

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on January 24, 2025, the following order was made and entered:

**RE: APPROVAL OF AMENDMENTS TO RULE 21 OF THE WEST VIRGINIA TRIAL COURT RULES, RULES 39, 47, 48, AND 48a OF THE RULES OF PRACTICE AND PROCEDURE FOR FAMILY COURT, AND RULES 23a AND 25a OF THE RULES OF PRACTICE AND PROCEDURE FOR DOMESTIC VIOLENCE CIVIL PROCEEDINGS, No. 24-138**

On October 16, 2024, the Court considered proposed amendments to Rule 21 of the West Virginia Trial Court Rules, Rules 39, 47, 48, and 48a of the Rules of Practice and Procedure for Family Court, and Rules 23a and 25a of the Rules of Practice and Procedure for Domestic Violence Civil Proceedings. The Court has jurisdiction of court rules under Article VIII, §§ 1 and 3 of the West Virginia Constitution.

On October 21, 2024, the Court published the proposed amendments for public comment for a period of 30 days. Upon consideration of the proposed amendments, the Court is of the opinion that the following amendments should be adopted. The amendments are adopted as set forth below by underscoring and strike-through.

### WEST VIRGINIA TRIAL COURT RULES (T.C.R.)

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#### 21. GUARDIANS AD LITEM.

##### **Rule 21.01. Application Generally.**

This ~~R~~ule applies to Supreme Court of Appeals of West Virginia ~~payments to~~ all eligible guardians ad litem appointments in circuit, family court, and magistrate court. This rule does not apply to guardians ad litem appointed ~~ments~~ in abuse and neglect proceedings.

##### **Rule 21.02. Appointments Generally.**

(a) A guardian ad litem shall be selected independently of any nomination by the parties or counsel.

(b) *Appointed Guardians Ad Litem Payments.*

(i) ~~(b)~~ may be paid by a litigant or a litigant-parent of an infant for whom the appointment is made if the litigant or litigant-parent is not an indigent person.

(ii) ~~(e)~~ ~~or~~ may be paid by the Supreme Court of Appeals of West Virginia as provided in ~~Rule~~ 21.05.

(iii) ~~may~~ ~~(a)~~ not be made where guardians serve on a voluntary basis without compensation.

### **Rule 21.03. Duties Generally.**

A guardian ad litem shall make a full and independent investigation of the facts involved in the proceeding and make recommendations to the court by testimony or in writing, unless otherwise ordered by the court. Guardians ad litem appointed for an infant(s) in family court shall follow the guidelines under the Rules of Practice and Procedure for Family Court.

### **Rule 21.04. Definitions.**

For purposes of this ~~R~~ule, the following definitions shall apply:

(a) “Indigent person” means any person who qualifies for a waiver of fees ~~pursuant to the provisions of~~ under W. Va. Code § 59-2-1.

(b) “Infant” means any person under the age of eighteen (18) years.

(c) “Incarcerated person” means any person who is being held against the person’s will in any facility operated under the authority of any governmental authority in the United States.

(d) “Incompetent person” means any person who is admitted to a mental health facility or has been found by the court to be incompetent.

(e) “Nondiscretionary appointment for infant(s)” means ~~when substantial allegations of domestic abuse violence under W. Va. Code § 48-27-401 have been made, and/or when serious allegations of abuse and neglect under W. Va. Code § 49-1-201 have been made, which create when there are serious issues relating to the child-infant’s health or safety; or in when a cases involvesing disproving an child-infant’s paternity.~~

### **Rule 21.05. Eligibility for Payment of a Supreme Court-Paid Guardian Ad Litem.**

(a) To be eligible for payment by the Supreme Court of Appeals of West Virginia, an attorney must serve as the appointed guardian ad litem, and the person for whom the guardian is appointed must be:

(~~a~~i) an infant-party who is indigent;

(~~b~~ii) an infant of a party or parties who are indigent, provided however, if both parents are parties to the action, both parents must be indigent;

(~~e~~iii) an incarcerated person who is indigent; or

(~~d~~iv) an incompetent person who is indigent.

