

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 19th day of October, 2010, the following order was made and entered:

On this day came the Court, on its own motion and proceeded to consider the proposed amendments to the Rules of Criminal Procedure, necessitated by the adoption of the Revised Rules of Appellate Procedure, previously published for comment. Upon consideration whereof, the Court is of opinion to and does hereby adopt said amendments, effective December 1, 2010, with deletions indicated by strikethroughs and insertions indicated by underscoring, to read as follows:

VIII. APPEAL

Rule 37. Taking Appeal

(a) *How an appeal is taken.* — (1) From a circuit court. — An appeal permitted by law from a circuit court to the Supreme Court of Appeals is taken by filing a notice of intent to appeal in the circuit court within the time provided by paragraph (b)(1) of this rule. The notice of intent to appeal shall ~~specify the parties or party taking the petition; shall indicate the judgment, decree or order or part thereof appealed from; shall name the court in which the petition is taken; shall designate by itemization such pleadings, orders and exhibits to enable the Supreme Court of Appeals to decide the matters raised; and should concisely state the grounds for appeal.~~ be filed and served in accordance with Rule 5 of the Rules of Appellate Procedure. The clerk shall serve notice of the filing of a notice of intent to petition for appeal by personal service or by mailing a copy thereof to all parties. The clerk shall note on each copy to be served the date on which the notice of intent to appeal was filed, and shall note in the docket the names of the parties on whom he or she serves copies, with the date of mailing or other service. Failure of the clerk to serve notice shall not affect the validity of the appeal.

(2) From a magistrate court. — An appeal permitted by law from a magistrate court to a circuit court is taken by requesting an appeal in the magistrate court within the time provided by Chapter 50, Article 5, Section 13 [§ 50-5-13], of the West Virginia Code of 1931, as amended. The required specifications of the notice of intent to appeal ~~and the duties of the magistrate in forwarding the notice of intent to appeal to the clerk of the circuit court and serving notice on the parties~~ do not apply as provided for in paragraph (a)(1) of this rule.

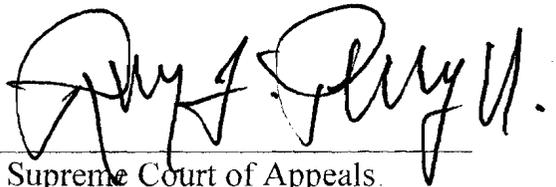
(b) *Time for taking appeal.* — (1) Time for notice of intent to appeal. — The notice of intent to appeal by a defendant shall be filed within 30 days after the entry of the judgment, decree or other order appealed from. A notice of intent to appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. A judgment or order is entered within the meaning of this paragraph when it is entered in the criminal docket.

(2) Procedure for requesting, preparing, and filing of transcript. — The procedure for requesting, preparing, and filing of transcripts shall be governed by ~~Appendix B~~ to the Rules of Appellate Procedure.

(3) Time for petition for appeal. — ~~A petition~~ An appeal must be filed with the clerk of the circuit court where the judgment, decree or order being appealed was entered perfected within four months of the entry of the circuit court order in accordance with Rule 5 of the Rules of Appellate Procedure. The appeal period may be extended, ~~upon request of the appealing party, within four months of the order appealed from for the purpose of preparing a transcript or for good cause, for a period or periods not to exceed a total of two months.~~ in accordance with the Rules of Appellate Procedure. ~~When an appeal by the state is authorized by statute, the petition for appeal shall be filed with the clerk of the circuit court within 30 days after entry of judgment or order appealed from.~~

A True Copy

Attest:



Clerk, Supreme Court of Appeals.