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Rules of Practice in the Trial Courts of Record of West Virginia

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BENCH AND BAR

RULES OF PRACTICE IN THE TRIAL COURTS OF
RECORD OF WEST VIRGINIA

Ordered April 10, 1936

STATE OF WEST VIRGINIA :

At a regular term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, April 10, 1936, the following order was made and entered, to-wit:

IN THE MATTER OF MAKING AND PROMULGATING
GENERAL RULES AND REGULATIONS GOVERNING
PLEADING, PRACTICE AND PROCEDURE IN THE TRIAL
COURTS OF RECORD OF THE STATE:

The matter of making and promulgating general rules and regulations governing pleading, practice and procedure in all of the trial courts of record of the state, in accordance with the provisions of Chapter 37, of the Acts of the Legislature for the year 1935, came on this day again to be considered by the court, a preliminary draft of the rules and regulations hereinafter set forth having been presented to this Court by the Judicial Council and having been considered at an open hearing held by the Court on December 7, 1935, after which a revision thereof was tentatively adopted by this Court on January 29, 1936, and was referred to the Chairman of the Judicial Council, the President of the West Virginia Bar Association, and to the judge of every court affected thereby in accordance with the act referred to above. There having been no request, under the terms of said act, for a further hearing pursuant to the reference above recited, and more than twenty days having elapsed since the date of such reference, the Court is of opinion to and doth hereby make and promulgate the rules and regulations hereinafter set forth, which shall, on and after the first day of May, 1936, be and constitute rules and regulations governing pleading, practice and procedure in each trial court of record within the state, and shall, in so far as they are applicable, have in all respects the same effect as would be given statutes upon the same subject matter under the terms and provisions of Chapter 37, of the Acts of the Legislature of 1935, subject, however, to the right of each judge of a court of record in this state to make and promulgate for the court over which he presides, additional rules and regulations not in conflict with those hereinafter set forth, which are in the words and figures following, to-wit:

RULES OF PRACTICE AND PROCEDURE FOR TRIAL
COURTS IN THE STATE OF WEST VIRGINIA PROMUL-
GATED BY THE SUPREME COURT OF APPEALS APRIL
10, 1936, IN PURSUANCE OF CHAPTER 37 OF THE ACTS
OF THE LEGISLATURE OF 1935.

RULE I

(a) The clerk is responsible for all papers filed in his office. A carbon copy or duplicate of every pleading (not including exhibits) filed in the clerk's office, shall be given to the clerk at the time of the filing of the original papers, which copy shall be delivered to opposing counsel. Attorneys are urged to keep an accurate office copy of all papers filed. Unless otherwise ordered by the Court, papers, except papers in criminal cases, may be withdrawn by resident counsel upon leaving with the clerk a receipt for the same, which papers, after being retained for a reasonable time, shall be returned to the clerk's office. No papers shall be taken without the county except as provided in Code, chap. 51, art. 4, sec. 4.

(b) The clerk will not be required to file any paper in a cause unless endorsed so as to show the title of the case, the number thereof, if one is assigned, and the nature of the contents of the paper. Papers of all cases shall be kept together in a folder or jacket, or otherwise, as shall be furnished by the clerk for that purpose.

(c) Before filing any paper in a case, the clerk shall require a deposit for the costs, if one is required by statute.

RULE II

When the Judge enters the room for the purpose of opening court, the sheriff shall say in a distinct voice: "Silence, all present will arise. The Judge of the Circuit Court of..... County." Then the sheriff shall make the following proclamation: "Oyez! Oyez! Oyez! Silence is now commanded under pain of fine and imprisonment, while the Honorable Judge of the..... Court of..... County, is sitting. All persons having motions to make, pleas to enter or suits to prosecute come forward and they shall be heard. God save the State of West Virginia and this Honorable Court."

RULE III

All members of the bar who are interested in cases set for a given day are expected to be present at the opening of Court for that day.

RULE IV

(a) After indictments have been returned by the grand jury, if the defendant has no counsel nor means to employ one, the Court shall assign counsel. The Court will require all dilatory pleas and

demurrers to indictment to be filed promptly and hearings to be had thereon. Criminal cases, unless otherwise ordered, shall take precedence over all other business of the Court.

(b) The prosecuting attorney shall file with the clerk a copy of each indictment for the use of defendant's counsel. No indictment shall be withdrawn from the custody of the clerk, without an order of the Court.

(c) Neither the prosecuting attorney, nor the assistant prosecuting attorney of this county, nor the office associate or partner of either the prosecuting attorney or assistant prosecuting attorney of this county shall appear as counsel for defendant in any criminal case pending in this Court, nor shall the prosecuting attorney or assistant prosecuting attorney of any other county appear for the defendant in a criminal case pending in this Court.

RULE V

(a) Unless otherwise provided by local rule, the law docket shall be called at some appropriate time, to be fixed by the Court, on or before the first day of the term. All attorneys interested in law cases are expected to be present at the call of the docket. In setting the calendar of cases to be tried, due regard shall be had for the probable time required to try each case. Preference shall be given to matured cases in the order of time in which they are instituted, unless the attorneys otherwise agree or the Court orders.

(b) In law actions all demurrers shall be filed at rules or within the first.....days of the term. In such actions all pleadings, amendments of pleadings, particular statements required, and such other matters shall be filed and settled and the issue made up.....days before the day set for trial, unless otherwise ordered by the Court.

RULE VI

(a) Private agreements or consent arrangements between counsel, respecting any proceeding in a cause, must be reduced to writing and signed by counsel. Consent orders, judgments and decrees shall be signed for the parties by their respective counsel before tender to the Court.

