

**In the Circuit Court of Berkeley County, West Virginia
Division II**

LEE TRACE LLC,
Plaintiff,

vs.)

**BERKELEY COUNTY
COUNCIL, DOUGLAS COPENHAVER,
PRESIDENT,
BERKELEY COUNTY COUNCIL,
NORWOOD BENTLEY, LEGAL
DIRECTOR,
BERKELEY COUNTY COUNCIL,
PAMELA JEAN GAMES-NEELY, PA,**
Defendants

Case No. CC-02-2014-AA-2

ORDER DENYING MOTION FOR SANCTIONS

On a previous day, came the Petitioner herein, by counsel, and moved the Court to impose sanctions against the Respondent, Berkeley County Council. Upon review of the motion, the response, and rebuttal memorandum, the Court finds that the Petitioner's motion should be and the same is hereby DENIED.

The Court finds that Petitioner's allegation that the Respondent Berkeley County Council and Berkeley County Council as Board of Review and Equalization agreed to mediation to force a continuance of the December 1, 2016, trial is without support or foundation. Petitioner pled no facts with regard to this allegation. It is supported only by speculation.

The Court further finds that Trial Court Rule 25.10 provides, as Petitioner points out in its Motion that "If a party or its representative, counsel, or insurance carrier fails to appear at the mediation session without good cause or appears without decision-making discretion, the court sua sponte or upon motion may impose sanctions..." W.Va. T.C.R. 25.10 (3). The Rule, also, provides, "Any party or representative may be excused by the court or by agreement of the

parties and the mediator.” Id.

Because the governing body of a county, as well as other public bodies in West Virginia, must act as a body and not as individual members, and because all decisions of this Respondent governing body must be made in open session pursuant to a specific notice of each agenda item to be discussed and voted upon, it would be impossible for the Respondent to have met the criteria set forth in the Trial Court Rule. While it would have been possible for one member of the Berkeley County Council to have participated in the mediation, still that member would not have had the discretion to bind the Council. Thus, the Respondent Council would have been liable for sanction even if one of its members had been present. This circumstance was presented to the Resolution Judge at the beginning of the mediation session and no objection was heard from the Judge or from the other participants in the mediation.

In this case, the mediator was the Resolution Judge, a part of the Court. As such, Judge Young had authority under the Rule to excuse the Respondent party from the mediation. Since neither the Judge nor the other participants voiced an objection, this Court finds that good cause has been shown by the Respondent in explanation of its absence from the mediation and its inability to bind the Respondent to any recommendation with regard to settlement which might have been made.

The Court notes that Petitioner failed to submit a timely proposed Order in this matter pursuant to the Court’s Order of March 20, 2017.

The exceptions of Petitioner are noted.

The Clerk shall provide all parties an attested copy of this Order.

/s/ Christopher Wilkes
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.courtsww.gov/e-file/ for more details.



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CC-02-2014-AA-2

Judge: Christopher Wilkes

To: BERKELEY COUNTY COUNCIL, NORWOOD BENTLEY,
LEGAL DIRECTOR
400 W. STEPHEN ST., STE. 201
MARTINSBURG, WV

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT OF BERKELEY, WEST VIRGINIA

Division II

LEE TRACE LLC v. BERKELEY COUNTY COUNCIL, DOUGLAS COPENHAVER, PRESIDENT

CC-02-2014-AA-2

The following order - case was FILED on 4/11/2017 3:07:03 PM

Notice Date: 4/11/2017 3:07:03 PM

Virginia Sine
CLERK OF THE CIRCUIT
Berkeley
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