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July 28, 2009

Sent via facsimile to (304) 487-1574

Michael F. Gibson, Esq.
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1345 Mercer Street
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RE: State of West Virginia v.
Amos Gabriel Hicks
Circuit Court of McDowell County
Case No. 08-F-154-S
Our File No. 34786

Dear Mike:

Tom asked that I forward these thoughts to you via letter in preparation for the filing of the motion to set aside the verdict. I understand from Mr. Hick's daughter, Chastity Davis, that the family has had several conversations with him and wants to convey what they believe are issues at trial that may be relevant to the motion and possible appeal.

Mr. Hicks observed that coincident or shortly after *voir dire*, Judge Stephens 'guaranteed' one of the jurors that the trial would be concluded by Thursday to accommodate any jurors' vacation plans. His recollection is that one juror specifically was planning a trip to Washington D.C.

Further, along the same line, following jury instructions Judge Stephens told the jury, and I paraphrase, 'if I don't hear a knock on the door then you'll stay in there forever.'

July 28, 2009

Page 2

Mr. Hicks and his family are concerned that these remarks influenced the jury in such a way that they felt rushed and compelled to reach a verdict quickly. We read Tom's letter to you regarding his thoughts on the motion and at this time, we do not have anything else to offer.

I will be on vacation beginning August 4 and will return to the office on August 18; in the meantime, Katie will be here to assist in any way she can.

With best regards, I remain,

Sincerely,



Carla J. Faletti
Law Clerk to Thomas R. Scott Jr.

Cc: Amos Gabriel Hicks
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April 13, 2018

Mr. Amos G. Hicks, 3446832
MOCC
One Mountainside Way
Mt. Olive, WV 25185

In re: habeas corpus case

Dear Gabe:

Please know that I met with Prosecutor, Ed Kornish, on the afternoon of April 12. I submitted to Mr. Kornish that Judge Stephens was concerned very much about your case mainly because of the court reporter's actions, as well as her husband's, at throwing away part of your file. I submitted to Mr. Kornish that there was a possibility, if the State agreed, that the Court might accept a plea of second degree murder or a lesser included offense such as voluntary manslaughter, in consideration for the fact that the habeas corpus case would be dismissed and that there would be no further litigation involving the history of Gabe Hicks' case and the actions of certain individuals during the course of the litigation, mainly the court reporters actions. I think that the Court does not want this information to go forth knowing that the next stage of Gabe's case would be in the Supreme Court, as I understand it.

The meeting kind of digressed at this point. Judge Stephens was discussed at great length. I probably told you already and you may not know much, if anything, about this type of case, but over the past year or so, there have been two child abuse/neglect cases before Judge Stephens. To not bore you, the Prosecutor's Office made a recommendation in both cases as to where the children should be placed, as did I as GAL for the children, as did the CPS worker. In both cases, the recommendations of those individuals were ignored by Judge Stephens and he placed the children with other folks involved in the case, who none of us recommended. In other words, the Judge did what he wanted to do, which was completely opposite of what was recommended to the Judge. I know that the Judge can do whatever he wants, normally, but this raised some significant signs indicating that apparently the Judge may have gone too far.

The attorney for the folks who lost out, appealed to the Supreme Court. This attorney represented both aggrieved parties. Much to my chagrin, I was required to go to Charleston and orally argue these cases to the Supreme Court as GAL. Perhaps Mr. Bullman would not mind, but going to Charleston on a cold winter day is a significant hassle for a 72 year old lawyer. The legislature was in session. I had to virtually bribe a security guard to allow me to park in one of his parking spaces so that I would not have to walk something like 2 miles to the Court. It was a nightmare for me. Finally, when we did get before the Court, Justice Workman, who is very much interested in childrens' cases, attacked us all. She yelled at me. I just looked at her and said "Judge, I was the Guardian ad Litem in both of these child abuse cases and my recommendations to the trial court, Judge Stephens, were well documented. There is only so much that I can do. I am not the Judge." Then she backed off at this point. My feelings were hurt,

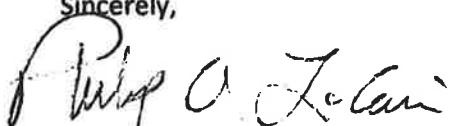
Gabe. I worked my tail off on both of those cases. I submitted detailed opinions as to why the Judge should do what he did not do. You know, when you are in court, you're just a lawyer. You are an officer of the Court, but you have little power. All you can do is argue to the Judge that he should do what you want him to do. At the end of the day, the Judge does what he wants to do. Does that make any sense to you?

Back to your case, and I was very much surprised that Mr. Kornish was aware of all these things because he was not directly involved in these two child abuse cases as an attorney, as one of his assistants handles those cases for the most part, but he was aware of everything. He was even aware of the effect that this was having on the Judge.

In any event, after talking about all these things, Mr. Kornish said he needed some time to consult with the victim and to think about my tentative offer. Again, there is NO plea offer on the table right now. This is purely a negotiation to see if we can move forward on that basis. This is not a time to put any pressure on at this point. I am looking for a positive response and at that point, we can get down to specifics, if indeed the State is interested. Let's just wait and see what Kornish says. He said he needed some time, so I intend to give him some time. There is nothing I want you to do right now. If Mr. Kornish comes back and says that he does not want to make a deal, then we shall have to decide how to proceed on that basis. If he does want to make a deal, then we can get into negotiations on what sort of plea you would make and we will try to work it out.

I am sending a copy of this to Mr. Bullman. As soon as I hear back from Mr. Kornish, I will contact you immediately. I hope this information is helpful to you. It's clearly informative. The negotiations continue, Gabe. We wish you well. We hope you are feeling better.

Sincerely,



Philip A. LaCaria
PAL/ac

C Mr. Ed Bullman

Supreme Court of Appeals of West Virginia

Manual
for
Official Court Reporters
of the West Virginia Judiciary



Certified Court Reporters

and

Electronic Recording Operators

*Promulgated October 30, 1984, and Amended by the Supreme Court of Appeals
by Administrative Order on December 13, 2010.*

Effective December 1, 2010

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INTRODUCTION

2 In West Virginia, as in other jurisdictions, a dramatic increase in the number and complexity
3 of cases filed in court has been experienced in recent years. Court officials have become increasingly
4 concerned with all aspects of our judicial system.

