

## **STATE OF WEST VIRGINIA**

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 9th day of October, 2008, the following order was made and entered:

### **RE: APPROVAL OF TRIAL COURT RULE 15**

On a former day, to-wit, April 24, 2008, the Court approved a period of public comment on proposed Rule 15 of the West Virginia Trial Court Rules, as recommended by the Mass Litigation Panel. By order entered on May 22, 2008, the period of public comment was extended to July 7, 2008. Thereafter, the Mass Litigation Panel presented to the Court a revised proposed rule.

Upon consideration whereof, the Court is of opinion to and does hereby approve and adopt the revised proposed rule, effective immediately. Justice Albright did not participate in the consideration of this matter. Senior Status Justice McHugh sitting by temporary assignment. The new rule reads as follows (all language is new, so underlining is not utilized):

### **"15. ELECTRONIC FILING AND SERVICE.**

#### **Rule 15.01. Application.**

Trial Court Rule 15 governs electronic filing and service of documents and maintenance of case-related information in the circuit courts of West Virginia in certain Mass Litigation referred to the Mass Litigation Panel ("Panel") under Trial Court Rule 26, and as further provided by Trial Court Rule 15.02.(c). This rule does not preclude future application of electronic filing and service in other types of actions.

**Rule 15.02. General Provisions.**

(a) The electronic filing and service of documents and the electronic receipt of associated case information in the circuit courts of West Virginia may be referred to as e-filing and service.

(b) E-filing and service shall not be used to initiate a civil action or to serve a new party with an amended complaint or a third-party complaint.

(c) If the Panel determines it is appropriate for Mass Litigation or proceedings therein to be subject to e-filing and service, the Panel Chair shall enter an order designating such Mass Litigation or proceedings therein for e-filing and service.

(d) Where requirements of the Rules of Civil Procedure are satisfied by e-filing and service procedures, Trial Court Rule 15 shall specifically so state. All filings, whether electronic or paper, shall otherwise comply with the Rules of Civil Procedure and the Trial Court Rules.

(e) The process for e-filing and service shall utilize an e-filing and service provider designated by the Supreme Court of Appeals.

**Rule 15.03. Authorization and Signature.**

(a) Each e-filed document shall be deemed to have been signed by the attorney, or by the party not represented by an attorney who authorized the filing, and shall bear a facsimile or typographical signature of such person, e.g. "/s/ Adam Attorney." Each document e-filed by or on behalf of a party shall also include the address and telephone number of the attorney or unrepresented party filing such document. Attorneys shall also include their West Virginia State Bar Identification Number or a notation that the attorney has been admitted *pro hac vice*.

(b) No lawyer shall authorize anyone to e-file or serve on that lawyer's behalf, other than an employee of his or her law firm or a service provider retained to assist in e-filing and service. No person shall utilize, or allow another person to utilize, the password of another in connection with e-filing or service.

(c) The e-filing of a document by a lawyer, or by another under the authorization of a lawyer, shall constitute a signature of that lawyer under Rule 11(a) of the Rules of Civil Procedure.

**Rule 15.04. Filing and Service.**

(a) Except where otherwise provided, every e-filed document shall be e-served. Unless otherwise ordered, the e-service of a document, in accordance with these rules, shall be considered service under Rule 5 of the Rules of Civil Procedure. Electronic service shall be treated the same as service by mail for purposes of Rule 6(e) of the Rules of Civil Procedure.

(b) Parties who are granted a waiver under Trial Court Rule 15.06 shall be served in accordance with Rule 5 of the Rules of Civil Procedure, or by utilizing the U.S. Mail feature of the e-filing and service system.

(c) The Presiding Judge may direct the parties to provide a courtesy copy of filings to the Presiding Judge in accordance with Trial Court Rule 6.03, either by U.S.

Mail or by utilizing the Courtesy Copy via U.S. Mail feature of the e-filing and service system.

(d) For documents that have been e-filed, the electronic version of the document constitutes the official court record, and e-filed documents have the same force and effect as documents filed by traditional means. Documents filed and served in accordance with these rules are deemed to be in compliance with Trial Court Rule 10.01.

**Rule 15.05. Orders and Civil Docket.**

(a) Orders issued by the Presiding Judge shall bear a typographic signature and an official e-filing court stamp, and shall be e-filed and served. The date of the official e-filing court stamp shall constitute the date of entry of the order.

(b) Parties who are granted a waiver under Trial Court Rule 15.06 shall be served in accordance with Rule 5 of the Rules of Civil Procedure, or by utilizing the U.S. Mail feature of the e-filing and service system.

(c) E-filed orders maintained as part of the online register of actions shall satisfy the requirements of Rule 77(d) of the Rules of Civil Procedure.

(d) An electronic register of actions, with associated documents and filing receipts, shall be maintained as part of the e-filing and service system and shall constitute the civil docket and satisfy the requirements of Rule 79 of the Rules of Civil Procedure.

