

NO. _____

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**STATE OF WEST VIRGINIA *ex rel.*
CRAIGO REAL ESTATE CORPORATION,
a West Virginia corporation,**

Petitioner,

v.

CIRCUIT COURT CASE No. 04-C-40

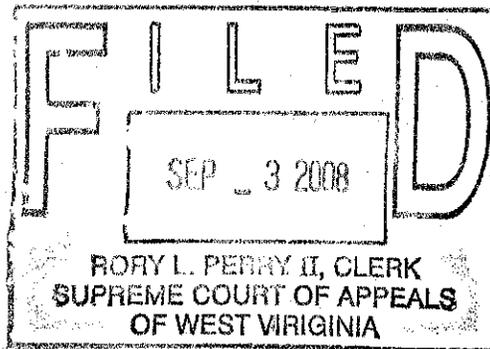
**THE HONORABLE N. EDWARD EAGLOSKI,
Judge of the 29th Judicial Circuit,**

Respondent.

PETITION FOR WRIT OF MANDAMUS

Submitted By:

**Harvey D. Peyton, Esquire
PEYTON LAW FIRM
2801 First Avenue
Post Office Box 216
Nitro, WV 25143
WV State Bar No. 2890
Telephone: (304) 755-5556
Telefax: (304) 755-1255
*Counsel for Petitioner,
Craig Real Estate Corporation***



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA *ex rel.*
CRAIGO REAL ESTATE CORPORATION,
a West Virginia corporation,

Petitioner,

v.

CIRCUIT COURT CASE NO. 04-C-40

THE HONORABLE N. EDWARD EAGLOSKI,
Judge of the 29th Judicial Circuit,

Respondent.

PETITION FOR WRIT OF MANDAMUS

Pursuant to Rule 14, *West Virginia Rules of Appellate Procedure*, Craigo Real Estate Corporation petitions this Court for the award of a writ of mandamus commanding the respondent herein named to comply with the unambiguous provisions of Rule 17.01(b) of the Trial Court Rules relative to a motion for disqualification of the above named respondent. The grounds for this motion are as follows:

1. There is now pending before the Respondent in the Circuit Court of Putnam County, West Virginia, a civil action styled *West Virginia Division of Highways, a corporation, Petitioner, v. Craigo Real Estate Corporation, et al, Respondents*, Civil Action Number 04-C-40; this is a civil action for the condemnation of a portion of real property owned by the Petitioner herein for use by the West Virginia Division of Highways in the completion of a public road project.

2. On December 10, 2007, a scheduling order was entered in the Putnam County civil action; the case was set for trial to commence on the 25th day of August 2008; the scheduling order directed all parties and counsel to participate in mandatory mediation not later than June 6, 2008. A copy of the referenced scheduling order is attached hereto as **Exhibit 1**.

3. In compliance with the scheduling order, a mediation session was held on May 8, 2008; as a result of vigorous negotiations, conducted with the assistance of a competent, approved mediator, all matters at issue between the parties in the Putnam County civil action were settled.

4. On June 18, 2008 a final order, endorsed by all of counsel, reflecting the mediated settlement was hand delivered to the office of the Respondent, Judge N. Edward Eagloski, Jr., at the Putnam County Courthouse in Winfield, West Virginia.

5. When the Respondent, Judge N. Edward Eagloski, Jr., had not entered the referenced final order by July 8, 2008, counsel for the petitioner, with the approval of other counsel in the case, made inquiry at Judge Eagloski's office regarding the status of the final order.

6. When counsel for the petitioner spoke with Judge Eagloski about the proposed final settlement order in the Putnam County civil action, the Judge replied to counsel with a number of statements that gave rise to a good faith belief by counsel that a reasonable basis existed to question Judge N. Edward Eagloski, Jr.'s, impartiality to continue as judge in the case in accordance with the principles established in Canon 3(E)(1) of the *West Virginia Code of Judicial Conduct*.

7. As a result of Judge Eagloski's inactivity regarding the subject final order and his verbalized appearance of bias expressed to counsel for Craig Real Estate Corporation, counsel for Craig Real Estate Corporation filed a motion pursuant to the provisions of Rule 17.01 of the *West Virginia Trial Court Rules* for the disqualification of Judge Eagloski from further presiding in the Putnam County civil action; a copy of this motion, verified certificate of counsel and exhibits thereto is attached to this petition as **Exhibit 2**.

8. The original of the motion for disqualification, together with the verified certificate of counsel required by Rule 17.01(a)(2), was filed in the office of the Clerk of

the Circuit Court of Putnam County, West Virginia at 11:21 a.m. on July 29, 2008; within a few minutes thereafter, a copy of the motion for disqualification and certificate was delivered directly to the office of Judge Eagloski; a copy of the motion for disqualification and certificate was served promptly upon all counsel of record and unrepresented parties.

9. The motion for disqualification that is the subject of this petition for mandamus was filed in the office of the Clerk of the Circuit Court of Putnam County, West Virginia, submitted by copy directly to the respondent judge and served upon counsel of record more than 21 days in advance of the date set by the court's scheduling order for a trial of the Putnam County civil action.