5 Court reporting is the process by which a permanent, readable record of a court proceeding
6 is made. Court reporting is a vital part of our judicial system. A short overview of our state judicial
7 system is set forth below.

8 According to Article VIII, Section 1, of the Constitution of West Virginia, the judicial power
9 of this State is vested in the Supreme Court of Appeals and in the circuit courts, and in such
10 "intermediate appellate courts and magistrate courts as shall be hereafter established by the
11 legislature, and in the justices, judges and magistrates of such courts."

12 The Supreme Court of Appeals, in Charleston, consists of five Justices. A majority of the
13 Justices of the Supreme Court constitutes a quorum for the transaction of business.

14
15 The Justices are elected by the voters of the State for a term of twelve years. By
16 administrative order of the Supreme Court of Appeals a member of the Supreme Court serves as
17 Chief Justice. The Chief Justice of the Supreme Court of Appeals for 2013 is Brent D. Benjamin.
18 The other Justices are Robin J. Davis, Margaret L. Workman, Menis E. Ketchum II, and Allen H.
19 Loughry II.

20 The Supreme Court of Appeals has general supervisory control over all circuit courts and
21 magistrate courts. The Chief Justice of the Supreme Court is the administrative head of all the
22 courts. The Supreme Court of Appeals has adopted a statewide personnel system for judicial
23 employees, and this system is described in detail in the West Virginia Judicial Personnel System
24 Manual. The Supreme Court is responsible for modifications in the statewide personnel system. The
25 Judicial Personnel System Manual has been amended several times.

26 The Administrative Director of the Supreme Court of Appeals is appointed by the Supreme
27 Court of Appeals and is responsible for the operation of the statewide personnel system. Mr. Steven
28 D. Canterbury is the Administrative Director. Mr. Rory L. Perry II is the Clerk of the Supreme Court
29 of Appeals, and Ms. Edythe Nash Gaiser is the Deputy Clerk. The Deputy Clerk is involved in the
30 monitoring of appellate transcript production.

31 There are 31 judicial circuits in West Virginia. The judges of the circuit courts are elected
32 by the voters of the circuit for a term of eight years. There is at least one circuit judge for each
33 circuit court, and as many more as necessary to transact the business of such circuit court. If there
34 are two or more judges of a circuit court, one judge serves as the chief judge.

35 Circuit court jurisdiction, authority and power are defined in Article VIII, Section 6, of the
36 Constitution of West Virginia. Circuit courts are empowered to appoint or select court reporters.
37 W. Va. Code, § 51-7-1 (1921).

1 The judicial circuits of West Virginia, number of judges per circuit, and the counties within
2 the circuit are as follows:

CIRCUIT	NO. OF JUDGES	COUNTIES
1st	4 Judges	Ohio, Brooke, Hancock
2nd	2 Judges	Marshall, Wetzel, Tyler
3rd	1 Judge	Ritchie, Doddridge, Pleasants
4th	3 Judges	Wood, Wirt
5th	2 Judge	Roane, Calhoun, Jackson, Mason
6th	4 Judges	Cabell
7th	2 Judges	Logan
8th	2 Judges	McDowell
9th	3 Judges	Mercer
10th	3 Judges	Raleigh
11th	2 Judges	Greenbrier, Pocahontas
12th	2 Judges	Fayette
13th	7 Judges	Kanawha
14th	2 Judges	Braxton, Webster, Clay, Gilmer
15th	3 Judges	Harrison
16th	2 Judges	Marion
17th	3 Judges	Monongalia
18th	1 Judge	Preston
19th	1 Judge	Barbour, Taylor
20th	1 Judge	Randolph
21st	2 Judges	Mineral, Grant, Tucker
22nd	2 Judges	Hardy, Hampshire, Pendleton
23rd	5 Judges	Berkeley, Jefferson, Morgan
24th	2 Judges	Wayne
25th	2 Judges	Boone, Lincoln
26th	1 Judge	Lewis, Upshur
27th	1 Judge	Wyoming
28th	1 Judge	Nicholas
29th	2 Judges	Putnam
30th	1 Judge	Mingo
31st	1 Judge	Monroe, Summers

35 The Supreme Court of Appeals has stated that court reporters are "officers of the court."
36 *Burger v. Burger*, 176 W. Va. 416, 419, 345 S.E.2d 18, 21 (1986); *State ex rel. Legg v. Boles*, 148
37 W. Va. 354, 358, 135 S.E.2d 257, 260 (1964). See also, the Introduction and Sections 2.3, 2.8, 3.1,
38 4.6 and 6 of the West Virginia Judicial Personnel System Manual.

West Virginia has a proud tradition of court reporting. Improvements and innovations are necessary, however, to meet the increasing demands upon the state judicial system. The purpose of this Manual is to assist court reporters in their practical, everyday, but highly important, duties with regard to the administration of justice.

Revised 10/6/2011

**The provisions of this Manual
supersede all previous policy statements
and memoranda prepared by the
Administrative Office
of the Supreme Court of Appeals.**

OFFICIAL COURT REPORTERS

I. Appointment; Duties

4 *W. Va. Code, § 51-7-1 (1921)*, provides that circuit courts in West Virginia are
5 empowered to appoint court reporters to take and report "the proceedings had and the testimony
6 given in any case, either civil or criminal" That statute further provides that "[t]he
7 appointment of such reporter may be made by the judge of such court by an order entered of
8 record, and the reporter so appointed shall be designated the 'official reporter' of the court for
9 which he [or she] shall be appointed."

