

STATE OF WEST VIRGINIA

At a regular term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on September 22, 2014, the following order was made and entered:

In Re: J.E., I.E., K.E., and L.E., No. 14-0666

In Re: J.S., No. 14-0747

In Re: D.P. and Z.P., No. 14-0754

On the 17th day of September, 2014, came the Court, on its own motion, and proceeded to review, consider, and resolve the issues being created by the failure of the official court reporter in the Fifth Judicial Circuit to timely produce transcripts as ordered. Official court reporter, Frank Vesel, hereinafter “Vesel”, has repeatedly failed to timely produce transcripts as ordered in appeals before this Court, causing delay in the Court’s review and consideration of the appeals. Despite the imposition of sanctions administratively, Vesel continues to fail to timely produce transcripts. The Court is therefore considering extraordinary measures for sanctioning Vesel. During the spring 2014 term of Court and thus far during the fall 2014 term of Court, Vesel has failed to produce transcripts in a timely manner in the following appeals:

13-1087 Jackson Co. *Alcan Rolled Products Ravenswood, LLC, a Delaware Corporation, and Melvin Lager v. Sharon Griffith and Lou Ann Wall*, 11-C-26

A scheduling order was entered on October 23, 2013. The transcript deadline was November 22, 2013. On December 3, 2013, by the Court’s own motion, an amended scheduling order was entered because Vesel failed to timely file the transcripts. The transcript deadline was extended until January 31, 2014. The transcripts were untimely filed on February 3, 2014.

13-1202 Jackson Co. *In Re: A.M., & Z.K.*, 13-JA-2, 3

A scheduling order was entered on December 17, 2013. The transcript deadline was December 30, 2013. The transcripts were untimely filed on January 3, 2014.

13-1232 Jackson Co. *In Re: J.T. and J.T.*, 12-JA-52, 53

A scheduling order was entered on December 17, 2013. The transcript deadline was January 30, 2014. A request for extension of time was received January 27, 2014, and an amended scheduling order was entered February 4, 2014. The transcript deadline was extended until February 18, 2014. The transcripts were untimely filed on March 5, 2014.

13-1239 Jackson Co. *In Re: J.B.*, 12-JA-49

A scheduling order was entered on December 17, 2013. The transcript deadline was January 30, 2014. A request for extension of time was received January 27, 2014, and an amended scheduling order was entered February 4, 2014. The transcript deadline was extended until February 11, 2014. The transcripts were untimely filed on February 24, 2014.

14-0026 Jackson Co. *Steven Mahood v. David Ballard, Warden*, 10-C-191

A scheduling order was entered on January 28, 2014. The transcript deadline was March 13, 2014. By letter of March 18, 2014, Vesel was advised that transcripts were not timely filed and sanctions were being imposed. By second letter issued March 31, 2014, because Vesel had not filed transcripts, he was directed to have all recordings, notes, or any other materials needed to prepare the transcripts available to be picked up, as the Court would have the transcripts prepared. An amended scheduling order was entered on April 1, 2014, directing another official court reporter to prepare and file the transcripts by April 10, 2014. The transcripts were certified and timely filed by that court reporter on April 7, 2014.

14-0050 Calhoun Co. *In Re: L.M. and L.S.*, 13-JA-2, 3

A scheduling order was entered on January 28, 2014. The transcript deadline was February 28, 2014. An amended scheduling order issued after counsel for the petitioner requested an extension of time to perfect the appeal, due to Vesel failing to timely certify and file the transcripts. A letter was issued on March 18, 2014, advising Vesel that because the transcripts were not timely filed, sanctions were being imposed. By second letter issued March 31, 2014, because Vesel had not filed transcripts, he was directed to have all recordings, notes, or any other materials needed to prepare the transcripts available to be picked up, as the Court would have the transcripts prepared. The amended scheduling order was entered on March 28, 2014, directing another official court reporter to prepare and file the transcripts by April 10, 2014. However, the other court reporter was not able to prepare the transcripts from the materials. The transcripts were filed by Vesel on April 9, 2014.

