment."
Based on Tabb's failure to present evidence, the Board found, by vote of 3/0 that Tabb's assessment was not erroneous. [3]

A. The Motion to Recuse or Disqualify the Board and the Resultant Appeal filed by Tabb is a Device Commonly Employed by Tabb in an Attempt to Intimidate Others and Thereby Influence the Course of Litigation

In this case, Mr. Tabb attempts to Appeal the decision from the Board of Review and Equalization, even though he entered no evidence into the hearing below. Tabb also concentrates on his allegation that he was or would be treated unfairly by the Board and has moved to recuse the Board for a variety of reasons.[4]
Taken in isolation, without background, Tabb's appeal could be considered an error of a *pro se* party that the Court could reject without sanctions. However, the record reveals that claims for recusal or disqualification are common tools utilized by Tabb in an attempt to affect the course of litigation. Consider the following partial list of examples:

CASE/EXHIBIT NUMBER[5]	MOTION	AGAINST WHOM DIRECTED	SUMMARY[6] OF ALLEGED BASIS FOR MOTION
16-AA-2 (This Case)	Motion to Recuse and Disqualify	Hon Judge Sanders	Claims prior prejudice.
16-AA-2 (This Case)	Motion to Recuse and Disqualify	Jefferson County Commission sitting as a Board of Review	Objects to JCC sitting as BORE. Mr. Tabb claims apparent bias based on numerous lawsuits and / or complaints that he filed against the Jefferson County Commission and other issues that are too voluminous to list here.
15-AA-4 (*See* Documents attached to the Motion for Sanctions as exhibit 1)	Motion to Recuse and Disqualify	Hon. Judge Lorensen	Unclear, seems to not object to Judge Lorensen but does object to his appointment.
15-AA-4 (*See* Documents attached to the Motion for Sanctions as	Motion to Recuse and Disqualify	Jefferson County Commission sitting as a Board of Review	Mr. Tabb claims apparent bias based on numerous lawsuits and / or complaints that he filed against the Jefferson County Commission and other

exhibit 2)			issues that are too voluminous to list here. They are contained in pages 4-8 of the March 18, 2015 Petition for Appeal filed in this case.
15-AA-4 (*See* Documents attached to the Motion for Sanctions as exhibit 3)	Motion to Recuse and Disqualify	Attorney Nathan Cochran	Tabb claimed, pursuant to rule 3.7 of the rules of professional responsibility, that Attorney Cochran should not have argued that this case should have been dismissed without Cochran calling witnesses. However, Tabb disregarded the fact that the Court file contained pleadings prepared and submitted by Tabb (1) (a certificate of service) that proved that Tabb had not properly served the Respondents with original process and (2) (a lack of civil cover sheet) proving that Tabb had failed to file a civil cover sheet with his complaint, both of which deprived the Court of jurisdiction and resulted in dismissal. No witnesses were needed for the Court to view Tabb's own documents that he prepared and submitted to the Court and that were contained in the Court file.
15-AA-4 (*See* Documents attached to the Motion for Sanctions as exhibit 4)	Motion to Disqualify	Hon. Judge Sanders	Judge Sanders continued a hearing and then, when Tabb showed up at the (now continued) hearing Judge Sanders refused to talk about the substance of the case since the Respondent's counsel was not present. A day or two later, Judge Sanders dismissed the case for reasons stated elsewhere in this Motion. This is the

			apparent source of Mr. Tabb's recusal motion and other motions in this case.
13-C-432 (*See* Documents attached to the Motion for Sanctions as exhibit 5)	Motion to Disqualify	Judge Sanders	Mr. Tabb had previously moved to disqualify Judge Sanders in case number 13 – C – 205 because Judge Sanders refused to disqualify the prosecuting attorney of Jefferson County, Ralph Lorenzetti, and Assistant prosecutor Stephanie Grove. Also, Judge Sanders did not allow Mr. Tabb to be compensated for legal fees in that case (even though Mr. Tabb had acted pro se in that case, Mr. Tabb had requested to be compensated for legal fees and costs).
13-C-432 (*See* Documents attached to the Motion for Sanctions as exhibit 6)	Motion to Disqualify	Office of the Prosecuting Attorney and all members thereof	Mr. Tabb moved to disqualify or recuse "the office of the prosecuting attorney and all members thereof . . . from participating in this case. . ." because of the "landlord-tenant" and budgetary relationship between the prosecutor's office and the Jefferson County commission.
13-C-432 (*See* Documents attached to the Motion for Sanctions as exhibit 6)	Motion to Disqualify	Assistant Prosecuting attorneys Stephen Groh and Stephanie Grove	Motion to disqualify or recuse assistant prosecuting attorneys Stephen Groh and Stephanie Grove pursuant to rule 3.7 of the rules of professional responsibility because Tabb intended to call them as witnesses and therefore did not believe they could testify as Tabb's witness and also represent the County in the case. This was denied by the circuit court on April 2, 2014.

13-C-432 (*See* Documents attached to the Motion for Sanctions as exhibit 7)	Motion to Disqualify Complaint of Judicial Misconduct with the Judicial Ethics Commission of West Virginia.	Hon. Judge Frye	Mr. Tabb states that he called Judge Frye twice and left two messages but Frye did not call Mr. Tabb back. Tabb then filed a complaint with the judicial investigation committee. The West Virginia Supreme Court of Appeals did not disqualify Judge Frye. Also, Judge Frye's alleged continuance or cancellation of a hearing scheduled for June 6, 2014, and Judge Frye's lack of appearance at the cancelled hearing. In this complaint, Mr. Tabb admits to filing a missing persons request with the West Virginia State Police, requesting their assistance in locating Judge Frye, and notifying the "Prosecuting Attorney's office, Sheriff's Department, West Virginia Supreme Court, Jefferson County Circuit Court, Jefferson County Commission, Governor Tomblin, and Senator Manchin."
13- C- 205 (*See* Documents attached to the Motion for Sanctions as exhibit 8)		Jefferson County Prosecutor Ralph Lorenzetti and Assistant Prosecutors	Mr. Tabb moved to recuse Mr. Lorenzetti and his subordinates in June of 2013 because Mr. Tabb alleged that the Prosecutors were biased due to the other litigation Mr. Tabb had filed against the County.
13- C- 205 (*See* Documents attached to the Motion for Sanctions as exhibit 9)		Hon. Judge Sanders	Mr. Tabb moved to recuse Judge David Sanders from the case on or about July 7, 2013.