II. Methods of Court Reporting

11 There are four methods of reporting acceptable under the rules and regulations of the
12 Supreme Court of Appeals for court reporting in West Virginia:

- 13 1. **Pen Writing** - A pen writer records by means of shorthand symbols or notes, using
14 Gregg, Pitman or other systems for the writing of sound, verbatim court proceedings
15 or testimony, which may be later transcribed into typewritten form. Only penwriters
16 certified and employed as official court reporters prior to July 1, 1996 shall be
17 permitted to use this method of reporting.
- 18 2. **Stenotype** - A stenotype court reporter mechanically records verbatim testimony and
19 proceedings in printed, phonic shorthand notes. The shorthand notes may also be
20 simultaneously recorded in a computer-compatible format. The notes may be
21 instantaneously translated on screen and in print for the hearing impaired by the court
22 reporter, or translated manually or by computer-aided means into typewritten form at
23 a later time.
- 24 3. **Stenomask/Voice Writing** - Stenomask is a trade name for a recording device by
25 which the operator, speaking into a mask so as not to disrupt the court proceedings,
26 repeats the testimony or proceedings as they occur, and the operator's voice is
27 recorded on electronic recording tape, CD, or a computer hard drive.
- 28 4. **Electronic Recording Operator** - An Electronic Recording Operator makes an
29 official record by means of a sophisticated, multi-track digital sound recording
30 system. [For details, see the Electronic Recording Operator job description, *infra*.]

31 All court reporter media/notes are retained at the courthouse until transcribed. These
32 notes are the official record and the property of the WV Judiciary.

III. Certification

A person desiring to become a court reporter for the West Virginia judiciary may apply directly to a circuit court judge [*W. Va. Code*, § 51-7-1 (1921)] or to the Administrative Director of the Supreme Court of Appeals. The completed application form will be evaluated and filed in the Office of the Administrative Director for distribution to circuit court judges when a vacancy occurs.

As of July 1, 1996, only certified stenomask/voice writers and stenotype court reporters will be employed by the West Virginia judiciary as official court reporters. Penwriters certified and employed as official court reporters prior to July 1, 1996, may continue their employment in that capacity. Effective January 1, 2001, stenomask and stenotype court reporters must be certified prior to employment with the West Virginia judiciary.

Certification tests will be offered by the Supreme Court of Appeals on the first Friday in April and on the 2nd or 3rd Friday in October. Testing will be conducted by administrative staff designated by the Administrative Director and representatives of the West Virginia Court Reporters Association.

All court reporters who pass the examination shall be certified by the Supreme Court of Appeals and shall receive a certificate signed by the Chief Justice and the Administrative Director.

The certification test shall be administered without regard to the method of reporting, be it stenotype or stenomask, and regardless of the applicant's status as an official court reporter [i.e., a court reporter employed by a circuit court or a freelance court reporter]. Electronic Recording Operators are not required to take the certification test.

A list of certified freelance court reporters shall be maintained in the Office of the Administrative Director and made available to the circuit courts.

Only certified freelance court reporters may report in the circuit courts as substitute court reporters. However, if all reasonable efforts have been used and a certified freelance court reporter is unavailable, the circuit judge may use a competent court reporter to report in the circuit court, as determined by the circuit judge.

As stated in the West Virginia Judicial Personnel System Manual, a court reporter may achieve certification (1) by passing the test administered by the Office of the Administrative Director, (2) by passing the test administered by the National Court Reporters Association (NCRA) and submitting documentation of certification, (3) by passing the test administered by the National Verbatim Reporters Association and submitting documentation of certification, or (4) by submitting documentation of certification by another state, so long as that state's certification standards are equal to or greater than the certification standards set forth herein. Currently, the NCRA offers the certification test to stenotype court reporters only. The National Verbatim Reporters Association offers their certification test to stenomask court reporters only. The Supreme Court offers the certification test to stenotype and stenomask court reporters.

1

IV. Job Description

2

CERTIFIED COURT REPORTERS

3

AUTHORIZATION AND JOB DESCRIPTION

4

Definition of Work

5 This is professionally responsible stenographic reporting and transcription of verbatim
6 court proceedings for submission to litigants, counsel, circuit judges and, ultimately, to the
7 Supreme Court of Appeals.

8

Examples of Work Performed

- 9 Records court proceedings by pen writing, stenotype machine or stenomask as
10 required by law.
- 11 Gives oral verbatim readings, as requested, of statements of participants during court
12 proceedings.
- 13 Prepares transcripts, making final check for accuracy, and distributes such transcripts
 as required.
- 15 Maintains the office of Official Court Reporter, including files, logs and necessary
16 correspondence, and, further, upholds the oath of office as sworn to before a circuit
17 court.
- 18 Assists in the performance of clerical tasks as requested by the Supreme Court of
19 Appeals.
- 20 Submits reports of transcript requests and production as required by the Clerk and the
21 Administrative Director of the Supreme Court of Appeals.
- 22 Assists the Office of the Administrative Director in the areas of certification testing,
23 education and quality review.
- 24 Assists the circuit clerk with the filing and maintenance of notes and exhibits.

25

Desirable Knowledge, Abilities and Skills

- 26 Knowledge of standard English, spelling and punctuation, including legal, medical
27 and engineering terminology; and, further, application of such knowledge to
28 transcription of the spoken word during court proceedings.
- 29 Knowledge of court rules and procedures.
- 30 Ability to comprehend complex oral testimony, argument and trial court instructions.

- 1 Ability to report and transcribe accurately, with regard to extended periods of time,
2 with sufficient skill to pass an approved certification test.
- 3 Ability to use dictating equipment as necessary for transcript production.
- 4 Editing and file management skills.
- 5 Continuing interest in upgrading reporting technology.
- 6 Skill in typing to produce a satisfactory volume of accurate transcript material.

7 Desirable Education

- 8 Graduation from high school, preferably college preparatory with a concentration in
9 business, and including typing and an accepted method of taking dictation.
- 10 Graduation from a National Court Reporters Association (NCRA) or National
11 Verbatim Reporters Association (NVRA) accredited school of court and conference
12 reporting and successful completion of an internship program, including courtroom
13 experience.
- 14 Bachelor of Arts Degree, including courses in English, criminal justice and history.
- 15 Continuing education related to maintaining the status of a Registered Professional
16 Reporter (RPR), as certified by the NCRA or NVRA.
- 17 Such knowledge attendant to serving upon committees and holding offices within
18 state and national court reporting associations and earning commendations of
19 distinction within such organizations.