14-0091 Jackson Co. *In Re: J.F.*, 13-JA-29

A scheduling order was entered on February 4, 2014. The transcript deadline was March 14, 2014. An amended scheduling order was entered on March 27, 2014, after counsel for the petitioner requested an extension of time to perfect the appeal because Vesel failed to

timely certify and file the transcripts. A letter was sent to Vesel on March 18, 2014, advising him that because the transcripts were not timely certified and filed, sanctions were being imposed. By second letter issued March 31, 2014, because Vesel had not filed transcripts, he was directed to have all recordings, notes, or any other materials needed to prepare the transcripts available to be picked up, as the Court would have the transcripts prepared. However, the other court reporter was not able to prepare the transcripts from the materials. The transcripts were filed by Vesel on May 1, 2014.

14-0101 Jackson Co. *In Re: C.H., K.H., S.H. and B.H.*, 12-JA-37, 38, 39, 40

A scheduling order was entered on February 7, 2014. The transcript deadline was March 3, 2014. On February 11, 2014, Vesel sent an e-mail requesting an extension of time until March 17, 2014. Vesel was advised on February 12, 2014, that his request could not be granted through March 17, 2014, but that a one-week extension of time would be granted. Vesel was advised that he would have until March 10, 2014, to certify and file the transcripts. When the transcripts were not completed, Vesel was advised that further sanctions would be imposed. By letter dated March 31, 2014, Vesel was directed to have all recordings, notes, or any other materials needed to prepare the transcripts available to be picked up, as the Court would have the transcripts prepared. An amended scheduling order was entered on April 1, 2014, directing another official court reporter to prepare, certify, and file the transcripts by April 10, 2014. However, the other court reporter was not able to prepare the transcripts from the materials. The transcripts were filed by Vesel on April 7, 2014.

14-0115 Jackson Co. *In Re: C.H., K.H., S.H., and B.H.*, 12-JA-37, 38, 39, 40

A scheduling order was entered on February 14, 2014. The transcript deadline was March 10, 2014. On February 11, 2014, Vesel sent an e-mail requesting an extension of time until March 17, 2014. Vesel was advised on February 12, 2014, that his request could not be granted through March 17, 2014, but that a one-week extension of time would be granted. By letter dated March 31, 2014, Vesel was directed to have all recordings, notes, or any other materials needed to prepare the transcripts available to be picked up, as the Court would have the transcripts prepared. An amended scheduling order was entered on April 1, 2014, directing another official court reporter to prepare, certify and file the transcripts by April 10, 2014. However, the other court reporter was not able to prepare the transcripts from the materials. The transcripts were filed by Vesel on April 7, 2014.

14-0161 Calhoun Co. *In Re: D.J. and H.J.*, 13-JA-23, 24

A scheduling order was entered on February 28, 2014. The transcript deadline was March 24, 2014. By letter dated March 31, 2014, Vesel was directed to have all recordings, notes, or any other materials needed to prepare the transcripts available to be picked up, as the Court would have the transcripts prepared. An amended scheduling order was entered on April 1, 2014, directing another official court reporter to prepare, certify and

file the transcripts by April 10, 2014. The transcripts were certified and timely filed by that court reporter on April 7, 2014.

14-0173 Roane Co. *State v. Kenneth Seen*, 13-M-2

A scheduling order was entered on February 24, 2014. The transcripts were due March 17, 2014. A letter dated March 18, 2014, was sent to Vesel advising him that because the transcripts have not been timely filed, sanctions were being imposed. The transcripts were untimely filed on March 21, 2014.

14-0228 Roane Co. *In Re: J.W. and O.S.*, 13-JA-15, 16, 17

A scheduling order was entered on March 18, 2014. The transcript deadline was April 4, 2014. The transcripts were untimely filed on April 22, 2014.

14-0286 Jackson Co. *In Re: I.V., C.V., E.V. II, D.B. II and G.C.*, 12-JA-32, 33, 34, 35, 36

A scheduling order was entered on April 7, 2014. The transcript deadline was April 25, 2014. The transcripts were untimely filed on May 9, 2014.

14-0462 Jackson Co. *In Re: L.G.*, 13-JA-47, 48, 49, 50

A scheduling order was entered on May 20, 2014. The transcript deadline was June 6, 2014. The transcripts were untimely filed on June 9, 2014.

14-0504 Jackson Co. *In Re: M.L. and B.L.*, 13-JA-51, 52

A scheduling order was entered on June 4, 2014. The transcript deadline was June 16, 2014. The transcripts were untimely filed on June 27, 2014.