No.: 13-1192 is the West Virginia Supreme Court of Appeals file on 13- C- 205. (*See* Documents attached to the Motion for Sanctions as exhibit 10)		Various Justices of the West Virginia Supreme Court of Appeals	Mr. Tabb requested that various West Virginia Supreme Court of Appeals Justices recuse themselves (Justices Workman, Benjamin, Ketchum, Davis) on or about February 24, 2014.
11-AA-3 (*See* Documents attached to the Motion for Sanctions as exhibit 11)	Motion to Recuse Judge Sanders	Hon. David Sanders	Alleged Personal Bias
11-AA-3 (*See* Documents attached to the Motion for Sanctions as exhibit 12)	Request the Court find a Conflict of Interest	Jefferson County Prosecutor	Mr. Tabb requested the Court find the Prosecutor had "… A conflict of interest in influencing the Jefferson County commission…"
10-AA-1 (*See* Documents attached to the Motion for Sanctions as exhibit 13)	Request the Court find a Conflict of Interest	Jefferson County Prosecutor	Mr. Tabb requested the Court find the Prosecutor had "… A conflict of interest in influencing the Jefferson County commission…"
09-AA-3 (*See* Documents attached to the Motion for Sanctions as exhibit 14)	Request the Court find a Conflict of Interest	Jefferson County Prosecutor	Mr. Tabb requested the Court find the Prosecutor had "… A conflict of interest on influencing the Jefferson County commission…"
09-AA-3 W.Va. Sct. App. pre-hearing # 12-063 (*See* Documents attached to the Motion for Sanctions as exhibit 15)	Motion to Disqualify	Various Justices of the West Virginia Supreme Court of Appeals	Mr. Tabb requested that various West Virginia Supreme Court of Appeals Justices recuse themselves (Justices Workman, Benjamin, Ketchum, Davis). Mr. Tabb alleges that "beginning with the 2008 case and continuing through the above styled matter that the four above-

			named justices have engaged in a course of conduct and intentional behavior that your petitioner believes demonstrates at least the appearance of bias if not actual bias against him and which course of conduct and bias violates ….[names numerous judicial canons]

A. The Underlying Issues in this Case are the Same or Similar Issues Tabb has Previously Presented and Have Been Previously Rejected

The underlying basis for the tax appeal in this case are many of the same or very similar arguments that Tabb has made in prior tax years which have proven to be unsuccessful. Consequently, Tabb is seeking to advance legal theories that have been previously denied, in similar or identical circumstances, which is the essence of a frivolous lawsuit and appear to be "presented for [an] improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation" within the meaning of W. Va. R. Civ. P. 11(b). In the alternative, they are *res judicata*.

A. Tabb Has Pursued Many Meritless Suits, Allegations, Claims or Administrative Actions Against the County and County Officials

Tabb has pursued many allegations, claims or administrative actions against the County and County officials which appear to be "presented for [an] improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation" within the meaning of W. Va. R. Civ. P. 11(b). These actions and acts involving the County government and government officials include the following: [7]

1. The instant case for the reasons stated herein.
2. Case 15-AA-4 David and Nadine Tabb v. Jefferson County Commission, sitting as a Board of Review and equalization, and Angie Banks, Assessor of Jefferson County.
    a. Mr. Tabb moved for review of his property tax assessment.
    b. In this proceeding, Mr. Tabb purports to have moved to disqualify the Circuit Judge, Hon. David Sanders, on or about July 23, 2015, although it remains to be determined whether the Motion was properly filed.
    c. A hearing was held on June 22, 2015. Both sides were allowed to present oral argument regarding a motion to dismiss previously filed by Cochran. The court set a follow-up hearing for July 20, 2015. However, as the hearing date approached, the court, on motion filed July 16, 2015, continued the July 20, 2015 hearing because it had not made a determination as to the motion to dismiss, and it was pointless to hold the hearing prior to that determination. Mr. Tabb showed up at the courthouse for the (now continued) July 20, 2015 hearing. Judge Sanders did not entertain argument or accept documents on July 20, 2015 from Mr. Tabb because the hearing had been previously continued and counsel for the respondent was not present. The court subsequently dismissed the case without holding further hearings because the court

determined it did not have jurisdiction since the original complaint was not properly served and there was no civil cover sheet.

d. In this proceeding, Mr. Tabb moved to disqualify the Assistant Prosecutor, Nathan Cochran, on or about July 20, 2015, based on an allegation that Attorney Cochran violated rule 3.7 of the rules of professional responsibility.
e. Tab further filed a Motion to vacate and set aside the Motion to Dismiss on or about July 31, 2015.[8] The Court denied his Motion on December 7, 2015. Tabb, on December 17, 2015, filed a Motion to Vacate and set aside Order of December 7, 2015 Denying Motion to Vacate, which the current Judge (Hon. M. Lorensen) granted. The case is currently before the Court on the Motion to Vacate the Motion to Dismiss.