20 Special Requirements

- 21 Certification by an approved organization.
- 22 Real-time reporting and instantaneous translation via computer-aided transcription
23 (CAT).

2

ELECTRONIC RECORDING OPERATORS AUTHORIZATION AND JOB DESCRIPTION

3 The Supreme Court of Appeals, in an administrative conference held on November 10,
4 1983, promulgated the following rule:

5 WHEREAS, A lack of clarity and consistency exists with respect to the
6 'transcription' of court and grand jury proceedings; and

7 WHEREAS, There is a need to eliminate such a lack of clarity;

8 IT IS THEREFORE ORDERED, By rule duly promulgated this tenth day of
9 November, 1983, that references to methods of 'reporting' or 'transcription' shall
10 in all cases mean the setting-down of manual shorthand notes; the use of stenotype
11 or stenomask machines; computer-aided transcription devices; or electronic audio
12 recording.

13 This rule, along with the establishment of the position of Electronic Recording Operator,
14 provides the basis for the implementation of electronic court reporting in West Virginia.

15 1. The Electronic Recording Operator, hereafter known as the "Operator," shall serve at
16 the will and pleasure of the circuit judge and be responsible to the circuit judge for recording all
17 proceedings during the term of court and other proceedings as directed. The Operator shall use a
18 recording device supplied by the Court.

19 2. When not involved in the recording of proceedings or other official duties, including
20 receiving and forwarding transcript requests, making duplicate tapes or CDs, referring
21 transcription work to private typists, and, in limited circumstances, preparation of transcripts, the
22 Operator may work as directed by the circuit judge to perform other duties within the judicial
23 system. The official headquarters for the Operator shall be the same as those of the employing
24 judge. The Operator will only perform additional duties at the official headquarters.

25 3. The Operator shall assist each circuit clerk in establishing a secure area for the
26 storage of the tapes or CDs of proceedings. The Operator shall prepare an index to each case, to
27 be stored with the tapes or CDs. Tapes or CDs shall be stored for a period of time as required by
28 law. The tapes or CDs may be reused if they have retained acceptable recording quality.

29 4. In most cases, the Operator will refer transcript requests to a private typist.
30 However, circumstances may arise in which this procedure would be unduly burdensome on a
31 party or unduly delay proceedings. When justice requires such expedited transcript production,
32 the circuit judge may require the operator to prepare a *brief* transcript of proceedings during
33 normal working hours of the court. Transcript preparation after normal working hours shall not
34 be required, except in unusual situations. Note: EROs may prepare their own transcripts, using
 the typist page rate.

1 5. When an Operator receives a written transcript request, s/he will prepare a duplicate
2 tape or CD on the equipment provided by the Supreme Court of Appeals. The Operator will then
3 prepare the transcript or refer it to a private typist for transcription. Private typists shall receive
4 the sum of one dollar and fifty cents (\$1.50) per page for transcript production and one dollar and
5 sixty cents (\$1.60) per page for expedited production, in limited situations. A party may also
6 request a duplicate of the tape or CD of the proceedings, to be provided at a cost of \$5.00 per
7 tape or CD as provided in Section XX of this Manual, and make private arrangements for
8 transcription.

9 6. When the transcript is completed, the typist shall deliver it to the Operator. The
10 Operator shall review the transcript and compare it to the recorded proceedings. Errors shall be
11 marked by the Operator and the transcript returned to the typist for correction.

12 7. When the transcript is complete and correct, the Operator shall attach a certificate
13 verifying the accuracy of the transcript. (Appendix A) The original of a transcript of any
14 proceeding before the circuit court shall be delivered to the circuit clerk, who shall provide
15 copies to parties requesting them at the fee set forth in the West Virginia Code. *See W. Va. Code,*
16 § 59-1-11 (1990). The original of any other transcript shall be delivered to the party who
17 requested it.

18 8. Where the transcription costs are to be paid by the Supreme Court of Appeals, the
19 typist shall deliver the Transcript Pay Statement/Administrative Order (Appendix C), including
20 the style of the case, case number, number of pages, payment due and name and address of the
21 typist, to the Operator, along with the completed transcript. The Operator shall attach the
22 required documentation, obtain the signature of the circuit judge, and forward the Transcript Pay
23 Statement/Administrative Order, required attachments, and the Certification of
24 Completion/Filing of Appellate Transcript form (Appendix A) to the Office of the
25 Administrative Director for payment. Where the party requesting the transcript is responsible for
26 the transcription costs, the typist shall make arrangements with the requesting party for payment.

27 9. The Operator shall be entitled to travel reimbursement as received by other judicial
28 employees.

29 10. Tapes or CDs and other material necessary for the actual recording of court
30 proceedings shall be provided by the Supreme Court of Appeals.

31 11. The Operator shall submit requests and reports, with regard to appellate transcript
32 production, as required by law (including Rule 73 of the West Virginia Rules of Civil Procedure
33 and Rule 37 of the West Virginia Rules of Criminal Procedure) and as required by the rules and
34 regulations of the Administrative Director. Monthly reports of appellate transcript production
35 shall be signed by the circuit judge, who should be advised of the status of transcript production
36 at all times.

2

V. Compensation

3 The court reporters of the various courts in the West Virginia judiciary will receive for
4 their services and expenses in the reporting of court related matters a salary or compensation
5 approved by the Administrative Director in conformity with the rules and regulations of the
6 Supreme Court of Appeals of West Virginia and the provisions of the West Virginia Code.

7 As provided in *W. Va. Code*, § 51-7-1 (1921), circuit courts in West Virginia are
8 empowered to appoint court reporters to take and report "the proceedings had and the testimony
9 given in any case, either civil or criminal. . ." The Administrative Director of the Supreme
10 Court of Appeals shall fix the salary to be paid the official court reporter, taking into account
11 previous experience and qualifications.

12 Salary levels for Certified Court Reporters and Electronic Recording Operators are set
13 forth in Appendix B of the West Virginia Judicial Personnel System Manual.

14 Note: Certified court reporters who have acquired special achievement or skill will receive,
15 upon satisfactory documentation, pay-step differentials in addition to their base salary as
16 follows:

18 (a) For attaining and then maintaining certification by the National Court Reporters
19 Association or the National Verbatim Court Reporters Association as a Registered
Professional Reporter: one step increase.