**Rule 15.06. Waiver of E-filing and Service Requirements.**

All parties who are unable to utilize e-filing and service may file a written motion with the Presiding Judge seeking a waiver of e-filing and service requirements, which motion may be granted for good cause shown. All parties who have obtained such waiver shall file documents in accordance with Trial Court Rule 10.01, and serve documents in accordance with Rule 5 of the Rules of Civil Procedure. Such documents shall be uploaded and made available within the e-filing and service system by the circuit clerk in the circuit where the Mass Litigation subject to e-filing is pending.

**Rule 15.07. Public Access.**

The circuit clerk in the circuit where the Mass Litigation subject to e-filing is pending shall make a Public Access Computer Terminal available to the general public to allow access to the Court's electronic docket, pleadings and other documents that are not sealed or otherwise confidential. Copies made from the Court's electronic records shall be printed by the Clerk's Office, and standard copying fees shall be charged.

**Rule 15.08. Case Management Order.**

Additional procedures specific to Mass Litigation or proceedings therein subject to e-filing and service may, in the discretion of the Presiding Judge, be set forth in a case management order.

**15.09. Registration and Fees.**

The e-filing and service system requires parties to be registered participants to file and serve, receive service, access the register of actions, and use the system. Each participant shall register with the e-filing and service provider, provide the information necessary to load a case and its parties into the e-filing and service system and pay the fees billed by the e-filing and service provider at rates approved by the Supreme Court of Appeals.

**15.10. Form of documents electronically filed.**

(a) Each e-filed document shall be submitted in a file format that is acceptable to the e-filing and service provider. To the extent practicable, each e-filed document shall be formatted in accordance with Trial Court Rule 6.01 governing formatting of paper documents. A document may exceed page limitation rules to a maximum of two additional pages when the additional pages are attributed to the electronic conversion or filing process. The e-filing and service system shall automatically convert all document formats accepted by the e-filing and service provider to a PDF format.

(b) All e-filed documents relating to a single pleading or document submitted in the same electronic transaction shall be "electronically stapled" using the "main" and "supporting" functionality of the e-filing and service system so multiple related documents, such as a motion and proposed order, are linked logically together and identified as a single transaction.

(c) All e-filed documents or pleadings directly relating to a previously e-filed document, or pleading shall be linked to the previously e-filed document or pleading, using the "linked document feature" in the e-filing and service system.

(d) Proposed orders filed for the consideration of the Presiding Judge shall be filed in a Rich Text Format document or ".rtf."

(e) A document that is required to be executed by the parties or counsel, verified, acknowledged or made under oath shall be e-filed only as a scanned image. Any such document that is to be attached to an e-filed document shall be scanned and e-filed and served along with the underlying document.

**15.11. Time of electronic filing and service.**

(a) A document shall be considered filed with the Clerk once electronic transmission is successfully completed, as recorded in the e-filing and service system.

(b) An e-filed document is deemed served for purposes of Rule 5 of the Rules of Civil Procedure only upon selection of participants to be served and completed submission of the electronic filing. If an individual or entity required to receive service is a participant in the e-filing and service system, then the person e-filing a document shall provide e-service. The associated filing receipt shall list the participants selected and give proof of date, time and method of service. If a party is unable to receive service of an e-filed document electronically, the document shall be served in accordance with Rule 5 of the Rules of Civil Procedure, or by utilizing the U.S. Mail

feature of the e-filing and service system, and a copy of the certificate of service evidencing non-electronic service shall be filed in the e-filing and service system.

(c) It is the responsibility of the participant to check his or her online inbox to view e-filed and served documents. Courtesy e-mail notification of a filing shall not constitute service.

**15.12. Filing of Sealed documents.**

A motion to seal documents shall be e-filed and served. However, any documents that are the subject of a motion to seal shall be filed with the court enclosed in sealed envelopes to be opened as directed by the court pursuant to Rule 26(c)(8) of the Rules of Civil Procedure, and a copy of the documents that are the subject of the motion to seal shall be provided to the Presiding Judge for review.

**15.13. System or participant errors.**

If a document cannot be e-filed with the circuit clerk or e-served due to: (a) an error in transmission of the document to the e-filing and service provider that was unknown to the sending participant; or (b) a failure to process the e-filing when received by the e-filing and service provider; or (c) rejection by the Clerk; or (d) other technical problems experienced by the filer; the Court may, upon satisfactory proof, enter an order permitting the document to be filed or served *nunc pro tunc* to the date it was first attempted to be e-filed and served.

**15.14 . Obligation of participants to maintain proper delivery information.**

E-filing and service system participants shall notify the e-filing and service provider within 10 days of any change in firm name, delivery address, fax number or e-mail address. Participants who have set an e-mail notification preference are solely responsible for providing an accurate, up-to-date e-mail address and for ensuring that the e-mail account is properly configured to receive e-mail notifications for the e-filing and service system."

The Clerk of the Court is directed to prepare an engrossed version of this rule and make it available for use by the bench, bar and general public on the Court's website at <<http://www.state.wv.us/wvsca/rules/rulesindex.htm>> as soon as practicable.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court