

XIV. Transcripts - Filing and Certification

The court reporter shall file the original of a completed transcript of court proceedings in the office of the circuit clerk. The original of any other transcript shall be delivered to the party who requested it.

As stated in *W. Va. Code*, § 51-7-4 (1997), transcripts, when certified, shall be authentic. Accordingly, all transcripts for which the Office of the Administrative Director has paid transcription fees shall have attached a certification showing that the transcript is prepared in conformity with *W. Va. Code*, § 51-7-4 (1997) (Appendix A).

XV. Untranscribed Notes

Notes and/or tapes of proceedings, hearings and trials for which no transcript request has been made shall be retained in the courthouse where the action took place in an area designated by order of the circuit judge. The court reporter shall prepare an index of the proceedings for each case, to be stored with the notes and/or tapes. These requirements shall apply to substitute court reporters as well as to official court reporters. The notes taken by court reporters of circuit court proceedings do not belong to the court reporter. These notes are the official court record, and are the property of the West Virginia Judiciary.

Ultimately, it is the official court reporter's responsibility to make sure a substitute court reporter's notes are left at the courthouse. The official court reporter should maintain a log book of untranscribed proceedings, including those of the substitute court reporter, in such a manner that anyone could look at it and be able to locate a past proceeding if a transcript is requested.

XVI. Reproduction of Transcripts

Transcripts filed in the office of the circuit clerk are the property of the West Virginia Judiciary. Such transcripts may be photocopied or reproduced (1) by the circuit clerk pursuant to the provisions of *W. Va. Code*, § 59-1-11 (2010), and (2) by the Supreme Court of Appeals of West Virginia pursuant to the Rules of Appellate Procedure. See also *W. Va. Code*, § 51-4-2 (1875).

XVII. Travel Expenses

Travel expenses of official court reporters shall be certified by the circuit judge. For other requirements concerning travel expenses, see Section 10, *et seq.*, of the West Virginia Judicial Personnel System Manual.

XVIII. Proceedings Not Requiring Attendance of Official Court Reporter

Unless requested by counsel or by the parties to the proceeding, or directed by the judge, official court reporters shall not be required to record the following types of proceedings:

- (1) uncontested divorces,
- (2) civil matters involving amounts less than \$500,
- (3) non-jury trials,
- (4) civil motions,
- (5) adoption proceedings.

The fee schedule and payment procedures contained in Sections XII and XIII of this Manual shall apply to the above proceedings.

XIX. Equipment and Supplies

All equipment necessary for the reporting of proceedings and transcribing the same shall be furnished by the Certified Court Reporter. The Office of the Administrative Director will not purchase any typewriters, steno-datawriters or other equipment necessary for the reporting of proceedings. All such purchases are the responsibility of the individual Certified Court Reporter.

Supplies necessary for reporting court proceedings, including

- (1) shorthand notebooks,
- (2) tapes or CDs used as the primary means of taking the record,
- (3) steno pads,
- (4) stenomask belts or disks,
- (5) computer tapes for steno-datawriters, and
- (6) mini diskettes for the storage of computer compatible steno notes

will be furnished through the Office of the Administrative Director.

All supplies connected with the preparation of transcripts, such as transcript paper, shall be provided by the court reporter except as provided in Section X of this Manual.

1 The Office of the Administrative Director will not pay for any back-up tapes or cassettes
2 which are used on an individual basis by court reporters as a matter of personal preference.
3 Court reporters may require attorneys to seek permission of the judge in order to listen to or
4 obtain such back-up tapes (Appendix F).

5 With regard to Electronic Recording Operators, the Office of the Administrative Director
6 will provide to each Operator an approved digital recording system.

7 Outside typists will provide their own typewriters, computers and transcribers and shall
8 be entitled only to a per-page compensation for their work.

9 **XX. Making of Duplicate Tapes - Electronic Recording Operators**

10 Duplicate tapes or CDs of actual court proceedings may be released, upon request, to
11 parties in a lawsuit, their attorneys or other individuals who would be entitled to receive a copy
12 of the transcript in a case. The requesting party shall deposit with the circuit clerk a check
13 payable to the State of West Virginia in the amount of five dollars (\$5.00) for each duplicate tape
14 or CD furnished. A listing of the cases duplicated and payments received shall be sent monthly
15 to the Office of the Administrative Director. Checks will be forwarded by the circuit clerk to the
16 Office of the Administrative Director with the report (Appendix G).

17 A duplicate tape or CD may be provided to the prosecuting attorney at no charge,
18 provided the tape is returned for reuse after completion of the case.

19 In indigent criminal cases, duplicate tapes and CDs will be provided to defense counsel at
20 no charge.

21 **XXI. Timely Production of Transcripts**

22 Each time an official court reporter receives a request for the production of a transcript
23 for purposes of appeal (Appendix H), the court reporter shall list the transcript request upon the
24 court reporter's monthly report, which monthly report (Appendix I) shall be transmitted to the
25 Office of the Clerk of the Supreme Court of Appeals, Room E-317, State Capitol Complex, 1900
26 Kanawha Boulevard, East, Charleston, West Virginia 25305.

27 The attorney or party requesting the appellate transcript has the responsibility to distribute
28 copies of the Appellate Transcript Request form to the Clerk of the Supreme Court of Appeals,
29 the court reporter, the opposing party, and the circuit clerk.

30 Unless otherwise provided in a scheduling order or other order issued by the Supreme
31 Court of Appeals, the official court reporter has 45 days after receiving the Appellate Transcript
32 Request form to complete the transcript and file the original with the circuit clerk. The court
33 reporter's time begins running when the request is actually received by the court reporter.

2 If the transcript cannot be timely completed, the court reporter shall notify the Clerk of
3 the Supreme Court of Appeals immediately and ask for an extension, not to exceed 15 days.
4 *Failure to request an extension of time may result in sanctions against the court reporter.* A
5 motion for an extension of the initial time period may be made by telephone, but all subsequent
6 requests for extensions of time must be made in writing on the form approved in Appendix E.
7 Requests for extensions must be mailed 10 days in advance of the deadline from which relief is
8 sought, unless unforeseen circumstances make later requests necessary, in which case the reason
will be set out by the court reporter in the request.

9 Grounds for obtaining an extension of time include:

- 10 (1) excessively burdensome transcript, considering the length and complexity of
11 proceedings;
- 12 (2) reasonable planned vacation;
- 13 (3) unavoidable, excessive time required for attendance in court;
- 14 (4) incapacitation or serious illness; or
- 15 (5) unforeseen emergencies.

17 Unless an extension is granted by the Clerk of the Supreme Court of Appeals, requests by
18 the party requesting the appellate transcript that the court reporter suspend or delay preparation of
the transcript will have no effect on the date the transcript is due.

19 When the transcript is completed and filed with the circuit clerk, the official court
20 reporter shall immediately notify the Clerk of the Supreme Court of Appeals that the transcript
21 has been completed by filing the Certification of Completion/Filing of Appellate Transcript form
22 (Appendix A). A Certification of Completion/Filing of Appellate Transcript form must be filed
23 for all appellate transcripts, including private pay.

