

FROM THE CHIEF

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Chief Justice
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2025: A YEAR OF CHANGE THAT COMMANDS CIVILITY & PROFESSIONALISM

2025 brings significant changes to the practice of law for West Virginia's legal community — both practitioners and judges — with the implementation of the amendments to the West Virginia Rules of Civil Procedure.¹ Plato once said, “The beginning is the most important part of the work.” I readily admit that I was not wholly in favor of the Court's decision to implement sweeping changes to the rules, the goal of which was to modernize and federalize civil procedure in West Virginia. Nonetheless, the time has come for those changes to take effect; our focus now turns to the implementation of many new procedures. Successful implementation requires that both the members of the State Bar and the judiciary navigate this upcoming period of change in a professional and civil manner, realizing that there will be bumps in the road as

everyone becomes familiar with the new procedures. This is not a time to play “gotcha.”

As a backdrop, it is important to remember that the West Virginia Rules of Civil Procedure were designed not only to improve efficiency in the litigation of civil cases but also — and more importantly — to ensure justice and fairness in all legal proceedings. Let there be no mistake: implementation of the amended Rules of Civil Procedure will place additional burdens on attorneys and judges, especially at the time a civil action is instituted. These burdens will fall more heavily on solo practitioners and lawyers working in small firms, who comprise the majority of practitioners in this State,² as they may have little or no practice experience in federal courts, and the Federal Rules of Civil Procedure are the source for the amendments to our rules.

Additionally, the burden of increased investigative work, research and paperwork which must now be accomplished in a compressed period of time, i.e., before the lawsuit is filed, will appear most onerous to those with fewer resources to handle the load.

Notwithstanding these considerations, if both lawyers and judges rely upon professionalism, courtesy and civility, together with a healthy dose of empathy, the burden of adapting to a new and different way of practicing law will be lessened for the entire legal community.

Civility is the foundation upon which the implementation of the rule amendments must be based. It is entrenched in both the West Virginia State Bar Constitution and the West Virginia Rules of Admission to the Practice of Law. Specifically, Article II of the West Virginia State Bar Constitution provides that

[t]he objects of the West Virginia State Bar shall be to protect the interests of the public; to advance the administration of justice and the science of jurisprudence; to improve the relations between the public and the bench and the bar; to uphold and elevate the standards of honor, integrity, competency and courtesy in the legal profession; and to encourage cordial relations among its members.

Moreover, Rule 7 of the West Virginia Rules of Admission to the Practice of Law requires every lawyer to “conduct [himself or herself] with integrity, dignity and civility and show respect toward judges, court staff, clients, fellow professionals and all other persons[.]” When dealing with significant and consequential procedural revisions to the Rules of Civil Procedure, civility is much more than mere etiquette; it is a tool for fostering better and fairer outcomes.

There are a number of ways that basic principles of civility can operate in this context. First, flexibility and grace should be a primary consideration during the period of transitioning from the old rules to the newly amended rules. There are various changes to deadlines, including, inter alia: for filing pleadings, motions, renewed motions, responsive pleadings and petitions; giving notices for depositions; filing objections to depositions; and making disclosures, discovery requests and demands for jury trials. In regard to these time deadline amendments, there will be a steep learning curve as to what the appropriate time frame may be under a particular rule and in a particular case, and during this learning period lawyers who miss a deadline should be afforded flexibility and grace, at least initially.

As indicated above, the rules automatically apply to the cases filed after the Jan. 1, 2025, effective date, but only as “just and practicable” to cases pending before the effective date, which may cause confusion as to what deadlines apply in a particular case. Moreover, under amended Rule 6(a) of the West Virginia Rules of Civil Procedure, computing time periods specified under the rules now requires that intermediate weekends and legal holidays be included, whereas under the old rule weekends and legal holidays were not counted when the total time described was fewer than 11 days.