14-0514 Jackson Co. *In Re: E.E., T.A., J.A., II, and C.E.*, 14-JA-7, 21, 22, 23

A scheduling order was entered on June 6, 2014. The transcript deadline was June 19, 2014. The transcripts were untimely filed on July 16, 2014.

14-0516 Roane Co. *In Re: G.H., P.H., K.H., and H.H.*, 13-JA-11, 12, 13, 14

A scheduling order was entered on June 6, 2014. The transcript deadline was June 18, 2014. The transcripts were untimely filed on July 18, 2014.

14-0517 Roane Co. *In Re: R.H.*, 13-JA-04

A scheduling order was entered on June 6, 2014. The transcript deadline was June 25, 2014. The transcripts were untimely filed on July 29, 2014.

14-0579 Mason Co. *State v. José Franklin Whitlatch*, 13-F-26

A scheduling order was entered on June 13, 2014. The transcript deadline was July 7, 2014. The transcripts were untimely filed on July 18, 2014.

14-0666 Calhoun Co. *In Re: J.E., I.E., K.E., and L.E.*, 13-JA-34, 35, 36, 37

A scheduling order was entered on July 17, 2014. The transcript deadline was August 6, 2014. On July 22, 2014, a written request for extension of time was received from Vesel.

The extension of time was granted on August 26, 2014, extending the deadline to file the transcripts until September 1, 2014. No transcripts have been filed as of this date.

14-0747 Roane Co. *In Re: J.S.*, 14-JA-5

A scheduling order was entered on August 5, 2014. The transcript deadline was August 25, 2014. As of this date, no transcripts have been filed.

14-0754 Calhoun Co. *In Re: D.P. and Z.P.*, 13-JA-68, 69

A scheduling order was entered on August 6, 2014. The transcript deadline was August 29, 2014. As of this date, no transcripts have been filed.

The Supreme Court of Appeals has general supervisory control over all circuit courts, and has adopted a statewide judicial personnel system. This judicial personnel system includes court reporters who are appointed or selected by the circuit courts. These court reporters are officers of the court. Burger v. Burger, 176 W.Va. 416, 419, 345 S.E.2d 18, 21 (1986).

Court reporting is the process utilized by the circuit courts of this state to produce the written record of court proceedings. As such, court reporting is a vital part of the appellate review process in our judicial system.

By order, the Court establishes the deadline for the certification and filing of appellate transcripts by the official court reporters. The timely preparation of transcripts is crucial to the ability of the Court to consider cases on appeal. Timely preparation of transcripts in abuse and neglect cases is of utmost importance in these appeals being expeditiously considered by the Court. Vesel has repeatedly failed to timely produce transcripts as ordered in appeals before this Court, causing delay in the Court's review and consideration of appeals. Given his continued refusal to comply with the deadlines of Court orders, together with his recalcitrance, the Court is of the opinion that extraordinary sanctions are appropriate. It is therefore ordered that a rule to show cause should be awarded herein. It is therefore considered and ORDERED that a rule does issue directed against official court reporter, Frank Vesel, commanding and directing him to show cause, if any he can, as to why his employment as an official court reporter should not be

terminated. This rule to show cause is returnable before this Court at its courtroom in the City of Charleston, County of Kanawha, at ten o'clock, a.m., on Tuesday, October 21, 2014, unless sooner mooted.

The action may be mooted by the official court reporter, Frank Vesel, certifying and filing the transcripts as previously ordered by this Court, as set forth above herein, on or before October 17, 2014.

It is further ORDERED, pursuant to the administrative action previously taken, that Vesel's freelance privileges are hereby revoked until he can demonstrate to the Court that there is a legitimate reason for his failure to produce transcripts in a timely manner. It is further ORDERED, pursuant to the administrative provisions of this Court, that when Vesel does not certify and file a transcript in a timely manner, he shall deduct from his transcription fees the required percentage amount. If Vesel does not deduct the required percentage amount, the amount will automatically be deducted from his fees. The fee reduction shall be automatic and shall take effect without the filing of a further sanction order.

Service of a copy of this order upon the official court reporter, Frank Vesel, shall have the same effect as the service of a formal writ.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court