24 This office supervises the appellate transcript production of the approximately 70 court
25 reporters who work for our circuit judges, and the freelance court reporters who have substituted
26 in circuit court. This includes transcripts being requested for purposes of appeal to the Supreme
27 Court in **civil and criminal** cases, for **retained counsel and appointed counsel**. When an
28 *Appellate Transcript Request* is sent to a reporter, this office receives the original. This request
29 is entered into a log of outstanding transcripts, along with the name of the court reporter. The
30 case is not removed from the list until this office receives a Certification of Completion/Filing of
31 Appellate Transcript from the court reporter.

32 If a court reporter receives a request for a transcript for purposes of appeal to the
33 Supreme Court and the request was not submitted on the Appellate Transcript
Request form, it is the court reporter's responsibility to inform the requesting
party that they need to complete the Appellate Transcript Request form by

1 mailing the appropriate form to them, with a letter of explanation. A
2 suggested form letter can be obtained from the Clerk of the Supreme Court.

3 If a court reporter receives an Appellate Transcript Request and they are not the
4 court reporter who took the record, they **MUST** immediately notify the
5 requesting party, and the Clerk of the Supreme Court of Appeals, by sending
6 them a copy of the request and a letter of explanation.

7 If a substitute court reporter working in the place of an official court reporter took
8 any portion of the record being requested, it is the responsibility of the
9 official court reporter to notify the substitute court reporter. It is also the
10 responsibility of the official court reporter to make sure the substitute court
11 reporter timely produces and files the transcript(s). All guidelines applicable
12 to the official court reporter will be applicable to the substitute court reporter.

13 If a court reporter receives an Appellate Transcript Request, and the proceedings
14 being requested were previously furnished and filed, notify the requesting
15 party that there is nothing to be done because the proceedings are already on
16 file with the circuit clerk. Send a copy of the request and a letter of
17 explanation to the Clerk of the Supreme Court of Appeals.

18 If a court reporter receives an Appellate Transcript Request and the requesting
19 party withdraws the request, you must have this in writing. Ask the
20 requesting party to send you a short letter withdrawing the request, and send a
21 copy of this letter to the Clerk of the Supreme Court of Appeals.

22 If a court reporter receives an Appellate Transcript Request, and the proceedings
23 being requested are from magistrate court, where no court reporter was
24 present, send a copy of the request and a letter to this effect to the Clerk of
25 the Supreme Court. An official court reporter is not responsible for
26 producing transcripts from tapes of magistrate court proceedings. You may
27 help the requesting party by referring them to a typist or offering the use of
28 your typist.

29 When an official court reporter exceeds the 45-day limit for producing an appellate
30 transcript, the official court reporter's freelance privileges will be automatically revoked until or
31 unless the court reporter demonstrates to the Supreme Court that there is a legitimate reason for
32 the failure to produce the transcript in a timely manner. Revocation of freelance privileges
33 comes in addition to a 10% fee reduction on the total cost of the transcript. When a transcript is
34 not timely filed with the circuit clerk, an official court reporter will be required to deduct from
35 his or her transcription fees the amount specified in the following table:

| NATURE OF CASE | TRANSCRIPT DUE | 10% FEE REDUCTION | 20% FEE REDUCTION | 20% FEE REDUCTION; PAYCHECK WITHHELD | SUPREME COURT WILL ISSUE AN ORDER TO SHOW CAUSE WHY THE OFFICIAL COURT REPORTER SHOULD NOT BE TERMINATED IF TRANSCRIPT IS FILED AFTER 120TH DAY* |
|--|--|--------------------------|--|--|--|
| | | FREELANCE REVOCATION | | | |
| Criminal appeals and Civil appeals | Within 45 days | If filed after 45th day* | If filed after 60th day* [15 days past the initial 45 days] | If filed after 90th day* [45 days past the initial 45 days] | |
| Expedited transcripts (e.g., bail petitions, etc.) | As ordered by the Supreme Court of Appeals | If due date missed | If due date missed by more than 30 days | If due date missed by more than 60 days | |

Fee deduction is automatic and will take effect without the filing of a sanction order by the Supreme Court of Appeals.

The requirements of this section are mandatory and are based upon Rule 73 of the West Virginia Rules of Civil Procedure and Rule 37 of the West Virginia Rules of Criminal Procedure.

There is some concern about the quality of certain transcripts of circuit court proceedings filed in the circuit courts. This Court has received several complaints about inaccurate transcripts. We have also received complaints saying page requirements do not comply with W. Va. Code § 51-7-4 (1997) (and Section XXVII of this Manual) (margins, spacing, tabs, etc). In an effort to improve the quality of transcript production, this Court will take the following steps:

1. If this Court receives several complaints that a court reporter's transcripts are inaccurate, that court reporter's transcripts will be randomly reviewed by the Clerk of the Supreme Court.
2. Court reporters who have consistently inaccurate transcripts will be required to use backup tapes.
3. If the quality of the court reporter's transcripts do not improve within a reasonable amount of time, the court reporter will be required to retake the certification test, or the court reporter's page rate may be reduced to that of a typist.

*If an extension of time has been granted by the Clerk of the Supreme Court of Appeals, the sanction will not be applied until the expiration of such extension. Legitimate reasons for failure to produce the transcripts, such as hospitalization and unforeseen emergencies, will be taken into account.

XXII. Monthly Reports

Monthly reports of transcript production for cases on appeal to the Supreme Court of Appeals shall be filed by official court reporters in the Office of the Clerk of the Supreme Court of Appeals showing: (1) the style and civil/criminal action number of the case, (2) the date the request for the transcript was received, (3) the estimated number of pages in each transcript to be completed, (4) the estimated date of completion, (5) the date the transcript is filed, and (6) the total number of pages of each transcript. Monthly reports of appellate transcript production shall be signed by the circuit judge, who shall be advised of the status of transcript production at all times.

All requests for transcripts for purposes of civil and criminal appeals from judgments of circuit courts are to be reported, whether or not the transcript has been filed in the office of the circuit clerk. Once requested, a transcript must be carried on each monthly report filed thereafter until the transcript is completed and a notation to that effect appears on the monthly report. An official court reporter is required to submit a monthly report even if he or she has no outstanding transcript requests or if a transcript request was received and completed in a single month. ***Failure to report all requests for transcripts or the improper listing of a requested transcript as completed when it has not been completed is grounds for immediate termination of employment.***

Monthly reports shall be filed on the form approved by the Supreme Court of Appeals (Appendix I) and must be received in the office of the Clerk of the Supreme Court of Appeals by the 10th day of the month following the reporting period. Failure to file a monthly report or to file a monthly report within the time allotted may result in the following sanctions:

1. revocation of freelance privileges;
2. withholding of the court reporter's paycheck;
3. termination of the court reporter's employment.

In addition, the Administrative Director will not process invoices for transcription or other billings of any court reporter who is delinquent in filing a monthly report. Processing of billings will be resumed only when all delinquent monthly reports have been filed and received in the Office of the Clerk of the Supreme Court of Appeals.

Failure to use the approved form (Appendix I) shall be deemed a failure to file a monthly report and shall warrant application of the sanctions available for failure to file a monthly report.