3. The school levy case, *Tabb v. Jefferson County Board of Education and Jefferson County Commissio*n, Civil Action No. 15-C-282
    a. This case was transferred to the Hon. Judge Cookman and was recently dismissed.
    b. In this case, the Defendants/Respondents have filed Motions to Dismiss that have recently been granted.
    c. Mr. Tabb has challenged the recent school levy in Jefferson County as improperly conducted.

4. 13-C-432 *David C. Tabb v. The County Commission of Jefferson County, West Virginia*. Summary and highlights include:

    a. Mr. Tabb filed suit against the Jefferson County Commission. The complaint is meandering and unclear in its requests for relief but seems to generally claim that the County Commission must conduct meetings only in the Courthouse, and that other locations were unlawful unless this Court or the West Virginia Supreme Court grants special permission, absent special circumstances.
    b. Ultimately, on June 17, 2014, the parties entered a joint voluntary dismissal order agreeing that flags were to be posted outside of the library meeting room, but not specifying the size or type of mount, and dismissing with prejudice the issue that the library meeting room was a proper meeting place for the Jefferson County Commission, that a bulletin board would be posted containing the meeting agenda, and resolving all other issues in the case.
    c. Tabb filed further motions with the court in December of 2014 claiming the agreement had not been kept. A hearing was held on April 24, 2014 about that issue, and the Court entered an Order on June 22, 2015 affirming that all other allegations in the case (except the flags) had been resolved and instructing the County Commission to follow the Order of June 17, 2014.
    d. The Commission filed a Motion to clarify or amend the Order of June 22, 2015, since the Commission believed it had already followed the Order of June 17, 2014.[9]
    e. Mr. Tabb subsequently filed a petition for contempt before the circuit Court, asking the Court to hold the Commission in contempt.
    f. The court held a hearing on Tabbs petition for contempt. Ultimately, after testimony before the court and the commission supplying the court with some additional information about the cost of mounting flags, the court dismissed the petition for contempt and ultimately dismissed the case.

g. In this case, Mr. Tabb also filed a Motion for Disqualification of Hon. Judge Frye and a complaint of "judicial misconduct"
h. Mr. Tabb has filed a notice of Appeal with the West Virginia Supreme Court of Appeals, which is pending and is in the briefing cycle.

5. 13- C- 205 *David C. Tabb v Ralph Lorenzetti*. Summary and highlights include:
   a. Mr. Tabb filed suit against Jefferson County Prosecutor Ralph Lorenzetti. The complaint is meandering and unclear in its requests for relief but seems to generally claim that a local newspaper's characterization of Mr. Tabb as a "regular County Commission gadfly" and the newspaper's stating that Socrates likened himself to a gadfly before his death was either a threat to Mr. Tabb's life or an encouragement to others to endanger Mr. Tabbs's life. The lawsuit apparently seeks information and/or FOIA information as to Lorenzetti's actions to decide whether Lorenzetti should file criminal charges against the author and/or newspaper, and the scope of the investigation.
   b. No.: 13-1192 is the West Virginia Supreme Court of Appeals file on this case. The West Virginia Supreme Court dismissed Tabb's petitions for Appeal and Reconsideration.

6. Cases number 15-0323 and 15-0324, which are appeals from Public Service Commission decisions before the West Virginia Supreme Court of Appeals, in which Mr. Tabb is challenging 911 fees, and claiming that the Public Service Commission should control and/or approve the County's legislative decisions about 911 service. The West Virginia Supreme Court of Appeals declined to grant Tabb relief.

7. 11-AA-3 Shenandoah Sales v Assessor, et. al., claiming that the Commissioners were improperly trained and that the system was faulty.

8. 10-AA-1 Shenendoah Sales and Service v. Lyn Widmyer, et. al. Issues regarding assessment.

9. 09-AA-3 Shenandoah Sales v. Assessor, et. al.
   a. Mr. Tabb filed a tax challenge because of the Tax value. Mr. Tabb felt the prosecutor had a conflict of interest.
   b. The case went to the West Virginia Supreme Court of Appeals case number 10-0645

10. 08-C-121 *Shenandoah Sales and Service v. Assessor*. A tax assessment case.

11. *Shenandoah Sales & Serv., Inc. v. Assessor of Jefferson Cnty.*, 228 W. Va. 762, 764-65, 724 S.E.2d 733, 735-36 (2012) a consolidated appeal of two cases from the Circuit Court of Jefferson County wherein the circuit court dismissed two of the tax appeals filed by Mr. Tabb's corporation, Shenandoah Sales & Services, Inc. ("corporation" or "Shenandoah"), disputing the Jefferson County Assessor's valuation of real estate owned by the corporation. The West Virginia Supreme Court of Appeals affirmed the circuit court's orders dismissing the two appeals.

12. It should be noted that several issues were appealed to the West Virginia Supreme Court of

Appeals, and some to the United States Supreme Court, which, while not specifically numbered, are included in the parameters of this Motion. The United State Supreme Court filings include:

a. No.: 14-603 *Tabb v. Lorenzetti*. Petition for writ of certiorari to the Supreme Court of Appeals of West Virginia denied. 135 S.Ct. 1182 (Mem), 191 L.Ed.2d 134, 83 USLW 3350, 83 USLW 3623, 83 USLW 3625 (2015)
b. No.: 13-1542 *In re David C. Tabb*. Upon information and belief, a petition for writ of mandamus in the Lorenzetti case which was denied. 135 S.Ct. 160 (Mem), 190 L.Ed.2d 240, 83 USLW 3035, 83 USLW 3160, 83 USLW 3195 (2014)
c. No.: 12-M16 *Tabb v. Banks* Motion to direct the Clerk to file a petition for writ of certiorari out of time denied. 133 S.Ct. 396 (Mem), 184 L.Ed.2d 13, 81 USLW 3159. (2012)
d. No.: 12-628 *In re David C. Tabb* Petition for writ of mandamus denied. 133 S.Ct. 986 (Mem), 184 L.Ed.2d 774, 81 USLW 3334, 81 USLW 3406, 81 USLW 3409 (2013) Petition for rehearing denied 133 S.Ct. 1626 (Mem), 185 L.Ed.2d 609, 81 USLW 3514 (2013).
e. No.: 10-1023 *Tabb v. Bordier* Petition for writ of certiorari to the Circuit Court of West Virginia, Jefferson County, denied. 131 S.Ct. 2104 (Mem), 179 L.Ed.2d 892, 79 USLW 3494, 79 USLW 3589, 79 USLW 3591 (2011).

