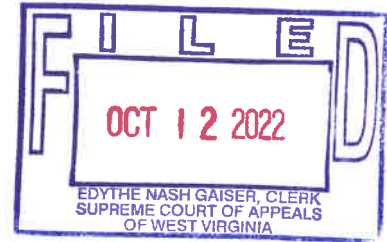


MOUNTAIN STATE BAR ASSOCIATION, INC.



Gail Henderson Esq.  
Mountain State Bar President  
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711 ½ Fifth Avenue  
Huntington, WV 25701



Edythe Nash Grier, Clerk of Court  
Supreme Court of Appeals of West Virginia  
State Capitol Room E-317  
1900 Kanawha Boulevard East  
Charleston, WV 25305

October 13, 2022

Dear Edythe Nash Grier:

In response to the June 2022 Order of the West Virginia Supreme Court of Appeals (“WVSCA”), the Mountain State Bar Association (“MSBA”) provides the following comments:

Formed in 1918, the Mountain State Bar Association is one of the oldest minority bar associations in the Nation. The Association exists to benefit African American attorneys of West Virginia and increase access to justice for all citizens. While the majority of members are licensed attorneys, the Mountain State Bar Association also permits non-lawyers to join. The MSBA offers a number of educational and community-based services, including scholarship awards for underprivileged minority law students in West Virginia. The Association also regularly works with the West Virginia University College of Law to provide law students with the opportunity to learn with members of the legal community at various events. A vital part of MSBA’s century-old mission is to improve access to justice for all, which is the primary reason for this response.

increasing access to justice. The expense of litigation is ever increasing for all parties, especially in federal court. Further increasing the costs of litigation will only create additional barriers for already dramatically underserved communities. A national study by the American Bar Association analyzed in *Race, Class, and Access to Civil Justice* found that among low-income individuals, 47% were experiencing one or more civil legal needs.<sup>1</sup> Of those 47%, only about one-quarter made any effort to seek legal advice.<sup>2</sup> Disturbingly, in these communities, nearly three-quarters avoided the justice system entirely. Increasing costs of litigation, eliminating more lenient timing rules,<sup>3</sup> and making robust expert reports a repeated requirement,<sup>4</sup> will only exacerbate already existing access to justice issues.

Even more troubling, no exploration of the impact of these changes on minorities, or the poor, has been made. Indeed, the committee making these suggestions, contained no diversity whatsoever.<sup>5</sup> Research has shown again and again that analysis from a diverse group of individuals consistently results in better outcomes. The potential for having a more diverse committee provides an opportunity to understand important perspectives that are consistent with the important mission to improve access to justice.

For the foregoing reasons, the MSBA and its membership, inclusive of both lawyers and non-lawyers, requests rejection of the proposed rules because of the serious potential of these changes to create barriers harming access to justice.

Sincerely,



The Mountain State Bar Association

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<sup>1</sup> Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 Iowa Law Review 1234-1322 (2016)

<sup>2</sup> *Id.*

<sup>3</sup> See proposed amendments to Rule 6(b), 6(c) and other timing rules generally.

<sup>4</sup> See proposed amendment to Rule 26(a), 26(e).

<sup>5</sup> <https://hbr.org/2019/03/when-and-why-diversity-improves-your-boards-performance>.