The sanctions specified for failure to file a timely monthly report may also be employed by the Administrative Director for any failure to comply with applicable rules and regulations of the Supreme Court of Appeals or provisions of the West Virginia Code, as determined by the Administrative Director.

XXIII. Format

A transcript is a verbatim typed reproduction of what was said in the courtroom. A court reporter does not add, delete, correct or editorialize. Grammar is never corrected. If a person misspeaks, the transcript contains what was said, not what should have been said.

Each transcript consists of a title page, an index and the body of the transcript and is concluded with a court reporter's certificate as to the accuracy of the transcript. Each transcript upon appeal is bound with either a stiff cardboard cover or, more commonly, a plastic cover.

The title page of all transcripts, regardless of the court in which the proceedings are held, must include the following information:

1. The State of West Virginia,
2. The name of the court in which the proceedings are held,
3. The case style and number,
4. The nature of the proceedings transcribed,
5. The name and title of the person who presided over the proceedings,
6. The place and date of the proceedings,
7. The names of all attorneys and officials present and any person appearing *pro se*, and
8. The name of the court reporter who has taken and transcribed, or caused to be transcribed, the proceedings.

The name of the parties are always in capital letters. In party designations and other words (for example *Plaintiff*, *Defendant*, *In the Matter of*), only the first letters are capitalized.

"Et al.", designating multiple plaintiffs or defendants, should never be used on a title page. All plaintiffs and all defendants must be listed. Other abbreviations, such as *Inc.*, *Co.*, and *Jr.* are permitted.

A person who acts as his or her own attorney is designated as *pro se* and is shown under Appearances as: *Appearing Pro Se*.

When a case is entitled "In the Matter of:" there is no plaintiff or defendant.

XXIV. Colloquy - Questions and Answers

Transcribed testimony consists of two basic forms: (1) "colloquy," which is conversation between anyone other than a witness and the examining attorney, and in some cases the judge, and (2) questions and answers, "Q and A." The typical court hearing begins with a colloquy between the judge and the attorneys. The witness is sworn, and one attorney begins questioning the witness. In colloquy, the judge is always identified as "THE COURT"; an attorney is always identified by his or her name; and the witness is identified as "THE WITNESS."

1 Whenever a witness is sworn, the questioning is set up as "Q and A", including any
2 situation where the judge questions a sworn witness.

3 Any answer following the designation "A" must be preceded by question "Q". "Q and A"
4 must be in sequence. Whenever "Q and A" is interrupted by any colloquy, tab to the "colloquy
5 stop" (five spaces from the margin), identify the speaker, follow the name with a colon, and
6 begin typing the statement. If the text of the colloquy carries over to the next line, return the
7 carriage to the left hand margin to continue typing. If the witness answers a question posed
8 during the colloquy, the response is colloquy.

9 "Q and A" is always preceded by the name of the questioning attorney, for example: "BY
10 MR. LAW:"
11

12 **XXV. Stricken and Expunged Testimony**

13 Stricken and expunged testimony is transcribed as any other testimony. It will be obvious
14 to the reader what portion of the testimony the judge has ordered stricken. The judge might say,
15 "Reporter, please strike that last answer, and the jury is to disregard what the witness said." The
16 court reporter transcribes the entire colloquy, exactly as it took place.

17 **XXVI. Impaneling the Jury, Voir Dire, Opening Statements, 18 Closing Arguments** 19

20 In civil matters, the impaneling of the jury, *voir dire*, opening statements and closing
21 arguments are not required to be included in the official transcript of the proceedings. The
22 presiding judge will determine the practice to be followed in reporting and transcribing the
23 impaneling of the jury, *voir dire*, opening statements and closing arguments. If the judge has
24 established the practice of not having those portions of the proceedings reported and transcribed
25 and counsel requests any or all of those portions be reported and transcribed, the court reporter
26 will report and transcribe the proceedings exactly as they took place.

27 In criminal matters, the reporter reports all proceedings exactly as they took place and
28 transcribes, exactly as they took place, only those portions of the proceedings specifically
29 directed by order.

30 **XXVII. Requirements for Transcript Page**

31 Transcripts are to be typed in conformity with *W. Va. Code*, § 51-7-4 (1997). That statute
32 provides that the reporter shall furnish, upon request, to any party to a case, a typewritten
33 transcript of the testimony or other proceedings, "which shall be upon paper measuring eight and
34 one-half inches in width and eleven inches in length, with margins of one-half inch on the right
35 side and bottom, one inch at the top and one and one half inches on the left, with the page filled
36 as completely as practicable, with at least twenty-four complete lines on each page, with no more

WEST VIRGINIA DIVISION OF CULTURE AND HISTORY

West Virginia
Records Management
and
Preservation Board

**Records Retention Schedule
Circuit Clerk**

| ITEM | DESCRIPTION | RETENTION PERIOD | COMMENT |
|-----------------------|--|---|---|
| ADMINISTRATIVE | | | |
| ADM. 1 | ADMINISTRATIVE ORDERS-Orders relating to administrative matters in circuit or magistrate court entered by the circuit court or Supreme Court. | 1 Year | After a copy is entered in the Administrative Order Book. |
| ADM. 2 | ADMINISTRATIVE ORDER BOOK | Permanent | |
| ADM. 3 | ALIEN DECLARATION OR NATURALIZATION BOOK-Record of persons becoming naturalized citizens of the United States. Gives name of alien, place of residence, date of naturalization, and seal of judge. | Transfer to State Archives and History Division | |
| ADM. 4 | ATTORNEY'S OATH TO BE ADMITTED TO BAR - Oath taken by attorneys to be admitted to bar and to practice law in the county. 30-2-3 | Permanent | |
| ADM. 5 | CORRESPONDENCE - Not case related, general or administrative in nature. | 2 Years | |
| ADM. 6 | ELECTION RECORDS | By Statute and Regulation of the Secretary of State | |
| ADM. 7 | JURY COMMISSION RECORD BOOK (obsolete) - Record of annual meetings of jury commissioners showing date of meeting and commissioners present. | 4 Years | |
| ADM. 8 | MAGISTRATE ORDERS | 1 Year | After copy is entered in the Magistrate Order Book |
| ADM. 9 | MAGISTRATE ORDER BOOK | Permanent | |
| ADM. 10 | MOTIONS FOR JUDGMENT - Any motion that may be filed and is filed separate from a case. If motion is part of a case file, dispose in accordance with retention period for that type of case. | 50 Years | |
| ADM. 11 | STATISTICAL REPORTS - Reports submitted to Supreme Court on caseload (Circuit Court Report | 2 Years | |

