

**IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

WEST VIRGINIA RADIO CORPORATION

CIVIL ACTION NO. 13-C-468

Plaintiff,

HON. THOMAS C. EVANS III

v.

**WEST VIRGINIA UNIVERSITY BOARD OF
GOVERNORS, WEST VIRGINIA UNIVERSITY
FOUNDATION, INC., WEST VIRGINIA MEDIA
HOLDINGS, LLC, ANDREW A. PAYNE, III, DAVID
B. ALVAREZ, ALBERT BRAY CARY, JR., RALPH
BALLARD, RICHARD BALLARD, OLIVER LUCK,
JAMES P. CLEMENTS, and IMG COLLEGE, LLC**

Defendants.

CASE MANAGEMENT ORDER

THIS MATTER is now before the Court for a conference in accordance with Rules 16 and 26(f) of the West Virginia Rules of Civil Procedure. It appears to the Court after conferring with counsel for Plaintiff West Virginia Radio Corporation ("WVRC") and Defendants West Virginia University Board of Governors, West Virginia University Foundation, Inc., West Virginia Media Holdings, LLC, Andrew A. Payne, III, David B. Alvarez, Albert Bray Cary, Jr., Ralph Ballard, Richard Ballard, Oliver Luck, James P. Clements, and IMG College, LLC, (each a "Party," and collectively the "Parties") that the Court should enter this Case Management Order to aid in the fair and efficient disposition of this complex action, reduce expenses to all Parties, protect the Parties from unreasonable annoyance and undue burdens, and facilitate the administration of discovery in this matter consistent with the ends of justice within a reasonable time.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. General Scope of Order

This Order establishes certain procedures to be used and sets deadlines for various matters likely to arise in this complex action before trial. This Order shall remain in effect until rescinded by the Court or superseded by any subsequent Case Management Order. The West Virginia Rules of Civil Procedure and the West Virginia Trial Court Rules, specifically West Virginia Trial Court Rule 29, shall govern all matters not expressly covered by this Order.

2. Application of Order

Unless specifically ordered to the contrary, this Order and any subsequent Case Management Order shall bind all Parties to this action. If any additional party is added to the case in the future, WVRC shall provide notice of this Order and any subsequent Case Management Order to any such additional party within ten (10) days after the party is added to the case.

3. Modification of Order

The terms of this Order may be changed, amended, or supplemented by agreement of the Parties or by Order of the Court as deemed appropriate upon motion of any Party or upon the Court's own motion.

4. Liaison Counsel

Defendants shall designate Liaison Counsel to communicate with the Court and each other on administrative and scheduling matters. As of the date of this order, Defendants have designated the following as Liaison Counsel:

Jeffrey M. Wakefield, Esquire
Flaherty Sensabaugh Bonasso, PLLC
200 Capitol Street
P.O. Box 2824
Charleston, WV 25338-3843
Counsel For West Virginia University Board of Governors

The Court may modify the list of Liaison Counsel from time to time as circumstances warrant.

Liaison Counsel shall be responsible for prompt dissemination of information from the Court or the Parties to one another. Communications by and among Liaison Counsel and counsel for any defendant shall be subject to a joint defense privilege.

5. Communication with the Court

A courtesy copy of each document filed in this action and all communications with the Court shall be provided to the Honorable Thomas C. Evans, III and his staff via e-mail at the following addresses: evansjudge@hotmail.com; Lindsay.Gainer@courtswv.gov, and carolburgess914@hotmail.com. If a document is too large to attach to an email, it may be mailed to Judge Evans at the following address: Jackson County Courthouse, P.O. Box 800, Ripley, WV 25271 or such other address as the Court may designate.

Providing a courtesy copy of documents to the Court as described in this section shall not constitute "filing with the Court" as required by Rule 5 of the Rules of Civil Procedure, unless specifically allowed by the Court by noting the filing date on the courtesy copy and transmitting the document to the Office of the Clerk.