These suits, appeals, and other challenges have been unsuccessful endeavors on the part of Tabb, bringing front and center the reality that his numerous and frequent claims are meritless, and amount to harassment within the meaning of Rule 11.

A. Tabb Has Made Numerous Statements Before the County Commission that Show His Intent to Pursue Meritless Claims or Otherwise Harass the County and County Officials

Mr. Tabb regularly appears in the public comments portion of the regular meetings of the Jefferson County Commission to confront the Commission and accuse them of wrongdoing. While the Commission has stated that it respects the rights of the public to engage in political discussion, Mr. Tabb's comments can seem harassing, threatening, or intimidating, especially when taken in the context of the pattern of frivolous legal harassment that the Motion for Sanctions encompasses. The Court was presented with some recent examples:

1. In the September 3, 2015 meeting, Mr. Tabb remarked that he had been absent from recent meetings but warned the Commission that " . . . the only time you have to worry about me is when I'm not here." (see transcript of the September 3, 2015 meeting attached to the Motion for Sanctions as exhibit 17)

2. In the September 17, 2015 meeting, Mr. Tabb stated that ". . . maybe the County Commission needs to be tethered. You're cruel to the taxpayers and the citizens of this county. I do not apologize for any actions that I have taken nor will I…." (see transcript of the September 17, 2015 meeting attached to the Motion for Sanctions as exhibit 18)

3. In the October 1, 2015 meeting, Mr. Tabb (referring to the Hon. Judge Frye) stated that ". . . he (the judge) was ready to put the Jefferson County commission as a whole to incarcerate them for not doing what was done but somebody with a higher power got to the judge. I will fight that. It's not over by any means." (see transcript of the October 1, 2015 meeting

attached to the Motion for Sanctions as exhibit 19)

1. In the October 15, 2015 County commission meeting, Mr. Tabb states he is again renewing his allegation with Judge Frye that the County commission is "still not in compliance" with Mr. Tabb's claim that the commission is improperly flying the American and state flags. Mr. Tabb made this allegation in spite of the fact that the court had indicated it would withhold judgment on the issue until it had received further information from the commission, of which Mr. Tabb was well aware. (see transcript of the October 15, 2015 meeting attached to the Motion for Sanctions as exhibit 20)
    a. It is significant that Mr. Tabb also accuses the commission of "calling me a gadfly. Didn't have a problem with the paper putting in there that Socrates once likening himself as a gadfly and the Athenians put him to death."
    b. The significance here is that the commission did not originally call Mr. Tabb a gadfly. That comment originated in a newspaper article that Mr. Tabb alleges amounted to a death threat against him and resulted in case number 13- C- 205 *David C. Tabb v Ralph Lorenzetti* which is briefly described above.

2. In the October 29, 2015 County commission meeting, Mr. Tabb again said that "I've stated before that I believe that the County commission and other elected officials need to be tethered and I hope you include that and for the update. . . " when challenged by one of the commissioners, Mr. Tabb claimed that the commission had violated his civil rights and stated that "you will be notified by the authorities" and renewed his call that the commission "need[s] to be tethered. . . " (see transcript of the October 29, 2015 meeting attached to the Motion for Sanctions as exhibit 21)

3. On the November 19, 2015 County commission meeting, Mr. Tabb stated that, in dealing with the school levy, he had ". . . contacted the Secretary of State and the Atty. Gen.. . ." to apparently claim that the signs advertising the upcoming school levy were false. (see transcript of the November 19, 2015 meeting attached to the Motion for Sanctions as exhibit 22)
    a. Mr. Tabb also seems to claim that he was challenging for the first time "whether or not this county commission is sitting proper" which appears to be a total disregard of the fact that he had made much the same challenge in case number 13 – C – 432 and had agreed in that case that the County commission could meet in the library.
    b. An additional claim made by Mr. Tabb is that, since the West Virginia Supreme Court of Appeals had at that time recently rejected Mr. Tabb's challenge concerning the local 911 system (holding that the public service commission has no jurisdiction to regulate the County commission) that he was now free to challenge a utility locally, instead of before the public service commission.
    c. Perhaps most disturbing is Mr. Tabb's claim that this "will only be one of many challenges. I will not be deterred. I don't have to win.. . ." which seems to indicate that Mr. Tabb is intent on filing additional suits whether or not they have merit.

