

STATE OF WEST VIRGINIA

On February 17, 2026, the Supreme Court of Appeals of West Virginia made and entered the following order:

RE: REQUEST FOR PUBLIC COMMENT ON AMENDMENTS TO RULE 38A OF THE RULES OF APPELLATE PROCEDURE, No. 25-890

Under Article VIII, §§ 1 and 3 of the West Virginia Constitution, the Court has jurisdiction to promulgate court rules. By that authority, the Court has considered proposed amendments to Rule 38A of the Rules of Appellate Procedure.

Upon consideration and review, the Court is of the opinion that the following amendments to Rule 38A of the Rules of Appellate 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 March 19, 2026. Additions are indicated by underscoring, and deletions are indicated by strike-through.

Rules of Appellate Procedure

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Rule 38A. General rule on electronic filing and service of documents.

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(c) *Filing of actions.* Electronic filing is mandatory for all Actions in the Intermediate Court or the Supreme Court, unless otherwise provided in these rules or by order, and shall be subject to this E-Filing Rule. Parties not represented by an attorney may file Actions electronically or file paper documents with the Clerk, who shall electronically file the Actions upon receipt. The Intermediate Court, the Supreme Court, or the Clerk shall not offer to attorneys any alternative electronic document filing transmission system (including facsimile or e-mail filing), except for good cause shown by motion. If an attorney is unable to file Documents using the E-Filing System, the attorney may file a motion in paper showing good cause for leave to file Documents in that Action by paper.

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(q) Electronic service. Except where otherwise provided, every e-filed document shall be e-served through the E-Filing System or contain a certificate of service under Rule 37. The E-Filing System shall generate a Notice of Electronic Filing and email it to the email address of record of the filing User and any attorney Users who have appeared in the Action who are also Users of the E-Filing System. The Notice of Electronic Filing will include the Document filed as an attachment or a link to download the Document. Upon receipt of the Notice of Electronic Filing, service is complete and effective to those parties who are Users of the E-Filing System as of the date and time listed on the Notice of Electronic Filing and shall be considered service under Rule 37. It is the responsibility of the User to check their registered email to view e-filed and served documents. Courtesy email notification of a filing shall not constitute service.

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(t) Filing of sealed documents. A motion to seal documents shall be e-filed and served, unless otherwise provided in these rules or by order. However, any documents that are the subject of a motion to seal shall be physically filed with the Clerk enclosed in sealed envelopes to be opened as directed by court order.

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A True Copy

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