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| | and Pending Case Age) and juror usage (JSMR and Term Report) 51-1-17 | | |
| CIVIL | | | |
| CIV. 1 | ADOPTION ORDER BOOK (confidential) 48-22-704 | Permanent | |
| CIV. 2 | ADOPTION CASE FILES (confidential) - Petitions to the court for the adoption of children, all intermediate pleadings and final decree of the court, showing in addition to the text, name and address of petitioner. | Permanent | |
| CIV. 3 | ALIMONY AND SUPPORT CASES LEDGER (obsolete) This shows name and amount of payment set by the court for all alimony and support cases. | 5 Years | |
| CIV. 4 | CHANCERY FILES - Original papers in cases of chancery, including all orders, pleadings and decrees. Shows name of parties to suit, style of case, names of attorneys, disposition of case and all pleadings entered. | 50 Years | For non- real property cases. Permanent for real property cases, Chief judge must approve disposal with advice from local Bar Committee |
| CIV. 5 | CHANCERY INDEX - Index to Chancery Orders to include reports, orders for payment and other services. 56-4-2 | Permanent | |
| CIV. 6 | CHANCERY ORDER BOOK | Permanent | |
| CIV. 7 | CHANCERY ORDER BOOK FOR SALE OF LAND FOR SCHOOL FUND 11A-4-6 | Permanent | |
| CIV. 8 | CHANCERY ORDERS -Record of orders issued by superior court of law and chancery and Circuit Court. Gives names of parties to suit, date order entered, type of order, and status of case. Includes reports of special commissioners, orders for payment of fees, and other services to court. 56-4-2 | 50 Years. | |
| CIV. 9 | CHANCERY RULE AND PROCESS BOOK - Record of chancery rule days in Circuit Court and record of issuance of chancery process, orders, or decrees in said court. State cases at rules, style of case, date of process, return date, name of person summoned, officer to whom delivered with receipt, execution of process, pleadings. Also shows nature of case, the person to whom and the time it was delivered, or if mailed. 56-4-2 | May be destroyed | |
| CIV. 10 | CHANCERY TRIAL DOCKET | May be destroyed | |
| CIV. 11 | CIVIL APPEALS - All papers and documents dealing with appeals of circuit court civil cases to the Supreme Court. 58-4-7 | See CIV. 14 | Use time periods listed for civil files |
| CIV. 12 | CIVIL DOCKETS - A listing of civil cases pending before the court at a given term of court | 3 Years | |
| CIV. 13 | CIVIL DOCKET BOOKS/SHEETS - A chronological listing of all papers filed with the clerk, process | See CIV. 14 | Use time periods listed for civil case |

| | and returns, orders and judgments entered in a given case. <i>R.C.P. 79 (a)</i> | | files |
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| CIV. 14 | <p>CIVIL CASE FILES - No service of process (any case)</p> <p>Tort case</p> <p>Contract case</p> <p>Real property rights</p> <p>Extraordinary writs, including habeas corpus</p> <p>Miscellaneous Proceedings/Petitions</p> <p>Payment on Accounts</p> <p><i>Note: The following documents may be disposed apart from the other contents of the file to reduce bulk before long term storage:</i></p> <p>Witness subpoenas</p> <p>Correspondence concerning scheduling, transmittals, or other administrative matters</p> <p>Envelopes</p> <p>Duplicate Copies <i>R.C.P. 4</i></p> | <p>5 Yrs. after dismissal order</p> <p>50 Years</p> <p>50 Years</p> <p>Permanent</p> <p>50 Years</p> <p>10 Years</p> <p>5 Years if satisfied</p> <p>30 days after the expiration of the appeal period</p> | |
| CIV. 15 | CIVIL DISCOVERY <i>R.C.P. 30 (f) (1)</i> | 1 Year | If filed with the court, after disposition returned to attorney or destroyed by order of Chief Judge |
| CIV. 16 | CIVIL CASE EXHIBITS 57-5-11 | 30 Days | After expiration of the appeal period (by court order and with notice to the party/owner) |
| CIV. 17 | CIVIL INDEX <i>R.C.P. 79 (c)</i> | Permanent | |
| CIV. 18 | CIVIL ORDER BOOK <i>R.C.P. 79 (b)</i> | Permanent | |
| CIV. 19 | <p>COURT REPORTER RECORDS IN CIVIL CASES - Record of the court proceedings produced by the court reporter or electronic recording device. Includes notes, tapes and typed transcripts. <i>Note: All temporary or substitute reporters must file notes or tapes with clerk for storage until transcript is requested.</i></p> <p>Tapes of Mental Hygiene Hearings</p> <p>Tapes of Guardianship Hearings</p> | <p>10 Years</p> <p>10 years</p> <p>10 years</p> | <p><i>Note: Original notes or tapes may be destroyed or returned to reporter after typed transcript is certified.</i></p> |

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| | Tapes of Family Law Master Hearings 51-7-4 | 5 years | |
| CIV. 20 | DELINQUENT LAND BOOK 11A-4-16 | 5 Years | After sale of property, however, permanent retention may be necessary if there is not adequate recordation in the office of the county clerk. |
| CIV. 21 | DOMESTIC RELATIONS DOCKET BOOK/SHEETS - A chronological listing of all papers filed with the court, process and returns, orders and judgments entered in a given case. C.C.P. 79 (a) | See CIV. 22 | Use time periods listed for domestic relations case files |
| CIV. 22 | DOMESTIC RELATIONS CASE FILES - (confidential) Divorce Cases Paternity URESAs Other Domestic Relations Cases | 20 Years Permanent if established 20 Years if not established 20 Years 20 Years | Unless dismissed under R.C.P. 41 (b), then destroy 4 years after dismissal |
| CIV. 23 | DOMESTIC RELATIONS ORDER BOOK R.C.P. 79 (b) | Permanent | |
| CIV. 24 | DOMESTIC RELATIONS CASE INDEX R.C.P. 79 (c) | Permanent | |
| CIV. 25 | EXECUTION OF ORDERS - Record of original writs of execution issued on judgments. Shows names of judgment debtor and creditor, name of attorney, date of judgment, date and amount of execution, court in which rendered, costs, when returnable, to whom delivered, and returns. | 10 Years | |
| CIV. 26 | EXECUTION ORDER BOOK (obsolete) | 10 Years | |
| CIV. 27 | GUARDIANSHIP/CONSERVATORSHIP CASE FILES (confidential) | 75 Years | |
| CIV. 28 | GUARDIANSHIP/CONSERVATORSHIP ORDER BOOK (confidential) | Permanent | |
| CIV. 29 | INTERMEDIATE COURT RECORDS - Records on hand designated as intermediate court records | Refer to specific record series in this retention schedule | |
| CIV. 30 | LAW ORDER BOOKS - Law orders of County Court and Circuit Court in all legal actions. Shows names of parties to suits, names of attorneys, type of case, order of decree issued, date of order and recordation. | Permanent | |
| CIV. 31 | LAW FILES | 50 Years | Permanent if real property |