4. At the February 4, 2016 meeting, Tabb said "I have taken on another challenge - the highway department" and suggesting that his other lawsuits (including this case) have created a rift between the highway department and the Jefferson County commission, stating "I hope so"; suggesting the "governor probably gets a little kickback" from the school levy (which Tabb has also recently challenged in case number 15-C-282) and stating that he will

challenge the County's snow removal methods, commenting "sounds like everything is stirring up nice." *See* meeting of the Jefferson County Commission at minutes 9:12 through 12:24 of the February 4, 2016 Jefferson County Commission meeting archive at http://70.88.132.180/videos/2016-02-04_Time0929.mp4

5. At the March 3, 2016 meeting Tabb stated that he was contacting Senators in an effort to stop snow removal cost reimbursement for Jefferson County based on this year's snow storm. Tabb also stated he will be able to "question everybody" (presumably in depositions) in the school levy case and added that "there's a whole lot more coming." *See* meeting of the Jefferson County Commission at minutes 5:10 through 8:31 of the March 3, 2016 Jefferson County Commission meeting archive at http://70.88.132.180/videos/2016-03-03_Time0929.mp4

1. At the March 17, 2016 meeting Tabb indicated to the commission that he had filed another property tax appeal and mandamus and stated he has "a lot more stuff coming." *See* meeting of the Jefferson County Commission at minutes 4:05 through 7:09 of the March 17, 2016 Jefferson County Commission meeting archive at http://70.88.132.180/videos/2016-03-17_Time0931.mp4

I. CONCLUSIONS OF LAW

A. Rule 11 Applies To *Pro Se* Litigants

Rule 11 sanctions apply to *pro se* litigants:

> The Court acknowledges that Plaintiff is proceeding pro se. However, Rule 11 of the Federal Rules of Civil Procedure still applies to him and his filings. See *Vukadinovich v. McCarthy*, 901 F.2d 1439, 1445 (7th Cir.1990) ("Status as a pro se litigant may be taken into account, but sanctions can be imposed for any suit that is frivolous."); *Farguson v. Mbank Houston, N.A.*, 808 F.2d 358, 359 (5th Cir.1986) (A party's pro se status does not serve as an "impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.").

Rahmi v. Sovereign Bank, N.A., No. 3:12-CV-87, 2013 WL 1975657, at *3 (N.D.W. Va. May 13, 2013)

Additionally, while not controlling, it is appropriate for the Court to consider Federal decisions regarding sanctions as persuasive,[10] since Rule 11 of the W.Va. R.Civ.P. is substantively similar to the Federal rules.

> Because the West Virginia Rules of CivilProcedure are patterned after the FederalRules of CivilProcedure, we often refer to interpretations of the Federal Rules when discussing our

> own rules. *See Painter v. Peavy,* 192 W.Va. 189, 192 n. 6, 451 S.E.2d 755, 758 n. 6 (1994) ("Because the WestVirginia Rules of CivilProcedure are practically identical to the Federal Rules, we give substantial weight to federal cases ... in determining the meaning and scope of our rules."). *See, e.g., State v. Sutphin,* 195 W.Va. 551, 563, 466 S.E.2d 402, 414 (1995) ("The WestVirginia Rules of Evidence are patterned upon the Federal Rules of Evidence, ... and we have repeatedly recognized that when codified procedural rules or rules of evidence of WestVirginia are patterned after the corresponding federal rules, federal decisions interpreting those rules are persuasive guides in the interpretation of our rules." (citations omitted)).

Keplinger v. Virginia Elec. & Power Co., 208 W.Va. 11, 20 n. 13, 537 S.E.2d 632, 641 n. 13 (2000), cited in *Cattrell Companies, Inc. v. Carlton, Inc*., 217 W. Va. 1, 8, 614 S.E.2d 1, 8 (2005)

A. The Appeal in This Case is Frivolous Because the Board of Review had no Choice but to Deny Tabb's Tax Review Since Tabb Presented No Evidence at the Hearing

The appeal in this case is frivolous because the Board of Review and Equalization had no choice but to deny Tabb's tax review since Tabb presented no evidence at the hearing.
Because Tabb failed to participate in the hearing below or introduce evidence before the board, there is consequently no record in the case below, save for the Orders entered by the Board and some letters to Tabb stating that his appeal was denied. The Orders from the hearing below state in part that "Mr Tabb refused to have the Board of Review and Equalization hear evidence regarding his appeal based upon Motion to Recuse and Disqualify provided to the Assessor on this same date" and that "Mr. Tabb left the room before the Board heard any evidence regarding this appeal of his assessment."
Based on Tabb's failure to present evidence, the Board found, by vote of 3/0 that Tabb's assessment was not erroneous. [11]
Because Tabb failed to present evidence at the hearing, Tabb lacks standing to file a Petition for Appeal. The West Virginia Code states:

> (a) *Any person* claiming to be aggrieved by any assessment in any land or personal property book of any county *who shall have appeared and contested the valuation* as provided in section twenty-four or twenty-four-a of this article, or whose assessment has been raised by the county commission sitting as a Board of Equalization and Review above the assessment fixed by the assessor *may*, at any time up to thirty days after the adjournment of the board sitting as a Board of Equalization and Review, or at any time up to thirty days after the order of the Board of Assessment Appeals is served on the parties, *apply for relief to the circuit court of the county in which the property books are made out*;

W. Va. Code § 11-3-25(a) (Portions omitted, emphasis added)

In this case, Tabb appeared at the hearing to insist the Board recuse itself, but, because he left and failed to participate in any hearing or introduce evidence before the board, did not "contest the valuation" as required in W. Va. Code § 11-3-25(a). Tabb therefore has no standing to appeal, since he did not "contest[ ] the valuation" at the hearing below. He therefore cannot "apply for relief" in the Circuit Court. *id*.
Tabb argues that he did present evidence because he dropped some documents off with the Board's

secretary at the hearing, however, this is in direct contradiction with the Board's Order, and, in any event, Tabb did not participate in the hearing (other than to argue that the Board should be recused) and did not present any evidence at the hearing or enter documents into evidence in the hearing. Consequently, there was no meaningful record from which to appeal, in contravention to W.Va. Code 11-3-25. Additionally, there are no procedural irregularities "not involving the negligence of the party alleging the record is inadequate" *id* that would provide grounds for a remand of the case to the Board.

Since Tabb has the burden of proof[12] at the hearing and offered no proof, and there is no record from which to appeal, there is therefore no valid ground for remand. Dismissal was appropriate, and the Motion for sanctions as molded by Respondents is well founded.