(b) Whenever ordered by the Court, counsel shall file written briefs on any question. At the time of presentation to the Court or Judge thereof, a carbon copy shall be presented to opposing counsel.

(c) No application for an injunction or appointment of a special receiver shall be considered by the Court or Judge thereof, in vacation, unless interested parties or their counsel are notified of the place where and the time when such application shall be made.

This rule, however, for reasons deemed sufficient to the Court,

or Judge thereof, may be disregarded, except as to receivers of real estate. Code, 53-6-1.

(d) Amendments to pleadings shall not be made by erasures or interlineations in or mutilations of the original. Amendments shall be made only by filing a new pleading, unless the Court, by order otherwise permit, which order shall clearly show the nature of the amendment.

(e) All instructions to juries shall be reduced to writing and a copy presented to opposing counsel at the conclusion of the evidence. The Court will instruct the jury prior to argument. Supplementary instructions may be given later. Objections, if any, to each instruction shall be made when the same is offered; specific grounds of objection only will be considered. Exceptions to the refusal to grant or to granting the same or to modified instructions shall be made at the time, or the same shall be deemed to be waived. Counsel may comment upon the instructions in their argument, but may not read the instructions to the jury, but the Court in its discretion may reread one or more of the instructions. Counsel may not argue against the correctness of any instruction, nor comment upon any evidence ruled out, nor misquote the evidence, nor make statements of fact dehors the record, nor contend before the jury for any theory of the case that has been overruled. Counsel shall not be interrupted in argument by opposing counsel, except as may be necessary to bring to the Court's attention objection to any statement to the jury made by opposing counsel, and obtain a ruling on such objection. No portion of a law book shall be read to the jury by counsel.

(f) The time of argument, in any case, may be determined and regulated by the Court, but the convenience of counsel will be consulted. No more than two attorneys on each side shall argue a case, without leave of the Court.

RULE VII

The sheriff, or a deputy, shall be present at all times while the Court is in session.

The sheriff shall provide a sufficient number of deputies to maintain order in the court room at all times. The rules and orders of the Court pertaining to conduct in the court room shall be enforced by him or them.

RULE VIII

(a) No attorney shall become surety on any bond given in this Court. A special commissioner shall deposit his funds in an account separate from his personal funds to his credit as special commissioner in the designated case and shall pay out such funds only upon the order of the Court in conformity with the statute.

(b) Attorneys are reminded that the Canons of Ethics of the American Bar Association, and their interpretation, and the Canons of Ethics of the West Virginia Bar Association, and their inter-

pretation, are in force in this county and shall govern themselves in accord therewith.

RULE IX

(a) Subject to the provisions of chapter 51, article 2, section 4, of the Code, the business transacted at special terms shall be only upon a fair notice to counsel of record, except the filing of pleadings and making motions as of right. Except in matters of urgency, or where otherwise provided by law, counsel will not be expected to prepare law cases for trial or hearing at a special term, except such cases as are fixed for hearing by consent.

(b) Trial courts shall provide by rule for the time for hearing contested chancery causes.

RULE X

Chancery causes may be heard and determined in open court. In cases so heard, the witnesses shall personally appear before the judge to testify orally, unless their depositions shall be taken out of court for reasons sufficient in actions at law or by order of the judge made for good cause; but when a case is not to be heard in this manner, it may be heard on depositions taken on due notice, or the Court or Judge may appoint a commissioner to take the evidence. The commissioner shall thereafter make such report as the Court may require. In case of exception to the report, the Court shall enter such decree as it may deem proper. In all cases where the hearing is before a commissioner, the commissioner shall have power to rule upon the admissibility of evidence, with the further right at any time to obtain a summary ruling from the Court, or from the Judge thereof in vacation, upon any question presented concerning the admissibility of evidence. The compensation of the commissioner shall be as provided by section 8, article 1, chapter 59 of the Code of West Virginia. The rules of evidence, procedure and practice now in force, and as hereafter changed, shall apply in taking such evidence. Upon the conclusion of the evidence of a litigant, his opponent may move for final decree, without prejudice, in the event such motion is overruled, to his right to take further evidence.

The evidence taken in open court in chancery causes shall, unless waived by the parties, be taken down in shorthand by the official reporter of the Court, or, when there is reference to a commissioner, by such official reporter or by any other competent reporter agreed to by the parties in interest or designated by the commissioner, and the evidence, or such part or parts thereof as may be required, shall in all such cases be transcribed by the reporter as provided for in respect to other matters; and like reporting charges for chancery causes and law actions shall be made, collected and accounted for.

The entire record as thus made up shall be available to any party on petition for appeal.

The foregoing procedure shall not be applicable to divorce cases.

This rule shall supersede and be in lieu of section 38, article 6, chapter 56 of the Code of West Virginia.

RULE XI

The court reporter shall not transcribe, and the clerk shall not include in the record of a case, whether at law or in equity, colloquy or argument of counsel (not made a point of error), unless so directed by the Court.

It is ordered that certified copies of this order, including the rules and regulations herein set forth, be sent by the Clerk of this Court to the judges of the trial courts of record for entry upon the law order books of their respective courts. It is further ordered that the official reporter of this Court be and he hereby is directed to publish this order, including the rules and regulations herein set forth, in volume 116 of the West Virginia Reports.

A true copy.

Attest:

WM. B. MATHEWS,

Clerk, Supreme Court of Appeals.

APPLICANTS FOR ADMISSION TO THE BAR. — The following three applicants successfully passed the State Bar Examination, held in Charleston, March 11-12, 1936:

Capott, Jacob Robert
Hall, Earl M.
Wilson, Johnston

Beckley, W. Va.
Madison, W. Va.
Charleston, W. Va.