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| CIV. 32 | LAW PROCESS BOOKS - Record or issuance of law process orders or decrees in Circuit Court. Shows nature of case, date and return day, person to whom and the time when it was delivered, or if mailed, date thereof, to whom mailed, and receipt from making delivery. | 50 Years | |
| CIV. 33 | MENTAL HYGIENE CASE FILES - (confidential) | 75 Years | |
| CIV. 34 | MENTAL HYGIENE ORDER BOOK- (confidential) | Permanent | |
| CIV. 35 | PRAECIPE/PROCESS BOOK (obsolete) - Record of writs of summons issued by Clerk of Circuit Court requiring appearance of person or papers in suits as stated on writs. 56-3-6 | May be destroyed at the clerk's discretion | |
| CIV. 36 | RECEIVER'S ACCOUNTS 51-6-12 | 5 Years after entry in receiver's docket | |
| CIV. 37 | RECEIVER'S DOCKET- Copies of reports made by general court receiver of funds in custody of court. Shows itemized accounts of receipts and disbursements. 51-6-12 | Permanent | |
| CIV. 38 | RECIPROCAL SUPPORT LEDGER - (obsolete) | 5 Years | |
| CRIMINAL | | | |
| CR. 1 | BOUND OVER CASES - Dismissed in circuit court. Cases bound over from magistrate court to circuit court which are dismissed after 1 year of inaction in circuit court. R. Cr.P. 48 | Returned to prosecutor after dismissal. | If prosecutor declines to accept, destroyed at the discretion of the circuit clerk. |
| CR. 2 | CRIMINAL DOCKET - A listing of criminal cases pending before the court at a given time of court | 3 Years | |
| CR. 3 | CRIMINAL DOCKET BOOKS/SHEETS - A chronological listing of all papers filed with the clerk, process and returns, orders and judgments entered in a given case. | See CR. 4 | Use time periods listed for criminal case files |
| CR. 4 | CRIMINAL CASE FILES - All documents in criminal proceedings, including the information or indictment, all pleadings, motions, orders or decrees, the original pre-sentence investigation report and other tests or evaluations performed on the defendant. Felony Misdemeanor Petitions ancillary to criminal proceedings in magistrate court <i>Note: The following documents may be disposed apart from other contents to reduce bulk before long term storage:</i> Witness subpoenas Correspondence concerning scheduling, | 75 Years 10 Years 10 Years 30 days after expiration of the appeal period | See CIV. 14) |

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| | transmittals, or other administrative matters | | |
| | Envelopes | | |
| | Duplicate copies | | |
| CR. 5 | CRIMINAL EXHIBITS 57-5-11 | 30 days after expiration of the appeal period | (by court order and with notice to the party/owner) |
| CR. 6 | CRIMINAL INDEX | Permanent | |
| CR. 7 | CRIMINAL ORDER BOOK R. Cr.P. 55 | Permanent | |
| CR. 8 | COURT REPORTER RECORDS IN CRIMINAL CASES - Record of the court proceedings recorded by the court reporter or electronic recording device. Includes notes, tapes and transcripts. Note: All temporary or substitute reporters must leave notes or tapes with clerk for storage until transcript is requested or notes may be disposed in accordance with retention schedule. 51-7-4 | | Note: Original notes or tapes may be destroyed or returned to reporter after typed transcript is certified. |
| | Felony | 75 Years | |
| | Misdemeanor | 10 Years | |
| CR. 9 | INDICTMENT BOOK, DRAWER OR ENVELOPE | 75 Years | |
| CR. 10 | INTERMEDIATE COURT RECORDS - Records on hand designated as intermediate court records. | Refer to specific record series in this retention schedule | |
| CR. 11 | WAIVER OF EXTRADITION | 10 Years | |
| FINANCIAL | | | |
| FIN. 1 | ACCOUNTING AND FISCAL RECORDS - Includes budget information, travel expense, financial reports and other operational type ledgers and reports. Includes the Monthly Statement of Clerk of the Circuit Court, the remittance to the sheriff. 59-1-30, 59-1-31 | 1 Year | After clearance of audit exceptions |
| FIN. 2 | ATTORNEY'S RECEIPT BOOK - Record of receipts given by attorneys for removal of documents from files for use in preparation of cases. States name of attorney, papers removed, date of removal, and date returned. | Destroy when all documents have been returned | |
| FIN. 3 | BANKING RECORDS - All cancelled checks, void checks, check books, deposits, bank statements, debit and credit memos, and other pertinent banking procedure documents. | 1 Year | After clearance of audit exceptions |
| FIN. 4 | CASH RECEIPTS BOOK OR AUTOMATED DATA RECORD - Record of daily receipts showing name of fund or case date amount, and account debited or credited. 59-1-30 | 1 Year | After clearance of audit exceptions |
| FIN. 5 | CIRCUIT COURT BONDS - Bonds given by court receivers, chancery commissioners, special commissioners, costs, appearance and forthcoming bonds filed with the Clerk of Circuit Court. Shows name of principal, date, amount | Retain with case file | |

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| | | | |
|------------------|---|---|---|
| | and condition of bond, names of surety and date admitted to record. | | |
| FIN. 6 | FEE BOOK (CASH JOURNAL) - Clerk's record of fees charged or collected for recordation and other services performed in their office. Gives names of person charged with fee, type of suit, kind of instrument and recordation; also receipts of the office. 59-1-19 | 1 Year | After clearance of audit exceptions |
| FIN. 7 | GRAND JURY PAYMENT RECORDS - Record of jurors summoned for grand jury service, showing name of juror, time served, mileage and amount allowed. 52-2-13 | 4 Years | |
| FIN. 8 | PETIT JURY PAYMENT RECORDS - Record of jurors summoned for petit jury service, showing name of juror, days served, mileage and amount of reimbursement. 52-1-19 | 4 Years | |
| FIN. 9 | PROCUREMENT PROCEDURE RECORDS - Requests for supplies and equipment, receiving reports, invoices, shipping documents, oil and gas tickets, and any other records used in the procurement of supplies equipment, or services. | 1 Year | After clearance of audit exceptions. |
| FIN. 10 | VOUCHERS FOR COURT- APPOINTED COUNSEL 29-21-13a(e) | 1 Year | |
| FIN. 11 | WITNESS BOOKS - (obsolete) - Record of witnesses appearing in court cases, showing date of court term, style of cases, names of witnesses for complainant, names of witnesses for respondent, number of days attended, miles traveled, amount due, and date of payment. | May be destroyed at discretion of clerk | |
| FIN. 12 | WITNESS FEE PAYMENT RECORDS - Vouchers for witness fees, mileage, hotel and/or meal expense payable by the State | 1 Year | After clearance of audit exceptions. |
| FIN. 13 | WORK RELEASE LEDGER - Ledger of individual defendant incarcerated in county jail released on work release. Itemized collections and disbursements of defendant's earnings. 62-11A-1 | 1 Year | After clearance of audit exceptions. |
| JUVENILE | | | |
| JUV. 1 | JUVENILE FILES - (confidential) - File may include record of arrest; showing names, addresses, date, time, age, date and place of birth, description, place of arrest, charge, disposition at time of arrest, name of judge, accomplices, arresting officer, remarks and disposition, vehicle, make and model, and license number. Cases are sealed and are not open to public inspection. | 20 Years | After last hearing |
| JUV. 2 | JUVENILE ORDER BOOKS - (confidential) - Record of findings of Circuit Court in all cases of juvenile delinquency. Shows name of minor, date of hearing, charge, and disposition of case. 49-5-17 | Permanent | Whiteout or obliterate any to name of juvenile when the case file is expunged |
| PERSONNEL | | | |
| PER. 1 | EMPLOYMENT APPLICATIONS | 2 Years | |
| PER. 2 | PERSONNEL ATTENDANCE RECORDS -Includes time sheets/time cards, compensatory time | 1 Year | After clearance of audit exceptions |

| | | | |
|--------|--|---------|--|
| | records, monthly/weekly reports, etc. | | |
| PER. 3 | PERSONNEL EMPLOYMENT RECORD CARDS - Record card for each employee showing name, address, date of birth, emergency information, beginning and ending dates of employment, social security number, job position, wages, etc. | 5 Years | After termination of employment or longer at the discretion of the clerk |
| PER. 4 | PERSONNEL FOLDERS | 5 Years | After termination of employment or longer at the discretion of the clerk |

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COPY

IN THE CIRCUIT COURT OF McDOWELL COUNTY, WEST VIRGINIA

STATE ex rel.
AMOS GABRIEL HICKS,

Petitioner,

vs.