Instead of the challenge provided for in the *above* statutes, Tabb's "Assignments of Error" in his Petition for Appeal are mostly if not entirely based on his similar or identical appeals from 2015 and 2014 and prior years.[13] Tabb's claim from 2016 seems to be only that the Board in 2016 should have recused itself. However, since Tabb did not introduce any evidence in the hearing below, his Petition's "Assignments of Error" have no factual basis, and, even if they did, do not challenge the subject matter stated in W. Va. Code Ann. § 11-3-24.

Consequently, since Tabb raised no issues in the hearing below, he simply has nothing to appeal, and his Petition for Appeal of this tax case is frivolous. This is doubly true since his Appeal seems to be based on his Motion to Recuse the Board, and that Motion to Recuse is Tabb's *modus operandi* in dealing with litigation when he perceives that the course of the litigation might be turning against him. The Petitioner's current campaign to Appeal the Board's Orders appears to be "presented for [an] improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation" within the meaning of W. Va. R. Civ. P. 11(b).

A. Petitioners' Motion to Recuse the Board of Review is also Frivolous.

Tabb's Petition for Appeal and his Verified Petition for Mandamus are frivolous within the meaning of W.Va.R.Civ.P. 11(b) not only because Tabb presented no evidence in the case below (yet sought this court to rule on appeal) but also because Tabb is once again engaging in meritless litigation and motions for recusal in an attempt to manipulate the system to harass and intimidate the respondents. Tabb's Petition for Appeal and his Petition for Mandamus seem to be based on his Motion to Recuse the Board of Review and Equalization below. Respondent's Motion shows that it is standard practice for Mr. Tabb to move to recuse or disqualify Judges, County Commissioners, Boards, and Attorneys who decide or handle cases in ways which Tabb perceives are unfavorable, or who file documents that are in opposition to Tabb's designs.

The Respondents claim that the underlying motion to recuse the Board of Review and Equalization in this case is nothing more than a continuation of Tabb's *modus operandi* in dealing with litigation and amount to vexatious, wanton, or oppressive conduct. Since the motion to Recuse and subsequent Petition for Appeal and Verified Petition for Mandamus are not presented for a proper purpose, not warranted by existing law or presented in a reasonable argument to extend the law, they are frivolous within the meaning of W.Va.R.Civ.P. 11(b).

Upon review of the evidence presented in this case, the Court agrees with the Respondents and FINDS that the underlying recusal motion in this case, and the resultant appeal, are frivolous within the meaning of W.Va.R.Civ.P. 11 and is merely a continuation of Tabb's *modus operandi* in dealing with litigation and amount to vexatious, wanton, or oppressive conduct within the meaning of W.Va.R.Civ.P. 11.

A. Petitioners' Conclusory Request to Sanction Attorney Brandy Sims is also Frivolous.

Tabb requests at the end of his Petition for Appeal to sanction Attorney Brandy Sims because she, it is alleged, "allow[ed] the Board of Review and Equalization to continue when a recusal was requested."[14] Even assuming for the purposes of this Motion that Tabb's allegations are true, Tabb's arguments about sanctioning counsel Brandy Sims are frivolous since Attorney Sims by law does not control the Board and has no ability to determine whether or not the Board will recuse itself.

A. The Court has Authority to Fashion Relief Both Under Rule 11 and Pursuant to its Inherent Power as a Court

A Court has both authority to protect its docket and to fashion relief both under Rule 11 of the West Virginia Rules of Civil Procedure and pursuant to its inherent power as a Court. The United States Court of Appeals for the Second Circuit summed up this power when it stated:

> We act, therefore, not only as an arbiter of a dispute between private parties but also in defense of the means necessary to carry out our constitutional function. In such circumstances, the power to act against vexatious litigation is clear. As we previously have stated:
>
> > [t]he United States Courts are not powerless to protect the public, including litigants ... from the depredations of those ... who abuse the process of the Courts to harass and annoy others with meritless, frivolous, vexatious or repetitive ... proceedings.
>
> *In Re Hartford Textile Corp.,* 659 F.2d 299, 305 (2d Cir.1981), *cert. denied,* 455 U.S. 1018, 102 S.Ct. 1714, 72 L.Ed.2d 136 (1982). Moreover, the traditional standards for injunctive relief, *i.e.* irreparable injury and inadequate remedy at law, do not apply to the issuance of an injunction against a vexatious litigant. . . . . A history of litigation entailing "vexation, harassment and needless expense to [other parties]" and "an unnecessary burden on the courts and their supporting personnel" is enough. *Matter of Hartford Textile Corp.,* 681 F.2d 895, 897 (2d Cir.1982), *cert. denied,* 459 U.S. 1206, 103 S.Ct. 1195, 75 L.Ed.2d 439 (1983).

In re Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir. 1984) (speaking of U.S. Courts, portions omitted)

In this case, the history of this Petitioner is clear. Petitioner, for whatever reason, and no matter what his cause *du jour* may be, merely seeks to file lawsuits and other claims to harass or intimidate the Jefferson County Commission, its agents and employees, and related entities. That harassment may come in the form of a challenge to the Commission's meeting location, to the way it flies the American flag, a challenge to the 911 system, to the school levy, to the tax system, or a plethora of other issues, but whatever entity is the focus of the current complaint, Tabb's claims before the Jefferson County Commission seem to indicate that Tabb is intent on filing additional suits whether or not they have merit.

As set forth above, Tabb stated to the Commission:

- At the November 19, 2015 meeting: this "will only be one of many challenges. I will not be deterred. I don't have to win.. . .".
- At the March 3, 2016 meeting: "there's a whole lot more coming."
- At the March 17, 2016 meeting Tabb indicated to the commission that he had filed another property tax appeal and mandamus and stated he has "a lot more stuff coming."