20 (b) For attaining the National Court Reporters Association Certificate of Merit or
21 certification as a Registered Merit Reporter: one step increase.

22 (c) For possessing the capability (i.e., skill and equipment) for realtime court
23 reporting, attaining realtime certification,* and agreeing to be available to do realtime
24 court reporting statewide: two step increase.

25 [*The realtime certification requirement applies only to those court reporters seeking the two-
26 step increase after January 1, 2000.]

27

VI. Benefits and Leave

28 Information concerning benefits and leave time with regard to official court reporters
29 employed by the West Virginia Judiciary, including Certified Court Reporters and Electronic
30 Recording Operators, is set forth in the West Virginia Judicial Personnel System Manual in the
31 following sections:

32 (1) Insurance Benefits - Section 7.1
33

- (2) Retirement Benefits - Section 7.2
- (3) Annual Leave - Section 8.1 [except that it is the responsibility of the circuit judge to approve the court reporter's request for annual leave. Annual leave is not to be provided in addition to court vacations. In the event that an employee does not work during court vacations, annual leave time will be charged accordingly.]
- (4) Sick Leave - Section 8.2
- (5) Leave Without Pay - Section 8.7
- (6) Military Leave - Section 8.4
- (7) Pregnancy Leave - Section 8.2
- (8) Holidays - Section 8.11
- (9) Compensatory Time - Section 5.6

VII. Substitute Court Reporters

1. Circumstances for Use of a Substitute. Substitute court reporters may be employed when the official court reporter of a circuit court is taking leave time in conformity with the West Virginia Judicial Personnel System Manual, as set forth in Section VI of this Manual.

Under no circumstances will employment of a freelance court reporter be authorized to allow an official court reporter to take "typing days." Any official court reporter who is falling behind in transcript production shall be required to contract with an independent typist, who shall be paid in conformity with this Manual.

2. Approval for Substitute Court Reporters. The circuit judge may, at his or her discretion, hire a substitute court reporter, when his or her official court reporter is unavailable because of the taking of leave time in conformity with the West Virginia Judicial Personnel System Manual, for a period of up to ten (10) working days. If a substitute court reporter is required for a period exceeding ten (10) days, prior approval of employment must be obtained from the Administrative Director of the Supreme Court of Appeals. A substitute court reporter shall be paid an appearance fee of \$120 per day, plus \$30 per hour for every hour worked in excess of four. The \$120 appearance fee is a half-day rate and will be paid even if the substitute court reporter does not work the full four hours. [For example, if a substitute court reporter worked a total of eight hours in one day, payment would be \$240. If the substitute court reporter worked a total of one hour in one day, payment would be \$120.] *See example below.*

DATE(S)	APPEARANCE FEE	HOURS WORKED IN EXCESS OF FOUR	MILEAGE (\$.555 EFFECTIVE 7/1/11)	DAILY TOTAL
2 1/5/11	\$120.00	4 hrs @ \$30.00 = \$ 120.00	100 miles @ \$.555 per mile = \$ 55.50	\$ 295.50
3 1/6/11	\$120.00	hrs @ \$30.00 = \$	100 miles @ \$.555 per mile = \$ 55.50	\$ 175.50
4 1/7/11	\$120.00	2 hrs @ \$30.00 = \$ 60.00	100 miles @ \$.555 per mile = \$ 55.50	\$ 235.00
<i>"Example"</i>				TOTAL \$ 706.50

5 **3. Locating Substitutes.** When a circuit court judge needs a substitute court reporter due to
 6 the unavailability of his or her official court reporter, the following steps must be taken:

7 **A. SCHEDULE REVISION:** The court reporter shall first
 8 attempt to arrange or revise his or her personal schedule so that
 9 no substitute court reporter is necessary.

10 **B. OTHER COURT REPORTERS IN CIRCUIT:** In multi-
 11 judge circuits, a judge must contact the other judge or judges
 12 within the circuit to check on the availability of scheduling one
 13 of the other court reporters in that circuit.

14 **C. LOCAL FREELANCE ASSISTANCE:** The judge or court
 15 reporter must next contact a local freelance court reporter who
 16 is certified (or a court reporter who is not certified, only if a
 17 certified court reporter is not available), in order to save the
 18 travel expenses involved in contacting an out-of-county court
 19 reporter. After the judge and official court reporter have
 20 exhausted all efforts to locate a substitute court reporter, the
 21 judge may then contact the Office of the Administrative
 22 Director to request assistance in securing a substitute court
 23 reporter for the specified period of time.

24 **4. Methods of Substitute Reporting.** Any method of reporting, including shorthand,
 25 stenotype, stenomask or electronic recording is acceptable when a substitute court reporter is
 26 required. Substitute shorthand, stenotype, and stenomask court reporters will be paid according
 27 to the above scale. Substitute electronic recording operators will be paid an hourly rate of \$8.00
 28 per hour.

29 **5. Record of Substitute Notes.** The circuit clerk shall maintain, in each case file, the
 30 name, address and telephone number of the substitute court reporter who worked upon any
 31 portion of the proceedings of a particular case. The judge's secretary shall have the responsibility
 32 of making sure that information concerning the identity of the substitute court reporter is placed
 33 in the case file.

1 All untranscribed notes and/or tapes¹ used to take the record shall remain in the
2 courthouse where the action took place. Depending on the procedure in that county, these notes
3 are to be left with either (1) the circuit clerk, or (2) the judge's secretary for safekeeping until the
4 official court reporter returns to work. The official court reporter will log and store these notes in
5 the same storage area at the courthouse where his or her own notes are stored. The retention of
6 these items is mandatory, and it is the responsibility of the official court reporter to make sure all
7 substitute court reporter notes and/or tapes are retained at the courthouse. [If for some reason,
8 the substitute court reporter does not leave his or her notes, the official court reporter should
9 obtain the notes as soon as possible.] If a transcript is requested, those notes and/or tapes shall be
10 checked out by the substitute court reporter, just as the official court reporter's notes and/or tapes
11 are checked out in his or her home county. The substitute court reporter shall prepare an index for
12 each case, to be stored with the notes and/or tapes.