Civil Action No. 12-C-100

DAVID BALLARD, Warden,
Mount Olive Correctional Center,

Respondent.

Transcript of proceedings had before the Honorable
Booker T. Stephens, Circuit Judge, in Courtroom A,
McDowell County Courthouse, Welch, West Virginia,
pursuant to a hearing concerning the above-styled felony
action, commencing on the 8th day of August, 2013.

Carolyn R. DiLorenzo, CCR
Official Court Reporter

1 it's denied.

2 Motion to Retain and to Procure Jury Payment
3 Records. What's that about?

4 MR. LaCARIA: I don't know, Your Honor. I'll
5 leave that to --

6 MR. HICKS: That is to verify the jurors that
7 were present that day in case of the *voir dire*, Your
8 Honor. Also -- also, during my trial I remember the
9 jury pool running low and jurors coming from outside
10 the courtroom and I don't remember where they come
11 from or anything like that. That's why I need a
12 payment record to keep track of who was and was not
13 there.

14 THE COURT: That's going to be denied.
15 Actually, the circuit clerk has a list of those
16 jurors in your underlying case file. We have a list
17 of all the jurors that would have been here that
18 day. So that's not going to -- you don't need
19 payment records to find that out. That's denied.

20 Motion to Invoke Discovery. What's that about?

21 MR. LaCARIA: I would assume, Your Honor, and
22 I'm not really for sure on that, and I apologize to
23 the Court for making such a statement, but I believe
24 that would be, if we find these witnesses that he

1 says we need to find, we would want to take their
2 depositions. Is that what you mean?

3 MR. HICKS: Yes. That will be the majority of
4 it.

5 THE COURT: All right.

6 MR. HICKS: We need to find the witnesses and
7 get a statement from them and have them on record.

8 MR. LaCARIA: We probably could do that, if we
9 find these folks, and come back and --

10 THE COURT: Well, that's something -- this is
11 denied at this juncture. If you -- if you -- if
12 that develops, you want to come back and renew this
13 motion at that time, then I'll have to look at it
14 again.

15 MR. LaCARIA: Thank you, Your Honor.

16 THE COURT: Motion for Change of Venue. I've
17 never had a motion for change of venue in a *habeas*
18 *corpus* proceeding. That's normally the trial, the
19 underlying trial.

20 MR. LaCARIA: Agreed, Your Honor.

21 THE COURT: But you tell me what this is about.

22 MR. HICKS: Well, because you and I have been
23 in front of the Judicial Board, and because
24 Mr. LaCaria and I have been in front of the

IN THE CIRCUIT COURT OF McDOWELL COUNTY, WEST VIRGINIA

AMOS GABRIEL HICKS,

Petitioner,

v.

DAVID BALLARD, WARDEN, MOUNT
OLIVE CORRECTIONAL COMPLEX,

Respondent.

CIVIL ACTION
NO. 12-C-100-S

DATE: December 5, 2016

TRANSCRIPT OF OMNIBUS HABEAS CORPUS PROCEEDING
BEFORE THE HONORABLE BOOKER T. STEPHENS
IN WELCH, WEST VIRGINIA

APPEARANCES:

For the Petitioner: Philip A. LaCaria, Esq.
88 McDowell Street
Welch, WV 24801

Edward L. Bullman, Esq.
BULLMAN & BULLMAN
607 Ohio Avenue
Charleston, WV 25302

For the Respondent: Ed Kornish, Prosecuting Attorney
Emily Miller, Asst. Prosecutor
McDowell County Prosecutor's Office
93 Wyoming St., Ste. 207
Welch, WV 24801

Court Reporter: Teresa L. Harvey, RMR, RDR, CRR

Proceedings recorded by mechanical stenography;
transcript produced by computer.

I N D E X

| PETITIONER'S WITNESSES | DIRECT | CROSS | REDIRECT | RECROSS |
|------------------------|------------|-------|----------|---------|
| Francine Spencer | 15 | -- | -- | -- |
| Carolyn DiLorenzo | 25, 26, 38 | -- | -- | -- |
| Mark Shelton | 60 | -- | -- | -- |
| Chasity Davis | 72 | -- | -- | -- |
| Athena Duty | 79 | -- | -- | -- |
| Carla Falletti | 86 | -- | -- | -- |
| Larkin Rippeth | 138 | 139 | 140 | -- |
| Jimmy Wayne Payne | 141 | -- | -- | -- |
| Amos Gabriel Hicks | 144 | -- | -- | -- |

RESPONDENT'S WITNESSES

| | | | | |
|----------------------|-----|-----|-----|-----|
| Thomas R. Scott, Jr. | 94 | 99 | -- | -- |
| Michael F. Gibson | 108 | 111 | -- | -- |
| Sidney Bell | 120 | 130 | 135 | 136 |

RESPONDENT'S EXHIBITS

ADMITTED

| | | |
|-------|---|----|
| No. 1 | Record Retention Schedule | 34 |
| No. 2 | Manual for Official Court Reporters of the West Virginia Judiciary | 34 |
| No. 3 | Appellate Transcript Request Form Dated October 30, 2009 | 34 |
| No. 4 | Letter Dated 11/9/12 from DiLorenzo to LaCaria | 27 |
| No. 5 | Appellate Transcript Request Form Dated November 24, 2009 | 29 |
| No. 6 | Letter Dated 6/24/14 from Horn to DiLorenzo | 30 |
| No. 7 | Letter Dated 8/18/14 from DiLorenzo to Horn | 31 |
| No. 8 | | 38 |

1 PROCEEDINGS had before the Honorable Booker T.
2 Stephens, Judge of the Circuit Court of McDowell County,
3 West Virginia, Eighth Judicial Circuit, held in Welch,
4 West Virginia, on December 5, 2016, at 11:02 a.m., as
5 follows:

6 **THE COURT:** Let's see if we're ready on the Amos
7 Gabriel Hicks case.

8 **MR. LaCARIA:** Judge, we may have some witnesses in
9 here who might need to be sequestered.

10 **THE COURT:** We'll take care of that.

11 **MR. LaCARIA:** Yes, Your Honor.

12 **THE COURT:** I just need to take this out here and
13 get started.