10. When a motion for disqualification, with accompanying verified certificate of counsel is filed with the circuit clerk and written notice thereof is submitted to a presiding judge more than 21 days in advance of the date set by order for trial, Rule 17.01(b) provides that the presiding judge must do the following:

(b) Upon the judge's receipt of a copy of such motion, regardless of whether the judge finds good cause and agrees to the disqualification motion or not, the judge shall:

- (1) proceed no further in the matter;
- (2) transmit forthwith to the Chief Justice a copy of the motion and certificate, together with a letter stating the judge's response to the motion and the reasons therefore, including such matters and considerations as the judge may deem relevant; and
- (3) make a copy of the letter part of the record and file same in the office of the circuit clerk with copies to counsel of record and any unrepresented party.

11. Thirty days have now passed since the subject motion for disqualification and verified certificate of counsel were filed in the office of the Clerk of the Circuit Court of Putnam County and written notice thereof submitted to Judge Eagloski; despite the

mandatory directives of Rule 17.01(b), Judge Eagloski has done nothing to satisfy his mandatory duty pursuant to rule 17.01(b)(2); he has not forthwith transmitted a copy of the motion and certificate to the Chief Justice of this Court together with a letter stating his response to the motion and the reasons therefor, nor has he made a copy of any letter part of the record in the underlying case, filed such letter in the office of the Clerk of the Circuit Court of Putnam County, West Virginia, or provided any of counsel of record with any such letter. Admittedly, the respondent has complied with Rule 17.01(b)(1) -- he has proceeded no further in the underlying civil action, but that is inaction that is indistinguishable from the inactivity that was a part of the reason for filing the disqualification motion in the first place.

12. Because of Judge Eagloski's failure to comply with the mandatory provisions of Rule 17.01(b) of the *West Virginia Trial Court Rules*, the petitioner is left with uncertainty regarding the status of title to its real property; an order of taking was entered in the underlying case long ago and the petitioner's property is now being used and occupied by the West Virginia Division of Highways and its authorized contractors for the purpose of road construction; the petitioner continues to make mortgage payments on a piece of property that has been taken and can no longer be used; petitioner cannot get paid the just compensation to which it is constitutionally entitled, and to which the West Virginia Division of Highways agreed, because Judge Eagloski will not comply with the mandatory, nondiscretionary and nondelegable duties imposed upon him by rule 17.01(b) of the *West Virginia Trial Court Rules*; the petitioner is without any adequate remedy other than compelling Judge Eagloski to perform his duties.

13. Article III, §17 of the *West Virginia Constitution* provides that justice shall be administered without delay.

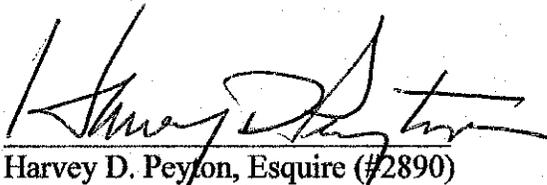
14. Canon 3B(8) of the *West Virginia Code of Judicial Conduct* provides that a judge "...shall dispose of all judicial matters promptly, efficiently, and fairly."

15. The duties imposed upon the respondent by the foregoing are mandatory and non-delegable, so that respondent's failure to perform those duties may be compelled by a writ of mandamus issued out of this court.

WHEREFORE, the petitioner respectfully prays that a rule to show cause issue out of this Court directed to the respondent commanding the respondent to appear before this Court at a fixed date and time to show cause, if any he has, why the prayer of this petition should not be granted and a writ of mandamus issued compelling performance by the respondent of his Constitutional and statutory duties.

Respectfully submitted this 2nd day of September, 2008.

CRAIGO REAL ESTATE CORPORATION
BY COUNSEL



Harvey D. Peyton, Esquire (#2890)
The Peyton Law Firm
P. O. Box 216
2801 First Avenue
Nitro, WV 25143
Telephone: (304) 755-5556
Telefax: (304) 755-1255
Counsel for Craigo Real Estate Corporation

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF PUTNAM, To-Wit:

Oshel Craigo, President of Craigo Real Estate Corporation, the petitioner named in the foregoing *Petition for Writ of Mandamus*, after being first duly sworn, says that the statements and allegations contained therein are true, except insofar as they are therein stated to be upon information and belief, and insofar as they are therein stated to be upon information and belief, he believes them to be true.

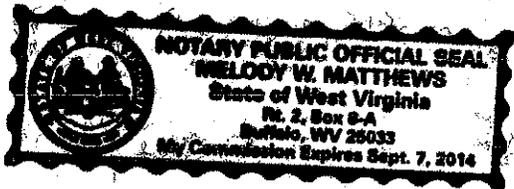


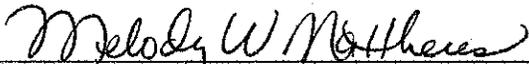
OSHEL CRAIGO

Taken, subscribed and sworn to before the undersigned authority this ____ day of August, 2008.

My commission expires:

September 7, 2014





Notary Public

ADDENDUM

INDEX TO EXHIBITS

EXHIBIT 1 DECEMBER 10, 2007, SCHEDULING ORDER

EXHIBIT 2 MOTION FOR DISQUALIFICATION PURSUANT TO RULE 17.01 OF THE
WEST VIRGINIA TRIAL COURT RULES