This Court has the authority[15] to stop this frivolous campaign, as Judge Groh recognized in *Rahmi v. Sovereign Bank, N.A.*, No. 3:12-CV-87, 2013 WL 1975657, at *3 (N.D.W. Va. May 13, 2013) "A party's *pro se* status does not serve as an "impenetrable shield, for one acting *pro se* has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets." citing *Farguson v. Mbank Houston, N.A.,* 808 F.2d 358, 359 (5th Cir.1986).[16]

Additionally, the law in West Virginia does not preclude this Court from exercising jurisdiction over the case even after the case is dismissed, up until the time an appeal is filed. See *State ex rel. Dodrill v. Egnor*, 198 W. Va. 409, 413, 481 S.E.2d 504, 508 (1996) "A trial court is deprived of jurisdiction only when it has entered a 'final' order within the contemplation of WVA.Code, 58–5–1 [1926], and the final order has been appealed properly to this Court." Citing *Bartles v. Hinkle*, 196 W.Va. at 388, 472 S.E.2d at 834.

Likewise, the Court is mindful of the ruling in Syllabus Point 2 of *Bartles v. Hinkle,* supra, that states: "In formulating the appropriate sanction, a court shall be guided by equitable principles. Initially, the court must identify the alleged wrongful conduct and determine if it warrants a sanction. The court must explain its reasons clearly on the record if it decides a sanction is appropriate. To determine what will constitute an appropriate sanction, the court may consider the seriousness of the conduct, the impact the conduct had in the case and in the administration of justice, any mitigating circumstances, and whether the conduct was an isolated occurrence or was a pattern of wrongdoing throughout the case." Syllabus Point 2, *Bartles v. Hinkle,* 196 W.Va. 381, 472 S.E.2d 827 (1996).

In this case, when the Court considers

- the seriousness of the conduct as stated herein,
- the impact the conduct had in the case and in the administration of justice,
- any mitigating circumstances, and
- whether the conduct was an isolated occurrence or was a pattern of wrongdoing throughout the case

it becomes apparent that Tabb has engaged in a serious wholesale "pattern of wrongdoing" in this and numerous other cases that negatively impact the administration of justice.

The Court finds no mitigating circumstances that explain Tabb's incessant quest to litigate against the County, its employees, and other officials. Based on the evidence and arguments presented in the Motion for sanctions, and Tabb's own statements before the Commission and elsewhere, the Court FINDS that it is unlikely that Tabb will stop or even slow his litigation and other complaints absent active intervention by the Court, therefore a lesser sanction is unavailable.

Like the Court in *Rahmi* and the Court *in re Martin-Trigona*, this Court has the authority to grant this Motion and fashion an injunction or other relief prohibiting Mr. Tabb from bringing new actions or appeals in any tribunal or administrative body without leave from the court, or without obtaining a review and signature from a licensed, practicing, West Virginia attorney. This relief will allow Mr. Tabb the ability to pursue legitimate complaints without allowing him to continually file complaints simply for the sake of harassment or intimidation of County officials.

For the reasons stated herein, this Court GRANTS the underlying Motion and ORDERS that Mr. Tabb is prohibited from bringing new civil or administrative actions or appeals in any court, commission, administrative body, agency or other tribunal, without first noticing the

opposing parties and obtaining leave from the Court, or without obtaining a review and signature from a licensed, practicing, West Virginia attorney who certifies the new civil or administrative actions or appeal is not filed in violation of Rule 11 of the West Virginia Rules of Civil Procedure.

The Court notes all parties' objections to this Order to all adverse rulings.

The Clerk is directed to send copies of this Order to all counsel and pro se parties.

IT IS SO ORDERED

Order Prepared by:

Respondents County Commission of Jefferson County, et.al.
By Counsel:

/s/: Nathan Cochran
Office of the Jefferson County Prosecuting Attorney
Nathan P. Cochran
Assistant Prosecuting Attorney
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[1] Petition at page 1.
[2]*See* Orders of the Board of Review and Equalization that were filed contemporaneously with the Petition and are also attached to the Motion for Sanctions as exhibit 16.
[3]*See* Orders of the Board of Review and Equalizationthat were filed contemporaneously with the Petition and attached to Respondents' Motion as exhibit 16.
[4] Tabb also moves for mandamus to certify the record.
[5] Refers to Jefferson County Circuit Court cases unless otherwise noted.
[6] Respondents state that this table contains a summary only, and does not necessarily contain every nuance of every issue. The Defendant/Respondent refers the Court to the original pleadings for additional detail.
[7] All cases are in the Circuit Court of Jefferson County, West Virginia, unless otherwise noted. Some of these cases are also reflected in the table containing the recusal Motions above.
[8] Tabb also claimed the Court reporter did not accurately transcribe the discussion Tabb had with Judge Sanders. (Tabb attached a statement written from his memory that he claimed accurately described what was said).
[9]The Circuit Court Judge, the Hon. Andrew Frye, is a senior status judge who was assigned to the 13-C-432 case. Although the Motion to Alter or amend was timely filed and stamped with the Circuit Clerk; David Tabb received a copy of the Motion when it was filed and filed a response to the Motion; and Attorney Cochran filed a reply, the Judge stated that he did not receive a courtesy copy of the Motion when it was filed with the Circuit Clerk and denied the Motion on that basis. The reason the Judge did not receive a courtesy copy is unknown, since it is the practice of the Prosecutor's office to send courtesy copies to the Judge, and is explained by Respondents as due to unknown difficulties in transmission that occurred because the Judge is located out of the area.

