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Pleading--Attorney Negotiations Do Not Constitute An Appearance

In the instant case, the court simply defined more distinctly the county court's powers in selecting its own election officials once it decided those lists submitted were invalid, i.e., that the county court can legitimize an invalid group by adopting it as the county court's choice for election officials.

Pleading—Attorney Negotiations Do Not Constitute An Appearance

Plaintiff contracted to renovate defendant's house, and after partial completion of the contract a dispute arose between the parties. Both parties employed attorneys who engaged in unsuccessful negotiations. Plaintiff then instituted suit and defendant failed to answer within the twenty days required by Rule 12 (a) of the West Virginia Rules of Civil Procedure. Plaintiff's attorney orally agreed with the defendant's attorney to an extension of time. However, once this time extension had expired, the plaintiff moved for and received a default judgment. The defendant contended the trial court erred in refusing to set aside the judgment. *Held,* affirmed. *Intercity Realty Co. v. Gibson,* 175 S.E.2d 452 (W. Va. 1970). Because the defendant's and plaintiff's attorneys had been negotiating, the defendant contended these negotiations constituted an appearance entitling her to three days written notice in accordance with rule 55 (b), West Virginia Rules of Civil Procedure. The Supreme Court of Appeals sustained the trial court's finding that these negotiations did not constitute an appearance. The court distinguished *Dalminter, Inc. v. Jessie Edwards, Inc.* 27 F.R.D. 491 (S.D. TEX. 1961), in which a *layman's timely* written answer mailed directly to the plaintiff's attorney was held to constitute an appearance.

The defendant also contended the judgment should have been set aside for "excusable neglect" or "any other reason, justifyinf relief from the operation of the judgment" under rule 60 (b) (1), (6), West Virginia Rules of Civil Procedure. In refusing to set aside the default judgment under rule 60 (b), the court held the trial court did not abuse its discretion in finding that the defendant failed to show cause for his failure to answer timely.

Perhaps the significance of this case is found in the concurring opinion of Judge Berry. His opinion warned attorneys to adhere strictly to the Rules of Civil Procedure. Noting that time extentions are secured through compliance with rule 6 (b), West Virginia

Rules of Civil Procedure, his opinion stated attorneys cannot, by their own agreement, attempt to circumvent the application of the Rules.

Statutes—Modern Budget Amendment—Item Veto

During its 1970 regular session the West Virginia legislature passed a bill establishing the state budget for fiscal year 1970-71. The bill was presented to Governor Arch A. Moore, Jr., for his approval. On the face of the bill the governor reduced the appropriations for certain accounts by drawing a line through the amounts provided and inserting lower amounts. He then added his initials—"A.A.M., Jr." There were no other notations on the bill and the interlinations made by the governor were the only indications that changes had been made. The bill was then filed in the office of the Secretary of State.

The attorney general, Chauncey H. Browning, Jr., instituted an original proceeding in mandamus to require C. A. Blankenship, clerk of the House of Delegates, to publish the budget bill as passed by the legislature, excluding the reductions made by the governor. The attorney general contended that the reductions made by the governor did not comply with the manatory procedure for vetoes set forth in the modern budget amendment to the West Virginia Constitution W. VA. CONST. art. VI, § 51. *Held,* writ granted. The act of the governor in crossing out the items on the bill indicated that he disapproved of them in their original form, but mere disapproval does not constitute an objection that would satisfy the requirements of the modern budget amendment. In order to comply with the amendment, reasons must be given for the exercise of an item veto. *State ex rel. Browning* v. *Blankenship,* 175 S.E.2d 172 (W. Va. 1970).

The govenor contended that his actions in amending the budget bill did substantially, though not literally, comply with the provisions of the modern budget amendment. In support of his position the govenor cited three West Virginia cases which held that substantial compliance with a constitutional provision requiring publication of proposed constitutional amendments was sufficient. *May* v. *Topping,* 65 W. Va. 656, 64 S.E. 848 (1909); *Capita* v. *Topping,* 65 W. VA. 587, 64 S.E. 845 (1909). The court distinguished those cases from the factual situation existing in *State ex rel.*