14 The matter before the court is Amos Gabriel Hicks,
15 Petitioner, v. David Ballard, Warden of Mount Olive. The
16 case number is 12-C-100. This matter is before the court
17 upon omnibus habeas corpus hearing.

18 I would inquire whether the petitioner is ready to
19 go forward this morning or not?

20 **MR. BULLMAN:** I believe so, Judge.

21 **THE COURT:** Is respondent ready to go?

22 **MR. KORNISH:** Respondent is, Your Honor.

23 **THE COURT:** All right. In our most recent hearing,
24 I believe I allowed Mr. Hicks to represent himself. I

1 don't need for three people to be asking questions from
2 the petitioner's table. So I just need to know who's
3 going to -- are you-all letting Mr. Hicks control this
4 hearing or how is that going to work?

5 **MR. BULLMAN:** Not entirely -- I'm sorry, Judge; I
6 didn't mean to interrupt you. Not entirely. I think it
7 depends upon the witness and the subject. I've
8 interviewed various witnesses. Mr. LaCaria has
9 interviewed various witnesses. I plan on questioning
10 those that I have spoken with, same thing with
11 Mr. LaCaria. And I think Mr. Hicks has some other
12 witnesses that he is going to interview.

13 I think where this division of labor, whatever you
14 want to call it, took place is the way -- different way
15 we view the case and what we think may be stronger
16 grounds. So that's -- we're not -- for example, if there
17 is one witness up there, I'm not going to ask him
18 something and he's not going to ask him something. It
19 will only be one lawyer dealing with that.

20 **THE COURT:** That's the point I wanted to make. And
21 I appreciate that. I appreciate that.

22 And a couple other matters I'd like to deal with
23 before we actually get started. I wanted to try and take
24 two witnesses, if we can, with your permission, out of

1 turn. And that's the circuit clerk, Francine Spencer,
2 and the court reporter, Carolyn DiLorenzo.

3 Is that all right --

4 **MR. BULLMAN:** No problem.

5 **THE COURT:** -- with everybody?

6 I'd like for them to be the first witnesses today so
7 that they can go on. Any objection?

8 **MR. LaCARIA:** No, Your Honor.

9 **MR. KORNISH:** No objection, Your Honor. I'd also
10 ask that Mr. Bell, who is the trial prosecutor, and
11 Mr. Scott, who was trial counsel --

12 **THE COURT:** All right.

13 **MR. KORNISH:** -- and Mr. Gibson, who are trial
14 counsel, that they be taken out of order when they
15 arrive. I told them, as far as my subpoenas, they could
16 be here at 1:00 today.

17 **THE COURT:** And if there is no problem with that,
18 we'll do that.

19 Deputy Shelton, did you have a question?

20 **DEPUTY SHELTON:** Sir, I'd just like to testify as
21 soon as I could so I could get back to my job.

22 **THE COURT:** All right. Any problem with any of
23 this?

24 **MR. LaCARIA:** No. No, Your Honor.

1 **THE COURT:** All right. So that's Shelton, Bell,
2 Gibson -- is it Scott? What was -- Scott? Was that your
3 other lawyer's name? Trial lawyer.

4 **MR. BULLMAN:** There was Scott, Gibson and --

5 **THE COURT:** Scott and --

6 **MR. BULLMAN:** And I think there was Sid Bell when he
7 got here.

8 **THE COURT:** Spencer and DiLorenzo. So if we can
9 just start with -- I understand Ms. Spencer has
10 laryngitis, maybe?

11 **UNIDENTIFIED SPEAKER:** Yes.

12 **THE COURT:** So stay away from me, but come on up
13 here.

14 **PETITIONER HICKS:** I have one last ground that needs
15 to be put in with the habeas corpus.

16 **THE COURT:** All right.

17 **PETITIONER HICKS:** I brought copies for the Court
18 and for the prosecution. I also have a statement I need
19 to read into the record, please.

20 **THE COURT:** Wait just a minute, then.

21 **MR. KORNISH:** Could we sequester the witnesses?

22 **THE COURT:** Yeah, we'll sequester the witnesses but
23 let's see what he's adding.

24 **MR. KORNISH:** Maybe before he does that?

1 **THE COURT:** Hmmm?

2 **MR. KORNISH:** Maybe before he makes his statement?

3 **THE COURT:** I am going to do that before he makes a
4 statement.

5 This is to go in the court file. All right. I want
6 to sequester the witnesses. Those that were petitioned
7 by -- that were subpoenaed by the petitioner will go in
8 this upper room up here where these two offices are. And
9 those that were subpoenaed by the respondent will go in
10 the back room, first room on the right in the back. All
11 right.

12 The Court's been handed what looks like a number --
13 it begins with No. 37.

14 **PETITIONER HICKS:** That is the last -- the last
15 number on the original or amended petition was 36, so
16 that would be No. 37.

17 **THE COURT:** Does the respondent get a copy of this?

18 **MR. KORNISH:** We just got one, Judge.

19 **THE COURT:** All right. This will be filed and made
20 a part of the record.

21 Now, did you want to read your statement now, sir?

22 **PETITIONER HICKS:** Yes.

23 **THE COURT:** You may go ahead. Just keep your voice
24 up so the court reporter can hear you.

1 **PETITIONER HICKS:** Yes, sir.

2 On 1/22 and '13, I filed a motion for list of all
3 prospective jurors for both McDowell County Circuit Court
4 for the date of 20 July 2009.

5 We had a hearing on 08/08/13, where this Court
6 denied that motion and various other motions. The order
7 was filed 08/14/09 [sic], the circuit clerk's file
8 No. 43. I timely filed objections and exceptions to the
9 ruling on 09/09/13. There was no ruling, or as far as I
10 can tell, consideration after these objections were
11 filed. Therefore, I want to re-present my objections and
12 exceptions to the denial of that motion, because it is
13 potentially denying me the ability to prove one of my
14 grounds that are raised in the instant petition, No. 8 --
15 Ground No. 8.

16 All other avenues are frustrated or blocked by the
17 absence of the transcripts in this case and the
18 extraordinary amount of time that has elapsed since that
19 time.

20 In short, the denial of this motion has the effect
21 of denying me the ability to appeal my case on this
22 ground, which affects the fundamental groundwork of a
23 bedrock principal of law in jury selection process and
24 the right to a fair and impartial jury.

1 Therefore, I would like to ask that these rulings to
2 these objections and today's objection, if it would
3 please the Court.

4 **THE COURT:** Was that basically your objection to the
5 Court's ruling?

6 **PETITIONER HICKS:** I never received anything from my
7 objections and -- objections and exceptions. And I ask
8 of the Court to please reconsider the notion [sic] of
9 giving me the potential jury again.

10 **THE COURT:** Okay. Denied and overruled.

11 Anything else from you, sir?

12 **PETITIONER HICKS:** No. I had to put it on record,
13 sir. That's all.

14 **THE COURT:** It's on the record. You just read it
15 into the record.

16 **PETITIONER HICKS:** Yeah.

17 **THE COURT:** Anything else you want to add?

18 **PETITIONER HICKS:** Not at this moment, sir.

19 **THE COURT:** All right. Mr. Evans.