In the event that the Court wishes to communicate with Parties, the Court need only communicate with the following Counsel:

For Plaintiff:

Frank E. Simmerman, Jr.
Simmerman Law Office, PLLC
254 East Main Street
Clarksburg, WV, 26301
Counsel for West Virginia Radio Corporation

For Defendants:

Jeffrey M. Wakefield, Esquire
Flaherty Sensabaugh Bonasso, PLLC
200 Capitol Street
P.O. Box 2824
Charleston, WV 25338-3843
Counsel For West Virginia University Board of Governors

6. Communication Among the Parties

WVRC's counsel will prepare a Master Service List and serve that list on all counsel of record in this action. The Master Service List shall include the email addresses of all counsel of record in this action. Each Defendant shall notify WVRC's counsel of any changes that need to be made to the Master Service List. WVRC's counsel shall update the Master Service List and, as necessary, serve the current Master Service List on all Parties.

7. Filing and Service of Paper

a. Rules Governing

The West Virginia Rules of Civil Procedure and the West Virginia Trial Court Rules shall govern filing and service of all pleadings, motions, and other papers in this action except as otherwise provided in this Order.

b. Service by Email

The Parties shall serve all pleadings, motions, and other papers by email, unless a Party specifically asks to be served by U.S. First Class Mail. Papers shall be deemed served on the date that they are transmitted by email (or on the date indicated in the certificate of service, in the case of service by U.S. First Class Mail). If any pleading, motion, or other paper contains voluminous attachments or exhibits, such attachments or exhibits may be served by U.S. First Class Mail instead of email, in the discretion of the serving Party.

c. Certificate of Service

It shall be sufficient to state in a certificate of service that service was made on counsel for all Parties at the addresses listed on the Master Service List. The Master Service List may be incorporated by reference and need not be attached to the certificate of service.

8. Written Discovery

a. Availability of Written Discovery

Any Party, without leave of Court, may serve written interrogatories on any other Party. Any Party may also, without leave of Court, serve written requests for admissions, as permitted by Rule 36 of the West Virginia Rules of Civil Procedure, and written requests for the production of documents and other purposes, as permitted by Rule 34 of the West Virginia Rules of Civil Procedure, on any other Party.

b. Coordination of Discovery Efforts

The Parties shall use their best efforts to promote efficiency and avoid duplicative discovery efforts in this action. Nothing in this provision will preclude the Parties from objecting to the production of certain information or documents or disputing the accuracy or completeness of any Party's discovery responses.

c. Objection/Disputes

Counsel for the Parties shall engage in good faith attempts to resolve any and all disputes or objections to written discovery before seeking the Court's assistance. Motions to compel shall specifically describe the discovery request at issue and the steps taken in good faith to resolve the disputes. If the Parties cannot resolve any discovery dispute, they shall submit their dispute to the Court for resolution. Any Party seeking intervention by the Court shall submit the discovery dispute to the Court by written motion not to exceed twenty (20) pages without leave of Court, including any accompanying brief but excluding

supporting affidavits and exhibits, unless otherwise agreed to in advance by the Parties. Any Party who wishes to respond to such a submission to the Court shall do so within ten (10) business days after the date of service of any such submission. Any such response shall be in writing and may not exceed twenty (20) pages without leave of Court, excluding supporting affidavits and exhibits, unless otherwise agreed to in advance by the Parties. Any reply shall be filed within five (5) business days. No sur-replies shall be permitted without leave of Court. The foregoing shall not prevent the Parties from agreeing to and seeking an expedited resolution of any discovery dispute.

d. Protocol for Exchange of Documents

Documents produced by each Party shall be Bates labeled before distribution to any Parties. If a Party's responsive documents are voluminous, such documents may be made available for inspection and copying by the requesting Party before numbering and only those documents selected for copying shall be numbered. The Party or other entity producing the documents shall be identified on each page by a letter code followed by a sequential number of at least seven digits ("control number").