(b) ~~provided however, in~~ a domestic relations case the cost of a guardian ad litem for a party and/or an infant(s) of the parties ~~may~~ shall be ordered to be paid by a non-indigent party, provided however, if the court determines the non-indigent party does not have the financial ability to pay the full cost, the court may order the non-indigent party to pay one-half of the cost and the remaining cost paid by the Supreme Court of Appeals of West Virginia, or if otherwise qualified, by Supreme Court when the appointment is nondiscretionary, provided

(c) ~~The~~ The order appointing the guardian ad litem in domestic relations cases shall comply with the requirements of Rule 47 of the Rules of Practice and Procedure for Family Court.

(d) Prior to the commencement of the investigation by the guardian ad litem, the appointing court shall submit the appointment order to the Administrative Director of the Supreme Court of Appeals of West Virginia or the Administrative Director's designee for prior approval. The compensation payable by the Supreme Court is limited to the amounts set forth in Trial Court Rule 21.06.

(e) The appointment shall end automatically when a person for whom a guardian ad litem has been appointed either:

- (ai) is no longer indigent, or is an infant of a party or parties who are no longer indigent;
- (bii) reaches the age of eighteen (18) years;
- (eiii) is no longer an incarcerated person;
- (diiv) is released from a mental health facility; or
- (ev) is found by the court to have regained competency.

(f) The guardian ad litem shall notify the appointing court when an appointment has been automatically terminated. Upon notification of the automatic termination the court shall enter an order relieving the guardian ad litem of any further duties in the proceeding.

**Rule 21.06. Compensation for ~~a Supreme Court-Paid~~ Guardians Ad Litem.**

(a) Payment shall be made from funds of the Supreme Court of Appeals of West Virginia.

(b) ~~Supreme Court-paid~~ Guardians ad litem shall be compensated at eighty dollars (\$80.00) per hour for out-of-court services, and one hundred dollars (\$100.00) per hour for in-court services.

(c) The total compensation paid to a guardian ad litem pursuant to the provisions of under this Rule shall not exceed "Three Thousand" dollars (\$3,000.00) per appointment as of July 1, 2012.

(d) ~~However, a~~An appeal to the Supreme Court of Appeals of West Virginia shall be considered a separate case with regards to compensation.

(e) The Supreme Court of Appeals of West Virginia will not reimburse the cost of office expenses including but not limited to copying costs, postage, long distance telephone calls, and/or fees charged for invoice preparation;

(f) ~~however, that the~~ Costs of obtaining and copying court records, medical records, school records, and child protective services records will be reimbursed. Mileage will be reimbursed at the standard rate per mile as approved by the Supreme Court of Appeals of West Virginia.

(g) Requests for payment shall be reviewed and recommended by order of the appointing court prior to submission to the Administrative Director of the Supreme Court of Appeals of West Virginia.

(h) Requests for payment shall be made on forms provided approved by the Supreme Court of Appeals of West Virginia Administrative Director and shall follow all West Virginia State and Supreme Court of Appeals of West Virginia billing regulations, policies, and procedures.

(i) The Administrative Director of the Supreme Court of Appeals of West Virginia – or the Administrative Director's designee – shall review and approve all submissions for payment of fees to guardians ad litem.

(j) The Administrative Director of the Supreme Court of Appeals of West Virginia shall have the authority to approve and pay compensation in excess of the amounts state above in exceptional cases and for good cause shown. Requests for excess compensation shall be made by the appointing ~~judge court~~ and sent to the Administrative Director of the Supreme Court of Appeals of West Virginia for approval.

(k) As circumstances may warrant, the court in its discretion may at any time during the proceedings tax the costs of the appointment of a guardian ad litem to the parties and require that any compensation previously paid from the Supreme eCourt of Appeals of West Virginia funds be refunded to the Supreme Court of Appeals of West Virginia ~~the Administrative Director~~.

## **RULES OF PRACTICE AND PROCEDURE FOR FAMILY COURT**

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### **MEDIATION**

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#### **Rule 39. Pre-mediation screening.**

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(b) *Pre-mediation screening procedures.* --- .... ~~as provided by under~~ W. Va. Code, § 49- 6A-2 2-803....