13 When a transcript is requested for a proceeding taken by a substitute court reporter (or
14 former court reporter), it is the responsibility of the current official court reporter for the current
15 judge who has jurisdiction over the case, to act as a go-between, and make sure the substitute
16 court reporter receives the notes to be transcribed. If the substitute court reporter cannot be
17 located, the official court reporter must make arrangements to have an outside typist prepare the
18 requested transcript. The official court reporter may call the Supreme Court for assistance in
19 locating a typist. The official court reporter is not required to do the actual typing, but is required
20 to make sure a requested transcript is prepared.

21 Freelance substitute court reporters who fail or refuse to produce requested transcripts
22 will not be allowed to work as substitutes in circuit court.

23 **6. Payment of Substitutes.** Each substitute court reporter shall forward his or her
24 charges for an appearance fee and allowable expenses to the Office of the Administrative
25 Director on the approved form (Appendix B) signed by the circuit court judge.

26 Where a substitute court reporter is required to produce a transcript for an indigent party,
27 the substitute court reporter may request payment from the Office of the Administrative Director
28 by completing the Transcript Pay Statement/Administrative Order form approved by the Supreme
29 Court of Appeals (Appendix C) and submitting such form and the documentation required of
30 official court reporters under Section XI of this Manual to the Office of the Administrative
31 Director. The Administrative Director will evaluate each request individually to determine
32 whether payment is appropriate.

¹ It would be helpful if CAT/Stenotype court reporters would leave a copy of their CAT dictionaries on a disk to be stored with the record in each case. This would aid in the production of transcripts if the substitute court reporter could not be located.

VIII. Freelancing by Official Court Reporters

Freelance reporting by official court reporters may be permitted at the discretion of the court reporter's supervising circuit judge. Freelance reporting shall not be permitted, however, to interfere with any aspect of the official work of the court reporter, including his or her availability for transcript production. The failure of an official court reporter to complete and file in a timely manner a requested appellate transcript, in the absence of good cause for delay, will result in the **immediate revocation of freelance privileges**. *See Section XXI regarding transcripts for more detail.*

IX. Transcription Fees Billable to the Office of the Administrative Director

Generally speaking, the Office of the Administrative Director of the Supreme Court of Appeals will pay transcription fees to a court reporter for producing a transcript requested by an indigent criminal defendant for purposes of appeal to the Supreme Court of Appeals, provided that all applicable rules and regulations set forth in this Manual, and all applicable provisions of law, have been satisfied.

1. Transcripts of Criminal Proceedings in Circuit Court. Transcripts of criminal proceedings in circuit court where the party is indigent and appealing to the Supreme Court will be paid by this Court if the required documentation (below) is provided. An indigent criminal appeal request (*by appointed counsel or pro se defendant*) must be made on the Appellate Transcript Request form and proof of indigency must be provided to the court reporter.

REQUIRED DOCUMENTATION:

- a. Copy of Appellate Transcript Request form.
- b. Proof of indigency (affidavit of indigency or order appointing counsel).
- c. Court reporter's Certification of Completion/Filing of Appellate Transcript.

The Office of the Administrative Director will pay transcription fees for preparation of an original and one copy of a transcript requested by an indigent criminal defendant for purposes of an appeal of a criminal conviction to the Supreme Court of Appeals, provided that the defendant has filed an affidavit of indigency with the circuit clerk's office, and completed the Appellate Transcript Request form and provided it to the appropriate parties.

The court reporter's request for payment must be made on the form approved by the Supreme Court (Appendix C), and the required documentation above must be attached to the invoice.

Where an indigent criminal defendant has requested an appellate transcript, using the Appellate Transcript Request form, for purposes of filing an appeal from his or her conviction and the prosecuting attorney requests, in writing, a copy of such transcript, the Administrative

1 Director will authorize payment for an additional copy of such transcript at a rate of \$0.75 per
2 page.

3 **2. Guilty Plea and Sentencing Hearings.** Transcripts of guilty pleas and sentencing
4 hearings will be paid only if requested under the guidelines of an indigent criminal appeal. *See*
5 *"Transcripts of Criminal Proceedings in Circuit Court" under No. 1 above.*

6 The Office of the Administrative Director will pay transcription fees for preparation of an
7 original and one copy. The court reporter's request for payment must be made on the form
8 approved by the Supreme Court (Appendix C), and the required documentation under No. 1
9 above must be attached to the invoice.

10 *The Administrative Director will also approve payment of transcription fees for
11 preparation of certain appellate transcripts in non-criminal cases, including:*

12 **3. Transcripts of Habeas Corpus Proceedings in Circuit Court.** Although habeas
13 corpus proceedings are civil in nature, they are adjuncts to criminal proceedings. Transcripts of
14 habeas corpus proceedings will be paid only if requested under the guidelines of an indigent
15 criminal appeal. *See "Transcripts of Criminal Proceedings in Circuit Court" under No. 1
16 above.*

17 The Office of the Administrative Director will pay transcription fees for preparation of an
18 original and one copy. The court reporter's request for payment must be made on the form
19 approved by the Supreme Court (Appendix C), and the required documentation under No. 1
20 above must be attached to the invoice.

21 **4. Transcripts of Juvenile Delinquency Proceedings.** Transcripts of juvenile
22 delinquency proceedings will be paid only if requested under the guidelines of an indigent
23 criminal appeal. *See "Transcripts of Criminal Proceedings in Circuit Court" under No. 1
24 above.*

25 The Office of the Administrative Director will pay transcription fees for preparation of an
26 original and one copy. The court reporter's request for payment must be made on the form
27 approved by the Supreme Court (Appendix C), and the required documentation under No. 1
28 above must be attached to the invoice.

29 **5. Transcripts in Child Abuse and Neglect Cases.** Transcripts of child abuse and
30 neglect proceedings will be paid only if requested under the guidelines of an indigent criminal
31 appeal. *See "Transcripts of Criminal Proceedings in Circuit Court" under No. 1 above.*

32 The Office of the Administrative Director will pay transcription fees for preparation of an
33 original and one copy. The court reporter's request for payment must be made on the form
34 approved by the Supreme Court (Appendix C), and the required documentation under No. 1
35 above must be attached to the invoice.