20 **MR. EVANS:** Yes, sir.

21 **THE COURT:** You're not late. Well, you are late,
22 but you're not late. Okay?

23 **MR. EVANS:** Yes, sir.

24 **THE COURT:** I moved your case for sentencing on

1 Bennett to December 28th at 10:00.

2 *MR. EVANS:* Very well. Thank you.

3 *THE COURT:* And he was supposed to try and catch you
4 and see you, but evidently --

5 *MR. EVANS:* Okay. I'll locate him today. Thanks,
6 Judge.

7 *THE COURT:* All right. Thank you.

8 (Colloquy between the Court and Mr. Evans
9 does not relate to this case.)

10 *THE COURT:* Now, can we take Ms. Spencer now as the
11 first witness? Okay. Have her come in.

12 That door probably needs to be closed.

13 Are there other witnesses back there?

14 *COURT BAILIFF:* No, sir.

15 *THE COURT:* All right. Come right here, please.
16 Stop there and raise your right hand.

17 (Witness sworn.)

18 *THE COURT:* All right. Now, who will question
19 Ms. Spencer?

20 *MR. LaCARIA:* Mr. Hicks will.

21 *THE COURT:* All right. See if that microphone is on
22 when you get up there. Just tap on it. Okay. You might
23 want to hold it close to you since you're having trouble
24 speaking. All right.

1 **MR. LaCARIA:** Your Honor, may I approach the witness
2 just for a second to give her something?

3 **THE COURT:** All right.

4 **MR. LaCARIA:** Mr. Hicks is going to question her
5 about this. She'll need to see it.

6 Ed, here is your copy.

7 **THE COURT:** Do you have a copy for the Court?

8 **MR. LaCARIA:** Do you have a copy for the Court?

9 **PETITIONER HICKS:** The record retention schedule.
10 This is all I have.

11 **THE COURT:** well, we'll make a copy. That's all
12 right. Give it to my law clerk to make a copy.

13 Let's wait one second till I can get a copy.

14 Do you have any exhibits to be marked? I think
15 that's what I need to ask you also.

16 **MR. LaCARIA:** Any more exhibits?

17 **PETITIONER HICKS:** As time goes, but just whenever I
18 call -- whenever I call the witness, I have the exhibits
19 already marked.

20 **THE COURT:** well, I want -- I want to get all the
21 exhibits marked now before we start, if we can.

22 **MR. BULLMAN:** Judge, I don't think this is going to
23 be an exhibit. This is the manual for the official court
24 reporters' employment. Mr. Hicks will be questioning the

1 court reporter about some provisions in that. I've given
2 a copy to the State. I can give a copy to the Court now.

3 *THE COURT:* All right.

4 *MR. BULLMAN:* Actually, what they're going to be --
5 I suspect what they're going to be asking about is --

6 *MR. KORNISH:* Could I ask a copy be made for
7 whatever witness as well?

8 *MR. BULLMAN:* I have one.

9 *THE COURT:* No. 15 was what you were pointing to?
10 It says: "Untranscribed notes"?

11 *MR. BULLMAN:* Yes, sir.

12 *THE COURT:* Okay.

13 *MR. BULLMAN:* We have one for the witness, if she
14 needs it.

15 *THE COURT:* Yeah. I'd like to get all the exhibits
16 marked now so that we don't have to do that piecemeal.
17 okay?

18 And you're saying that's not going to be an exhibit,
19 this Court Reporter's Manual?

20 *MR. BULLMAN:* I don't think it's an exhibit, Judge.
21 It's just the regulations from the Supreme Court.

22 *THE COURT:* All right.

23 *PETITIONER HICKS:* I would prefer that be an
24 exhibit, sir, because I'm going to question Ms. DiLorenzo

1 concerning Page 52.

2 **MR. BULLMAN:** I stand corrected.

3 **PETITIONER HICKS:** I'm sorry about that.

4 **MR. LaCARIA:** You only have one copy; right?

5 **PETITIONER HICKS:** I have got a copy.

6 **MR. BULLMAN:** I've got -- I meant the letter.

7 **PETITIONER HICKS:** Yeah, but he wants a copy of the
8 exhibits.

9 **MR. LaCARIA:** These are the other exhibits over
10 here.

11 **MR. BULLMAN:** I understand. Here is the letter
12 reply to you about the transcripts.

13 Here is the request for the transcripts.

14 **PETITIONER HICKS:** That needs to be given to the
15 Court.

16 **MR. BULLMAN:** That's your copy, one exhibit and one
17 to refer to --

18 **THE COURT:** If you'll just write --

19 **MR. BULLMAN:** -- and one for the State.

20 **THE COURT:** If you'll just write down on your paper
21 1, 2, 3, 4, 5, 6, you know, a list of them.

22 **MR. LaCARIA:** Just start at 1?

23 **THE COURT:** Huh?

24 **MR. LaCARIA:** Is that what you want us to do, start

1 at 1, Your Honor?

2 *THE COURT:* Yes.

3 *MR. LaCARIA:* Exhibit 1? Petitioner's Exhibit 1?

4 *THE COURT:* Yes.

5 *MR. LaCARIA:* Okay. On the back would be fine?

6 *THE COURT:* You got your labels?

7 well, she has a label but we need -- we need a list.
8 We need, you know, a list of what the exhibits are going
9 to be. So when you bring No. 1 up here, for your own
10 information, just write down what that is. And she's
11 going to write it down for my -- for the Court. Okay?

12 But, now, was this an exhibit or not?

13 *MR. LaCARIA:* He wants it to be an exhibit, Your
14 Honor.

15 *PETITIONER HICKS:* Yes.

16 *THE COURT:* This thing here?

17 *PETITIONER HICKS:* Yes.

18 *THE COURT:* So that will be No. 1. Let's let that
19 be No. 1 -- Petitioner's No. 1.

20 *MR. KORNISH:* Which one is that? What is that?

21 *MR. BULLMAN:* Record retention.

22 *THE COURT:* So what we'll do is just take about a
23 ten-minute recess here and just let you-all get your
24 exhibits lined up. Okay?

1 If you wish to step down or stay up there, it's up
2 to you, Ms. Spencer.

3 (Brief recess at 11:17 a.m.; proceedings
4 resume, all parties and counsel present.)

5 **THE COURT:** All right. Keep your voice up as much
6 as you can.

7 You may proceed, Mr. Hicks.

8 **F R A N C I N E S P E N C E R**

9 was thereupon called as a witness by the Petitioner, and
10 having been first duly sworn, testified as follows;

11 **DIRECT EXAMINATION**

12 **BY PETITIONER HICKS:**

13 **Q.** Ms. DiLorenzo --

14 **THE COURT:** No, this is Ms. Spencer.

15 **PETITIONER HICKS:** Yes. I'm sorry.

16 **BY PETITIONER HICKS:**

17 **Q.** Could I ask you to state your name for the
18 record, please?

19 **A.** Francine Spencer.

20 **Q.** Ms. Spencer, when did you become Circuit Clerk
21 for McDowell County?

22 **A.** December of 2009.

23 **Q.** Michael Brooks was the circuit clerk during my
24 trial; is that correct?