In short, even though standardization of time deadlines was the goal in tweaking various time frames,

transitioning from the old rules to the newly amended rules — especially during a period when both sets of rules may be in play — will necessarily require some patience by both lawyers and judges. Hopefully, we will not greet the implementation of the new rules with a blizzard of motions to dismiss and/or for sanctions; to the extent possible, flexibility and grace should rule the day where a deadline is missed during the early days of the transition.

With regard to amended Rule 26 governing discovery, which significantly changes the old rule, lawyers will need to be more focused on consideration of and communication with opposing counsel. While this rule will pose few if any problems for those who practice regularly in federal court, it may pose huge challenges for those lawyers who practice primarily or solely in State court, and may be equally challenging for some State circuit court judges. The amended rule requires the production of a significant amount of discovery at the beginning of a case in which the amount in controversy is \$25,000 or greater. This completely changes the landscape of how litigation is begun, and will most certainly occasion early discovery disputes. In attempting to resolve the myriad of issues that may arise while attempting to comply with the requirements newly imposed by this rule, I am confident that the civility that has long been a hallmark of the practice of law in West Virginia will be the foundation which will enable us to successfully master these changes. Effective communication combined with the courtesy that is common to our bench and bar are tools that will enable us to in short order master these new procedural requirements.

During the transition period, both counsel and the judiciary may initially struggle to comply with the requirements of Rule 26 for a variety of reasons, including unfamiliarity with the rule changes and impending statutes of limitation. During this period lawyers should not indulge in gamesmanship with opposing counsel, and courts should not impose significant sanctions for rule violations without evidence of intransigence or inexcusable neglect. While there may occasionally be a temptation to gain advantage because of opposing counsel’s unfamiliarity with the amended rule, I am confident that such is not the way law is practiced in

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PRESIDENT'S PAGE

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Handing over the reins to David at our annual meeting in April will be bittersweet. Admittedly, I will be happy to have some extra time built back into my days, but I will be saying farewell to a position that has been the highlight of my career. I have the honor of being able to spend one last year on the Board as Immediate Past President, but that just means that I'm going to be one year closer to saying farewell to what will be 14 years of leadership and dedication to the State Bar.

To those of you who read my articles, I would love

to hear from you and to continue any of the conversations that may have begun as a result.

To my Bar colleagues, friends and family, I think I'll miss you most of all. **WV**

Endnotes

1. Deborah L. Rhode, *Lawyers as Leaders* (2013), at p.10.
2. *Id.* at 12.
3. Kevin Lawrence, *Your Oxygen Mask First: 17 Habits to Help High-Achievers Survive and Thrive in Leadership and Life* (2017), at 28.

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West Virginia; instead I expect that lawyers and our courts will show civility, respect and grace as each of us becomes conversant with the amendments to the Rules of Civil Procedure.

As the 18th-century English writer Thomas Fuller is credited with saying, "All things are difficult before they are easy." The changes to the practice of law occasioned by the implementation of the rule amendments will no doubt be a challenge, at least initially, for a significant number of lawyers in this State, as well as our judges. However, the distress that comes with all the changes will be eased if both members of the State Bar and judiciary are guided by principles of civility in our mutual journey

of learning and applying the amended Rules of Civil Procedure. **WV**

Endnotes

1. West Virginia Rule of Civil Procedure 86 governs the "[e]ffective date" of the rules and provides that [t]hese rules, and any amendments of these rules, shall take effect on the date designated by the Supreme Court of Appeals of West Virginia in the order adopting such rules or amendments [January 1, 2025]. *The rules govern all proceedings in cases thereafter commenced and insofar as just and practicable, all proceedings then pending.* (Emphasis added.)
2. In his separate opinion to the Court's Order entered Jan. 31, 2024, adopting the amendments, Justice Hutchison noted that by his calculation "more than 80% of the law firms in West Virginia have fewer than five active lawyers and roughly half of all active lawyers practice in these firms."