Finally, the Administrative Director will approve payment of transcription fees where the transcript is requested for purposes other than appeal only in the following limited circumstances:

6. Grand Jury Testimony. Under no circumstances will the Office of the Administrative Director of the Supreme Court of Appeals pay for the routine, blanket production of transcripts of grand jury proceedings.

Rule 6(e)(1) of the West Virginia Rules of Criminal Procedure states that "except when the grand jury is deliberating or voting, [grand jury proceedings] shall be reported by an official court reporter or a certified court reporter appointed by the Supreme Court." *See also W. Va. Code, § 51-7-1 (1921).* Rule 6(e)(1) further states that the "recording or reporter's notes or any transcript prepared therefrom shall be filed with the clerk of the circuit court . . ." (Emphasis added). Routine production of transcripts of grand jury proceedings is *not* contemplated under the Rule.

Effective March 9, 2009, grand jury proceedings must be reported by the circuit judge's official court reporter, ERO or a court reporter approved to work for the Supreme Court.

In addition, there are secrecy concerns attached to production of grand jury transcripts. Rule 6(e)(1) specifies that the reporter's notes or any transcript prepared therefrom "shall not be made public except on order of the court." Under Rule 6(e)(2), the court reporter is prohibited from disclosing matters which occur before the grand jury. Routine production of grand jury testimony is contrary to the secrecy concerns expressed in the Rule.

Consequently, the Administrative Director will authorize payment of transcription fees for preparation of a transcript of grand jury proceedings for purposes other than appeal *only* when the request for payment is accompanied by:

- (1) an order, prepared by the prosecuting attorney and approved and signed by the circuit judge, stating that the person whose grand jury testimony is needed is scheduled to be called as a witness by the State at trial and requiring the court reporter to prepare an original transcript of such testimony if the criminal proceedings are not resolved within 10 days before trial. The order shall also require the court reporter to file the original transcript in the circuit clerk's office and order the circuit clerk to file the grand jury transcript under seal. (A sample order is contained in Appendix J.)
- (2) Proof of indigency (affidavit or indigency or order appointing counsel).

The Office of the Administrative Director will pay transcription fees for production of the original transcript filed with the circuit clerk, and one copy only of the transcript provided to the prosecuting attorney.

1 Recordings, notes and transcripts with regard to grand jury proceedings shall not be
2 released by the court reporter, except upon court order.

3

4 **X. Transcription Fees Not Billable**
5 **to the Office of the Administrative Director**

6 Except as otherwise expressly provided in this Manual, the Office of the Administrative
7 Director will *not* pay transcription fees for production of the following transcripts:

8 **1. Transcripts Requested by a Person Who is Not Indigent.** The Administrative
9 Director will not authorize payment of transcription fees for preparation of any transcript
10 requested by retained counsel or by a person who has not filed an affidavit of indigency with the
11 circuit clerk's office.

12 **2. Transcripts in Criminal Cases Requested for Purposes Other than Appeal.**
13 “[A]n indigent criminal defendant shall always be entitled, upon request, to a free transcript of
14 the entire record of his case.” *Call v. McKenzie*, 159 W. Va. 191, 193, 220 S.E.2d 665, 668
15 (1975). Consequently, an official court reporter is required to produce transcripts requested by
16 an indigent criminal defendant or inmate for purposes other than appeal. This includes
17 transcripts of prior criminal proceedings against the defendant and/or a co-defendant requested
18 for purposes of preparing for trial and transcripts requested by an indigent criminal defendant or
19 inmate for purposes of filing a petition for a writ of habeas corpus.

20 However, except as otherwise provided in Section IX of this Manual, the Office of the
21 Administrative Director will *not* pay transcription fees for production of transcripts in criminal
22 cases requested for purposes other than appeal.

23 If the requesting party is indigent, the court reporter may apply to appointed counsel, the
24 public defender, or Public Defender Services for transcription fees under *W. Va. Code* § 29-21-1
25 *et seq.* To reduce costs, the court reporter shall transcribe only those portions of the proceedings
26 designated by the party, appointed counsel, or the public defender. *See State ex rel. Banach v.*
27 *Boles*, 147 W. Va. 850, 858, 131 S.E.2d 722, 728 (1963) (“the State [is not] required to furnish a
28 complete transcript in every case, but need only supply the part or parts thereof necessary to
29 afford effective . . . review. . . .”).

30 **3. Routine Production of Grand Jury Testimony.** Routine production of transcripts
31 of grand jury proceedings is not contemplated by Rule 6(e)(1). Consequently, the Administrative
32 Director will not authorize payment of transcription fees to court reporters for production of
33 grand jury testimony except to the extent provided in Section IX of this Manual.

34 **4. Routine Production of Guilty Plea and Sentencing Hearings.** The Office of the
35 Administrative Director will pay transcription fees for preparation of transcripts of guilty plea
36 and sentencing hearings only to the extent authorized by Section IX of this Manual.

2 **5. Transcripts in Civil Cases.** The requesting party is responsible for the costs of
3 transcribing proceedings in civil actions. Where the requesting party is indigent, the court
4 reporter must provide a transcript for purposes of appeal as part of his or her official duties
5 without additional compensation. *Burger v. Burger*, 176 W. Va. 416, 419, 345 S.E.2d 18, 21
6 (1986) ("[I]n incident to the salary received from the State, a court reporter has an obligation to
7 provide civil proceeding transcripts to indigents" without charge). Consequently, the
Administrative Director will not ordinarily authorize payment of transcription fees in civil cases.

8 Where a Certified Court Reporter is required to provide a transcript without charge to an
9 indigent party in a civil case for purposes of appeal to the Supreme Court of Appeals, the
10 Administrative Director will authorize payment for the cost of supplies and paper. Where an
11 Electronic Recording Operator is required to provide such a transcript, the Office of the
12 Administrative Director will pay transcription fees to the typist at the rate paid to an Electronic
13 Recording Operator typist under Section XIII of this Manual.