Hard copies of non-privileged documents which are responsive to previously served requests for production and to which no other objection has been made shall be produced on or before February 28, 2014. Electronically stored non-privileged documents which are responsive to previously served requests for production and to which no other objection has been made shall be produced pursuant to the terms and provisions of a separately entered Order Regarding Discovery of Electronically Stored Information and/or E-Discovery Protocol Order.

e. Privilege Log

Unless otherwise agreed, within thirty (30) days of the substantial completion of a document production, the producing Party shall serve a privilege log that identifies each document withheld from production or redacted on the basis of any claim of privilege or protection from disclosure, to the extent possible, by its: document numbers, type of document, date, author, addresses, recipients of copies, the subject matter of the document beyond the document's title or "re" line, and the nature of privilege or protection asserted. The Parties are not required to comply with the foregoing provisions with respect to any privileged correspondence involving counsel to this litigation written after the commencement of this litigation.

f. Inadvertent Production of Privileged Materials

Each Party shall make a good faith effort to review the documents it produces in this action for privilege and to withhold all documents that it claims are privileged or otherwise protected from disclosure. However, if a producing Party inadvertently produces information, documents, objects, or things that it considers to be, in whole or in part, privileged or protected material, such inadvertent production does not constitute a waiver of any applicable privilege or protection. The Party may retrieve an inadvertent production as described below. No Party shall use any such retrieved information or materials in any way either in connection with the prosecution or defense of this action or otherwise except as provided herein.

Within thirty (30) days (i) after the discovery of the inadvertent production or (ii) after a document has been marked at a deposition or attached to a motion, whichever is sooner, but in any event no less than sixty (60) days before trial, the producing Party shall give written notice to all Parties that the producing Party claims such information or material

to be, in whole or in part, privileged or protected from disclosure and shall state the nature of the asserted privilege or protection. If privileged or protected material is inadvertently produced less than sixty (60) days before trial and/or a Party discovers within sixty (60) days before trial that it inadvertently produced privileged or protected material at any time, the Parties shall use their best efforts to resolve the matter in a manner consistent with their professional responsibilities. If they cannot resolve the matter, it may be presented to the Court for resolution.

Upon receipt of such notice, all Parties who have received copies of the inadvertent production shall cease to make any additional copies of any information or material in the inadvertent production and, within fifteen (15) days, (i) return to the producing Party or destroy and certify in writing to the producing Party that all copies thereof in their possession or control have been returned or destroyed or (ii) object in writing to the producing Party's assertion of privilege or protection, setting forth the basis for the objection. No information or material in the inadvertent production shall be used by any receiving Party until the dispute is resolved. Should any Party object to the producing Party's assertion that privileged or protected material has inadvertently been produced, it shall be the producing Party's burden to promptly move the Court for an order compelling the return of material and information on the ground it is privileged or protected. Such a motion shall be filed under seal, with the Court to conduct an *in camera* review of the material or information. The Party objecting to the producing Party's assertion of privilege shall maintain the produced information or material solely for the purpose of objecting to the privilege assertion.

9. Depositions in General

a. Rules

All depositions shall be conducted in accordance with the West Virginia Rules of Civil Procedure, except as modified herein.

b. Coordination of Depositions

The Parties shall use their best efforts to promote efficiency and avoid duplicative discovery efforts in this action. Thus, to the extent that multiple Defendants seek the deposition testimony of the same witness, or on the same information topics, the Defendants agree to consolidate their deposition requests so that WVRC will have to produce a given witness for only one deposition. Likewise, WVRC agrees that it will seek to depose each of the Defendants' witnesses one time. The Parties will seek to reach an agreement with respect to time limitations that provides a fair opportunity to each Party to participate in any deposition. If a Party seeks to depose a previously deposed witness again over the objection of any other Party, the requesting Party may seek leave of Court and show good cause why any additional deposition would be appropriate.

c. Scheduling of Depositions

Before any Party files a notice of deposition in this case, it shall confer with counsel for the Party or any third-party witness to be deposed to negotiate mutually convenient deposition dates. The Parties shall use their best efforts to schedule all requested depositions in a timely and efficient manner. Any deposition notice that a Party sends without first conferring to negotiate mutually convenient dates will be considered invalid. Once the Parties have agreed on a date, the Party noticing the deposition will circulate an e-mail to all parties confirming the deposition by witness, date, and location. If, after the parties agree on the deposition date, a Party needs to reschedule the deposition for good cause, the Party

noticing the deposition shall circulate an e-mail to all parties as soon as possible after receiving notice of the need to reschedule. Thereafter, the Party noticing the deposition and counsel for the Party or any third-party witness to be deposed shall negotiate a mutually convenient date to reschedule the deposition. The Parties agree that, beginning in January 2014, the second week of each month shall be a deposition week with each Party to make reasonable efforts to schedule depositions during that time. Liaison counsel shall coordinate with Plaintiff to fairly and efficiently schedule depositions.

