



## DECISIONS, NOTICES AND ORDERS

**Friday, May 15, 2015**

The Supreme Court of Appeals of West Virginia has taken action in the following cases. This list contains only the action taken by the Court, not the content or actual date of orders or decisions.

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### REHEARINGS

The Court took the following action on petitions for rehearing:

SER Safe-Guard Products International v. Hon. Miki Thompson, Judge; and Robin Hinkle, No. 14-1134 (Original Prohibition)  
Petition refused (5-0)

In Re: The Children of Brook L. and John L., No. 14-0599 (Pocahontas 08-D-68)  
Petition refused (5-0)

### MEMORANDUM DECISIONS

In accordance with Rule 21, memorandum decisions were entered in the following cases:

William T. Widmyer v. David Ballard, Warden, No. 14-0355 (Jefferson 13-C-224)  
Affirmed (5-0)

Elizabeth Rainey v. WV Department of Health and Human Resources, Office of Healthcare Facility Licensure and Certification, No. 14-0536 (Mason 11-AA-76)  
Affirmed (5-0)

Robert A. Clark, Jr., et al. v. WV Division of Natural Resources and WV Division of Personnel, No. 14-0626 (Kanawha 11-AA-75)  
Affirmed (4-0) (Chief Justice Workman disqualified)

Shelli E. Smith v. Board of Education of Berkeley County, et al., No. 14-0851 (Kanawha 14-AA-30)  
Affirmed (4-0) (Chief Justice Workman disqualified)

State of West Virginia v. John Hedrick, No. 14-0905 (Berkeley 14-F-30)  
Affirmed (5-0)

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Arrow Financial Services, LLC v. Patrick Morrisey, Attorney General, No. 14-0316  
(Kanawha 09-MISC-213)  
Affirmed (5-0)

State of West Virginia v. Crystal Dawn Smith, No. 14-0433 (Wood 13-F-55)  
Affirmed (5-0)

Charles J. Lively v. David Ballard, Warden, No. 14-0483 (McDowell 11-C-110)  
Affirmed (4-1) (Justice Ketchum dissenting)

Terry Buxton v. David Ballard, Warden, No. 14-0648 (Wayne 98-C-096)  
Affirmed (5-0)

Connie Flannagan v. Thomas Flannagan, No. 14-0697 (Monroe 10-D-34)  
Affirmed (3-2) (Justices Davis and Benjamin dissenting)

State of West Virginia v. Donald K. Medley, No. 14-0729 (Mingo 13-F-67)  
Affirmed (5-0)

State of West Virginia v. Michael Allen Fannin, No. 14-0797 (Cabell 12-F-455)  
Affirmed (5-0)

Ernest Young, Jr. v. WV Department of Corrections, No. 14-0226 (Kanawha 13-P-214)  
Affirmed (5-0)

Patricia S. Reed, Commissioner, WV Division of Highways v. Ronald W. Craig, No. 14-0346  
(Kanawha 13-AA-61)  
Reversed and Remanded (5-0)

Walter Lee Swafford II v. David Ballard, Warden, No. 14-0650 (Fayette 02-C-293)  
Affirmed (3-2) (Justices Benjamin and Ketchum dissenting)

**RULE 19 ARGUMENT GRANTED**

The following cases will be scheduled for Rule 19 oral argument on the dates stated:

Tex B. Simmons v. David Ballard, Warden, No. 14-0920 (Morgan 13-P-16)  
September 16, 2015

Patricia S. Reed, Commissioner, WV Division of Motor Vehicles v. Robert B. Conniff,  
No. 14-1063 (Ohio 14-P-120)  
September 16, 2015

State of West Virginia v. Richard Wakefield, No. 14-0968 (Jefferson 13-F-63)  
September 16, 2015

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**RULE 20 ARGUMENT GRANTED**

The following cases will be scheduled for Rule 20 oral argument on the date stated:

SER Greater Huntington Park & Recreation District v. Hon. Darrell Pratt, Judge; and Summer Reynolds, No. 15-0249 (Original Prohibition)  
September 16, 2015

State of West Virginia v. Stephen Wesley Hatfield, No. 14-0868 (Wayne 88-F-26)  
September 16, 2015

State of West Virginia v. Tex B. Simmons, No. 14-0891 (Morgan 07-F-20)  
September 16, 2015

Farmers & Mechanics Mutual Insurance Company, et al. v. Marlon Allen, Sr., Administrator of the Estate of Marcus Allen, No. 14-0967 (Mineral 12-C-43)  
September 22, 2015

WV Department of Health and Human Resources v. E.H., et al., No. 14-0965 (Kanawha 81-MISC-585)  
September 15, 2015

**ORDERS**

Orders of note were entered in the following cases:

J.C. Gourmet, Inc. v. Mark W. Matkovich, Acting State Tax Commissioner, No. 14-1336 (Kanawha 13-AA-78)  
Dismissed (5-0)

Michael R. Harmon v. James A. Brand, No. 15-0242 (Certified Question – Monongalia 13-C-488)  
Court declines to docket the question. Consideration of the question is premature in the absence of the full development of a factual record. (5-0)

Question certified by the circuit court:

“Is the use of a forty-foot extension ladder (consisting of two twenty-foot sections allowing the ladder to be adjusted in height from twenty to forty feet) an inherently dangerous activity which would constitute an exception to the independent contractor defense of a property owner where the worker was at the twenty-eight foot level of the ladder using a tape measure and caulking gun to install a range hood vent?”

Circuit Court’s Answer: No.

Wheeling Linen Service v. Katey Kage, No. 15-0217 (Certified Question – Ohio 13-C-19)  
Court declines to docket the question. Consideration of the question is premature in the absence of the full development of a factual record. (5-0)

Question certified by the circuit court:

“Do the laws of West Virginia respecting corporations which govern issues of shareholder or officer liability also apply to and govern issues of liability respecting a member or officer of a voluntary association doing business in West Virginia?”

Circuit Court’s Answer: Yes.

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David Cordell, et al. v. WV Department of Environmental Protection, et al., No. 14-1337

(Kanawha 14-P-524)

Motion for stay refused (5-0)

Motion to dismiss refused (5-0)