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## **SPECIAL PROCEEDINGS AND PROCEDURES**

### **Rule 47. Guardians ad litem for children.**

(a) *Appointment of guardians ad litem.*—Courts shall not routinely assign guardians ad litem for children in a domestic relations case. Where, however, the court is presented with ~~substantial~~ allegations meeting the statutory definition of domestic ~~abuse violence under W. Va. Code § 48-27-401, and/or serious allegations of~~ abuse and neglect under W. Va. Code § 49-1-201 ~~have been made, which create when there are~~ serious issues relating to the child’s health or safety, or ~~allegations when a case involvings~~ disproving a child’s paternity, a guardian shall be appointed by the court for the child(ren).

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### **Rule 48 Child Abuse and Neglect.**

(a) *Reports by Family Court.*-- .... ~~pursuant to under~~ W. Va. Code §§ 49- 6A-2 2-802, 49-2-803 ....

(e) *Material Change of Circumstances Reports.* --- ....~~pursuant to~~ under W. Va. Code §§ 49- 6-~~1~~ 4-601, et. seq. ....

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#### **Rule 48a. Infant guardianship proceedings.**

(a) *Removal by family court to circuit court of infant guardianship cases involving child abuse and neglect.*--- .... brought ~~pursuant to~~ under W. Va. Code § 44-10-3, ....as defined in W. Va. Code § 49-1-3 201, ..... ~~pursuant to~~ under W. Va. Code § 49- ~~6A-2~~ 2-803.

(b) *Investigation of Abuse and Neglect.*--- .... ~~pursuant to~~ under W. Va. Code §§ 49- ~~6-1~~ 4-601, et. seq. .... under W. Va. Code §§ 49- ~~6-1~~ 4-601, et. seq., .... Filing of a W. Va. Code §§ 49- ~~6-1~~ 4-601, et. seq., ....

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### **RULES OF PRACTICE AND PROCEDURE FOR DOMESTIC VIOLENCE CIVIL PROCEEDINGS**

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#### **Rule 23a. Children and incapacitated family or household members as parties.**

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(b) *Child as a petitioner.* ....

(1) *Magistrate court proceedings.* .... ~~in accordance with~~ under West Virginia Code § 49- ~~6-3~~ 4-303.

(2) *Family court hearing.* .... as defined in W. Va. Code § 49- ~~1-3~~(g) 4-302, .... ~~in accordance with~~ under West Virginia Code § 49- ~~6-3~~ 4-303.

(c) *Child as a respondent.* ....

(1) *Magistrate Court proceeding.* .... ~~pursuant to~~ under W. Va. Code § 48-27-403(h) .... under W. Va. Code § 49- ~~5-7~~ 4-701, et. seq.

(2) *Family court hearing.* ....as defeined in W. Va. Code § 49- ~~1-e~~(g) 4-302,....~~pursuant to~~ under W. Va. Code § 49- ~~5-8a~~ 4-705

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**Rule 25a. Child Protection Investigations.**

(a) *Administrative order regarding investigation.* --- ....pursuant to W. Va. Code § 49- ~~6A-2a~~ 2-802 ....

(b) *Mandamus relief.* --- .... pursuant to W. Va. Code § 49- ~~6-5b~~ 4-605 .... term in W. Va. Code § 49- ~~6-3(d)(1)~~ 4-602(d)(1), ....

(d) *Confidentiality.* --- ....consistent with W. Va. Code § 49- ~~7-1~~ 5-101; ....

(e) *Abuse and neglect co-petitions for child protection.* --- .... pursuant to W. Va. Code § 49- ~~6-1~~, 4-601, et. seq., .... under W. Va. Code § 49- ~~6-1~~ 4-601, et. seq., .... pursuant to W. Va. Code § 49- ~~6-1~~, 4-601, et. seq., ....

(f) *Transfer of Administrative Proceedings.* --- .... pursuant to W. Va. Code § 49- ~~6A-2a~~ 2-804 ....

A True Copy

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