14 Note: Where a freelance substitute court reporter is required to provide a transcript of a
15 circuit court proceeding for an indigent party in a civil case for purposes of appeal to the
16 Supreme Court of Appeals, the Administrative Director *may* authorize payment of the
17 transcription fees, provided the proper documentation is provided.

18 **6. Transcripts of a Trial or Hearing in Magistrate Court.** As a rule, the Office of
19 the Administrative Director will NOT pay transcription fees for production of any transcript of a
20 proceeding in magistrate court. However, if an indigent criminal defendant is appealing a case to
21 the Supreme Court of Appeals and a transcript of magistrate court proceedings is necessary to
22 perfect the appeal, the Administrative Director will pay transcription fees to a typist at the rate of
23 \$1.50 per page for the original and \$.75 per page for one copy. Proper documentation MUST be
24 provided. The original transcript is to be filed with the circuit clerk. The request for transcripts
25 must be made on the Appellate Transcript Request form, proof of indigency must be provided,
26 and the typist's Certification of Completion/Filing of Appellate Transcript must be filed with the
27 Clerk of the Supreme Court.

28 **7. Transcripts Furnished to a Circuit Judge for His or Her Own Use.** Transcripts
29 requested by a circuit judge to assist him or her in making a ruling or for the judge's own use
30 must be produced by the court reporter as a part of his or her official duties, at no additional cost.
31 *See W. Va. Code, § 51-7-4 (1997).* The Administrative Director will not authorize payment of
32 transcription fees in such cases.

33 Note: If a circuit judge orders a freelance substitute court reporter to prepare a transcript
34 for his or her use, the Administrative Director *may* authorize payment of the transcription fees, if
35 the circuit judge submits a cover letter explaining the necessity of the transcript.

36 **8. Transcripts Furnished to Private Counsel.** Under no circumstances will the office
37 of the Administrative Director pay transcription fees for production of any transcript requested by
private counsel. The court reporter should bill the party that requested the transcript.

1 **9. Exceptional Circumstances.** The Administrative Director may authorize payment
2 of transcription costs not otherwise billable to the Supreme Court of Appeals upon a written
3 showing by the court reporter, prior to preparation of the transcript, of exceptional circumstances
4 and provision of all necessary supporting documentation required under Section XI of this
5 Manual.

6

7 **XI. Procedure for Billing the Office of the Administrative Director**

8 A court reporter shall submit to the Office of the Administrative Director a bill for
9 payment of the costs of transcription of proceedings on the Transcript Pay Statement/
10 Administrative Order form approved by the Supreme Court of Appeals.

11 The form (Appendix C) in the back of this Manual can be copied and used for submitting
12 invoices. If the proper documentation is not attached to the invoice, it will not be processed.

13 If a circuit judge orders you to prepare a transcript and you submit an invoice without the
14 required documentation, the invoice will not be processed. If a circuit judge prepares an order
15 indicating the court reporter should be paid by the Supreme Court and the court reporter does not
16 attach the required documentation, the invoice will not be processed. A circuit judge cannot
17 order the Supreme Court to pay for something that they would not ordinarily pay for.

18

XII. Court Reporter's Fee

19 As provided in *W. Va. Code, § 51-7-6 (1975):*

20 The clerk of the court in which such reporter is employed shall tax as
21 part of the costs a reporter's fee of not less than five dollars, to be fixed
22 by the court or judge, for each case in which such reporter was engaged.
23 Such costs, when received by the clerk, shall be paid by him [or her] to
24 the sheriff, who shall account for and pay such costs, in civil and
25 misdemeanor cases, into the state treasury.

26 A circuit judge has the discretion to fix the court reporter's fee above the five dollar rate
27 described in the statute.

28 In conformity with the statute, all fees collected by the circuit clerk, including fees for
29 divorces and all other in-court proceedings, shall be paid to the sheriff, who shall account for and
30 forward such fees to the state treasury. *Under no circumstances may these fees be paid to the*
31 *individual court reporter.*

XIII. Compensation Per Page

Certified Court Reporters. Certified Court Reporters are authorized by *W. Va. Code*, § 51-7-4 (1997) to charge a transcription fee of \$2.85 per page for the original and \$1.00 per page for one copy. Copies requested on disk may be billed to the requesting party at a rate of \$1.00 per page. If the court reporter supplies the disk on which such copy is made, there may be an additional charge of \$5.00 per disk so supplied. The court reporter may not charge transcription fees in excess of the fees set forth in the statute, except for a "daily copy" [usually produced overnight] or an "expedited copy" [usually produced within three business days], in which case the price will be negotiated between the requesting party and the certified court reporter, subject to review by the Administrative Director.

The Office of the Administrative Director will pay a transcription fee of \$2.85 per page for the original and \$1.00 per page for one copy of a transcript where payment of such transcription fees by the Office of the Administrative Director is authorized under Sections IX and X of this Manual. *Under no circumstances will the Office of the Administrative Director pay additional transcription fees for a "daily copy" or an "expedited copy," as defined above.*

The Office of the Administrative Director will pay no other transcript preparation charges to Certified Court Reporters. All typing support used by Certified Court Reporters will be paid by the court reporter from the transcription fees received. In addition, all expenses related to computer-aided transcription will be the responsibility of the official court reporter.

Electronic Recording Operator Typists. Private typists who transcribe proceedings recorded by Electronic Recording Operators may charge a transcription fee of \$1.50 per page for production of an original transcript. With the approval of the Administrative Director, a typist may charge a transcription fee of \$1.60 per page for expedited production of an original transcript. [See Section IV of this Manual.] A party may also request a duplicate of the tape or CD of the proceedings from the Operator and make private arrangements for transcription. Duplicate tapes or CDs will be provided at a cost of \$5.00 per tape or CD as provided in Section XX of this Manual.

The Office of the Administrative Director will pay a typist a transcription fee of \$1.50 per page for the original and \$0.75 per page for one copy of a transcript where payment of transcription fees are authorized under Sections IX and X of this Manual.

Fees for all transcripts prepared by an Electronic Recording Operator (See Section IV of this Manual) shall be collected by the circuit clerk and forwarded to the Office of the Administrative Director.