

**SUPREME COURT OF APPEALS OF WEST VIRGINIA ISSUES REVISED
RULES OF APPELLATE PROCEDURE**

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May 17, 2010 – The West Virginia Supreme Court of Appeals, the State’s highest and only appellate court, issued significant revisions to its Rules of Appellate Procedure today. Public comments on the revised rules may be submitted to the Court in Charleston by July 19, 2010.

Under the Revised Rules, the prior practice of petitioning for appeal, under the legal writ known as *certiorari*, has been merged with the first brief typically filed in an appeal. Comments to the revised rules call this the “unified briefing process.” The new procedure proposed by the Court replaces the “Petition for Appeal” with a “Notice of Appeal,” which must be filed 30 days after the judgment from which the appeal is taken.

Under prior appellate rules, a party seeking an appeal had four months following an adverse judgment, whereas the new rules require an appeal to be initiated in 30 days. After the notice of appeal, the Supreme Court of Appeals will then issue an order scheduling the filings of briefs in the appeal. This procedure replaces the prior petition practice, where the Court initially decided to consider a case before ordering more detailing briefing.

The Revised Rules create for the first time two classes of oral argument, under Rules 19 and 20. The Court has essentially distinguished between minor appellate questions, for example, those where the law governing the issue is well-settled, and major questions, such as the constitutionality of state statutes and ordinances, and issues the Court has not heard before. For appeals concerning less complicated issues, each side will be permitted five minutes to argue. For more substantial legal issues, each side will be permitted fifteen minutes per side. Though the parties may request oral argument under either Rule 19 or 20, the Court can decline oral hearing on an appeal.

Another new rule of significance is the Court’s decision to issue “Memorandum” decisions, which do not have the legal significance of Opinions of the Court. Under Rule 21, a Memorandum decision is termed “non-precedential,” meaning that lower Courts, and the Supreme Court, are not required to follow decisions issued by Memoranda with the exception of limited circumstances. According to the new rule, the Court at its sole discretion can dispense of case by Memorandum decision at any

time after a case is fully briefed. Parties can also request decision by Memorandum to streamline an appeal.

The Revised Rules also contain detailed revisions to the requirements for production of briefs filed with the Court, the submission of the record to the Court, and the designation of one attorney as counsel of record for an appeal.

The extensive revisions the West Virginia Rules of Appellate Procedure embodied in these rules are in some measure a response to Governor Manchin's Independent Commission on Judicial Reform and recent legislative attempts to create an intermediate appellate court in West Virginia. Under the Revised Rules, the Court will decide every appeal brought to it, though the level of analysis, and the precedential nature of any disposition, will be at the discretion of the Court.

For questions concerning these proposed rules, please contact Paul J. Loftus, (304) 691-8344 or ploftus@huddlestonbolen.com.

About Mr. Loftus

Paul Loftus is a partner with extensive litigation and appellate experience in transportation law. Mr. Loftus has been actively involved in the defense of major derailment incidents involving hazardous materials releases, occupational injury claims, FELA personal injury incidents, maritime claims and property and flood damage claims. He has litigated in matters in West Virginia, Kentucky, Maryland, and various federal courts including the U.S Court of Appeals for the Fourth Circuit. Mr. Loftus has gained has experience in matters involving hazardous materials releases, ranging from employee chemical inhalation injuries, to complex multi-party litigation involving chemical shippers and common carriers.

For more information on Mr. Loftus, please see his bio at:
<http://www.huddlestonbolen.com/attorneys.php?a=20>.