

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on October 21, 2024, the following order was made and entered:

RE: REQUEST FOR PUBLIC COMMENT ON AMENDMENTS TO RULE 5.2, RULE 16, RULE 26, AND RULE 48 OF THE WEST VIRGINIA RULES OF CIVIL PROCEDURE, No. 21-Rules-12

On October 16, 2024, the Court considered proposed amendments to Rule 5.2, Rule 16, Rule 26, and Rule 48 of the West Virginia Rules of Civil Procedure. The Court has jurisdiction of court rules under Article VIII, §§ 1 and 3 of the West Virginia Constitution.

Upon consideration and review, the Court is of the opinion that the following amendments to Rule 5.2, Rule 16, Rule 26, and Rule 48 of the West Virginia Rules of Civil Procedure should be published for a period of public comment for 30 days. Comments may be filed in writing with the office of the clerk on or before November 20, 2024. The changes would take effect on January 1, 2025. Additions are indicated by underscoring, and deletions are indicated by strike-through.

West Virginia Rules of Civil Procedure

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Rule 5.2. Privacy protection for filings made with the court.

(a) Confidential filings. Whenever a party files a pleading or other document that is confidential in part or in its entirety, the party shall identify, by cover letter or otherwise, in a conspicuous manner, the portion of the filing that is confidential. A pleading or other document that is confidential in part or in its entirety shall be filed conventionally with the clerk. Any party or other person with standing may file a motion to unseal the case record or portion of a case record, setting forth good cause why the case record should no longer be confidential. An opposing party may respond to the motion within ten days from the date of filing of the motion. Upon its consideration, a court may, in its discretion, issue an order unsealing all or part of the case record, or issue an order denying the motion. Any party or other person with standing may file a motion to seal the case record or portion of a case record. The motion shall state the legal authority for confidentiality. Upon filing of the motion to seal, the case record or portion of the case record that is the subject of the motion shall be kept confidential pending a ruling on the motion. An opposing party may file a response to a motion to seal within ten days of the date of filing of the motion. Upon its consideration, the

court may, in its discretion, issue an order sealing all or part of the case record, or issue an order denying the motion.

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Rule 16. Pretrial conferences; scheduling; management.

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(b) Scheduling.

(1) *Scheduling order.* Except in categories of actions exempted by the Supreme Court of Appeals, the trial court shall issue a scheduling order:

(A) after receiving the parties' report under Rule 26(f); or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(3)(2) Time to issue. The judge shall issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge shall issue it within the earlier of ~~90~~ 120 days after any defendant has been served with the complaint or ~~60~~ 90 days after any defendant has appeared.

(4)(3) Required contents of the order. The scheduling order shall: (i) limit the time to join other parties (ii) limit the time to amend the pleadings, (iii) limit the time to complete discovery, and (iv) limit the time to file motions.

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Rule 26. Duty to disclose; general provisions governing discovery.

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(b) Discovery methods, scope and limits.

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(4) *Trial preparation: experts.*

(A) *Deposition of an expert who may testify.* A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) *Trial-preparation protection for draft reports or disclosures.* Rules 26(b)(4)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(1), regardless of the form in which the draft is recorded.

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Rule 48. Juries; verdict; polling.

(a) Fewer than six. The parties may stipulate that the jury shall consist of any number fewer than six.

(b) Verdict. Unless the parties stipulate otherwise, the verdict shall be unanimous ~~and shall be returned by a jury of six members.~~

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A True Copy

Attest: /s/ C. Casey Forbes
Clerk of Court