d. Deposition Limits

Depositions under this section shall be limited to seven (7) hours per day, excluding time taken for breaks, meals, or other reasons, unless otherwise agreed to by the Parties in advance. So that the Party noticing the deposition and the Party to be deposed can use their best efforts to accommodate any other Party seeking an opportunity to examine the deponent, any request for such an opportunity shall be explicitly expressed to the Parties during the scheduling process.

e. Pre-Deposition Designation of Documents

Counsel for the Party conducting the deposition of a Party Witness may designate by control number, if any, the documents that it may use during a deposition and shall provide by email a list of such control numbers to all counsel on the Master Service List at least seven (7) calendar days before the scheduled date of the deposition. Counsel for any other Party may designate in the same manner any additional documents two (2) calendar days thereafter (or, if the day for such designation would fall on a weekend or holiday, on the next business day thereafter) and shall use reasonable efforts to avoid duplicating documents designated by the original designating Party. Any counsel designating such documents shall not have an obligation to provide copies of designated documents at the deposition.

Any Party who does not designate documents as provided herein shall not forfeit the right to use non-designated documents at the deposition, but must provide any copies of non-designated documents that such Party desires to use at the deposition to all counsel as soon as practicable before the deposition or after determining the need to use such documents during the deposition.

Nothing in this provision shall be deemed to create any obligation on any Party to produce any documents to any non-party.

No Party shall have any obligation to designate any documents as set forth above with respect to the deposition of any fact witness who is not a Party Witness.

Any Party's failure to designate any document prior to a deposition shall not be a valid basis for any other Party to object to the use of that document at the deposition.

f. Objections

All objections shall be reserved except as to form and foundation. During the deposition, the Parties may object on the record for any reason, including, but not limited to, privilege or badgering of the witness. Whether or not testimony is objected to at the time of the deposition, objections to the admissibility of the substance of any testimony may be asserted at trial or at any hearing in this matter. There is deemed to be an objection to each question and a motion to strike each answer, and such objections and motions to strike shall be ruled on at the time all or any portion of the deposition is offered into evidence at trial or at any other hearing in the matter.

g. Signing

Unless the deponent specifically waives his or her right to read and sign his or her deposition transcript, the deponent shall have thirty (30) days from the date the transcript is delivered by the court reporter to the witness to read and sign his or her deposition transcript.

10. Motion

Unless otherwise agreed among the Parties or with leave of Court, briefs in support of each motion -- including dispositive motions filed after the entry of this Order but prior to July 31, 2014, but excluding motions filed in discovery disputes under section 8(c), and any briefs in opposition thereto -- shall not exceed twenty-five (25) pages, exclusive of supporting affidavits. Replies shall not exceed twenty (20) pages, exclusive of supporting affidavits.

Unless otherwise agreed among the Parties or with leave of Court, supporting briefs shall be filed and served contemporaneously with all motions. Opposition papers shall be filed and served within thirty (30) days of the filing and service of any motion and supporting brief, and reply briefs shall be filed and served within fifteen (15) days of the filing and service of any opposition paper. No sur-replies shall be permitted except with leave of Court.


11. Joint Status Conference Agenda

If a status conference is scheduled, WVRC's Counsel and Defendants' Liaison Counsel shall meet and confer at least ten (10) calendar days before the status conference to prepare a Joint Status Conference Agenda listing all matters that the Parties would like the Court to consider at the status conference.

12. Confidentiality

The Parties hereby agree that the Protective Order, which is attached hereto as Exhibit 1, shall govern the treatment, use, and disclosure of confidential material in this action.

Entered this 6th day of March, 2014.


The Honorable Thomas C. Evans, III

13-0468

Prepared and submitted by:

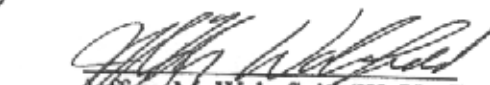
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ENTERED March 6, 2014

DOCKET LINE #: 449

JEAN FRIEND, CIRCUIT CLERK