[10]Because the WestVirginia Rules of CivilProcedure are patterned after the FederalRules of CivilProcedure, we often refer to interpretations of the Federal Rules when discussing our own rules. *See Painter v. Peavy,* 192 W.Va. 189, 192 n. 6, 451 S.E.2d 755, 758 n. 6 (1994) ("Because the WestVirginia Rules of CivilProcedure are practically identical to the Federal Rules, we give substantial weight to federal cases ... in determining the meaning and scope of our rules."). *See, e.g., State v. Sutphin,* 195 W.Va. 551, 563, 466 S.E.2d 402, 414 (1995) ("The WestVirginia Rules of Evidence are patterned upon the Federal Rules of Evidence, ... and we have repeatedly

recognized that when codified procedural rules or rules of evidence of WestVirginia are patterned after the corresponding federal rules, federal decisions interpreting those rules are persuasive guides in the interpretation of our rules." (citations omitted)).

Keplinger v. Virginia Elec. & Power Co., 208 W.Va. 11, 20 n. 13, 537 S.E.2d 632, 641 n. 13 (2000), cited in *Cattrell Companies, Inc. v. Carlton, Inc.,* 217 W. Va. 1, 8, 614 S.E.2d 1, 8 (2005)

[11] See Orders of the Board of Review and Equalization that were filed contemporaneously with the Petition and attached to the Motion for Sanctions as exhibit 16.

[12]A taxpayer's initial avenue for relief from an allegedly erroneous property valuation lies with the county commission, sitting as a board of equalization and review. *W. Va.Code §* 11–3–24 (1979). The burden upon the taxpayer to demonstrate error with respect to the State's valuation is heavy in these adjudicative proceedings: " 'It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of such fact must be clear.' Syl. pt. 7, *In re Tax Assessments Against Pocahontas Land Co.,* 172 W.Va. 53, 303 S.E.2d 691 (1983)." Syl. pt. 1, *Western Pocahontas Properties, Ltd. v. County Comm'n of Wetzel County,* 189 W.Va. 322, 431 S.E.2d 661 (1993). In challenging a tax valuation, "[t]he burden [of proof] clearly falls upon ... [the taxpayer] to demonstrate through clear and convincing evidence that the tax assessments were erroneous." *In re Maple Meadow Min. Co.,* 191 W.Va. 519, 523, 446 S.E.2d 912, 916 (1994); *see also Pocahontas Land,* 172 W.Va. at 61, 303 S.E.2d at 699 ("It is obvious that where a taxpayer protests his assessment before a board, he bears the burden of demonstrating by clear and convincing evidence that his assessment is erroneous."); syl. pt. 2, in part, *Western Pocahontas Properties, Ltd., supra* ("The burden is on the taxpayer challenging the assessment to demonstrate by clear and convincing evidence that the tax assessment is erroneous.")

In re Tax Assessment Against Am. Bituminous Power Partners, L.P., 208 W. Va. 250, 254, 539 S.E.2d 757, 761 (2000).

[13]*See generally* Petition pages 4-9.

[14] (*See* Petition at Pages 9-10).

[15] In Syllabus Point 3 of *Shields v. Romine,* 122 W.Va. 639, 13 S.E.2d 16 (1940), this Court held that: "[a] court 'has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction.' 14 Am. Juris., Courts, section 171." Included within the circuit court's inherent power is the power to sanction. "[A]trial court has inherent power to impose sanctions as a part of its obligation to conduct a fair and orderly trial." *Prager v. Meckling,* 172 W.Va. 785, 789, 310 S.E.2d 852, 856 (1983) (upholding the circuit court's right to sanction a party for failing to supplement its discovery responses).

State ex rel. Rees v. Hatcher, 214 W. Va. 746, 749, 591 S.E.2d 304, 307 (2003)

[16]*See also* the Federal Court system's interpretation of this issue in *Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384, 395-96, 110 S. Ct. 2447, 2455-56, 110 L. Ed. 2d 359 (1990):

It is well established that a federal court may consider collateral issues after an action is no longer pending. For example, district courts may award costs after an action is dismissed for want of jurisdiction. See 28 U.S.C. § 1919. This Court has indicated that motions for costs or attorney's fees are "independent proceeding[s] supplemental to the original proceeding and not a request for a modification of the original decree." *Sprague v. Ticonic National Bank,* 307 U.S. 161, 170, 59 S.Ct. 777, 781, 83 L.Ed. 1184 (1939). Thus, even "years after the entry of a judgment on the merits" a federal court could consider an award of counsel fees. *White v. New Hampshire Dept. of Employment Security,* 455 U.S. 445, 451, n. 13, 102 S.Ct. 1162, 1166, n. 13, 71 L.Ed.2d 325 (1982). A criminal contempt charge is likewise " 'a separate and independent proceeding at law' " that is not part of the original action. *Bray v. United States,* 423 U.S. 73, 75, 96 S.Ct. 307, 309, 46 L.Ed.2d 215 (1975), quoting *Gompers v. Buck's Stove & Range Co.,* 221 U.S. 418, 445, 31 S.Ct. 492, 499, 55 L.Ed. 797 (1911). A court may make an adjudication of contempt and impose a contempt sanction even after the action in which the contempt arose has been terminated. See *United States v. Mine Workers,* 330 U.S. 258, 294, 67 S.Ct. 677, 696, 91 L.Ed. 884 (1947) ("Violations of an order are punishable as criminal contempt even though ... the basic action has become moot"); *Gompers v. Buck's Stove & Range Co., supra,* 221 U.S., at 451, 31 S.Ct., at 502 (when main case was settled, action became moot, "of course without prejudice to the power and right of the court to punish for contempt by proper proceedings"). Like the imposition of costs, attorney's fees, and contempt sanctions, the imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate. Such a

determination may be made after the principal suit has been terminated.
Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395-96, 110 S. Ct. 2447, 2455-56, 110 L. Ed. 2d 359 (1990)

[COPY AND PASTE THE ORDER HERE]

/s/ Judge David Sanders
Circuit Court Judge
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.