

WEST VIRGINIA CRIMINAL DEFENSE  
MOTION FILE

PRE-TRIAL, POST-TRIAL, APPEALS

141662

U.S. Department of Justice  
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8-25-93 mfi

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987 STATE OF WEST VIRGINIA

## PREFACE

The WEST VIRGINIA CRIMINAL DEFENSE MOTION FILE is designed to be used by both the novice and experienced criminal defense attorney. The file provides sample pleadings that can be used in every step of the defense from the initial request for bail through the completion of the appeal.

These pleadings can be entered on the attorney's word-processing equipment and are particularly quick and easy to use when a merge print function is available.

The file is arranged to provide a brief description of the applicable law with citations to the leading West Virginia cases, statutory law and the governing rules of procedure. Form pleadings follow the legal summaries.

The pleadings are designed to conform to the requirements of the West Virginia Rules of Criminal Procedure (R.Cr.P.), the West Virginia Rules of Appellate Procedure for the Supreme Court of Appeals (R.A.P.), the West Virginia Rules of Evidence (W.V.R.E.), the Trial Court Rules for Trial Courts of Record promulgated by the Supreme Court of Appeals for West Virginia (T.C.R.) and the applicable West Virginia code sections (W.Va. Code Sec.). Of course, the attorney should always update the research to be sure that the pleadings conform to the current state of the law.

These pleadings have been developed for use in the State's public defender system. Two basic rules underlie the forms of all motions. First, a motion in a criminal case, other than one made during a trial or hearing, must be in writing unless the court permits it to be made orally. Second, unlike motions in civil cases, which must be stated with particularity, all that is required in a criminal case is that the motion state the grounds upon which it is made and set forth the relief or order sought. R.Cr.P., Rule 47.

These motions are written so that they begin with a citation to a procedural rule or code section, which constitutes "the grounds upon which it is made." This citation is followed by "the relief or order sought." This sometimes requires the attorney to add more information to the form motion.

In appropriate cases, of course, the motions must be supported by evidence in the form of affidavits, documents or testimony. For example, R.Cr.P., Rule 47, a MOTION TO REDUCE BAIL merely informs the court that a bail hearing is being requested. At the bail reduction hearing testimony or affidavits must be presented to support the relief requested and to create a record.

Any corrections or suggestions regarding these motions, or any suggestions for additional motions will be gladly accepted from the State's practicing criminal defense bar and should be sent in writing to the Public Legal Services Council, Building 3, Room 330, 1800 Washington Street East, Charleston, West Virginia 25305.

July 1987

RECORDS

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APR 5 1993

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PRE-TRIAL MOTIONS

## I. PRE-TRIAL MOTIONS

### A. BAIL

#### RELEASE ON BAIL

Eligibility for bail and the setting and revoking of bail is governed by W.Va.Code, §§62-1C-1 et seq., and R. 46, R.Cr.P.

A defendant is entitled to an evidentiary hearing to review eligibility for bail or release and to determine the amount and form of bail. R.46, R.Cr.P.

Bail determination hearings normally should be held within five days after the filing of the defendant's motion. R.46(h), R.Cr.P.

#### COMMENTARY TO FORMS

##### MOTION TO REDUCE BAIL

A felony defendant who has been admitted to bail by a magistrate court and whose case has been bound over to the grand jury may file this motion to have an evidentiary hearing in circuit court to review the amount or form of bail. R.46(h), R.Cr.P.

##### MOTION TO SET BAIL

A defendant who appears for the first time in court at the circuit court level or a defendant who has been arrested for an offense punishable by life imprisonment can be admitted to bail only by the circuit court. W.Va.Code, §62-1C-1(a) and R.46(h), R.Cr.P.

A defendant whose bail has been summarily revoked by the circuit court upon a sworn affidavit for alleged violations of the law or conditions of the bail is entitled to ask for an evidentiary hearing to reset bail. Marshall v. Casey, 324 S.E.2d 346 (W.Va. 1984).

##### MOTION FOR POST-CONVICTION BAIL

The circuit court may allow bail pending appeal from a conviction, except that bail cannot "be granted where the offense is punishable by life imprisonment or where the court has determined from the evidence at the trial or upon a plea of guilty or nolo contendere that the offense was committed or attempted to be committed with the use, presentment or brandishing of a firearm or other deadly weapon, or by the use of violence to a person." W.Va.Code, §62-1C-1(b).

MOTION TO DEVELOP BAIL RECORD

The circuit court must deny post-conviction bail where the offense was committed or attempted to be committed with the use, presentment or brandishing of a firearm or other deadly weapon, or by the use of violence to a person; nonetheless, the defendant is entitled to develop a bail record if he intends to petition the Supreme Court to set post-conviction bail in these circumstances. State v. Steele, 314 S.E.2d 412 (W.Va. 1984).

SUMMARY PETITION FOR BAIL

The amount of bail or the denial of bail at any stage of the proceedings may be reviewed by a summary petition to the Supreme Court. W.Va.Code, §62-1C-1(c). The petition should comply with Rule 17 of the Rules of Appellate Procedure, including service on opposing counsel.

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO REDUCE BAIL

Pursuant to Rule 46 of the Rules of Criminal Procedure, the Defendant moves the court to reduce &HIS-HER& bail pending trial of the case.

Bail was set for the Defendant by the Magistrate Court, and &HE-SHE& is now entitled under Rule 46(h) to a hearing in Circuit Court to determine the amount and form of bail.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO SET BAIL

Pursuant to Rule 46 of the Rules of Criminal Procedure, the Defendant moves the court to admit the Defendant to bail.

The Defendant is eligible for bail in accordance with W.Va.Code, §62-1C-1.

The Defendant requests a hearing on this motion, as provided for in Rule 46(h) of the Rules of Criminal Procedure.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR POST-CONVICTION BAIL

Pursuant to Rule 46(c) of the Rules of Criminal Procedure, the Defendant moves the court to allow the Defendant bail pending sentence and appeal of the conviction in this case.

The Defendant is eligible for bail under W.Va.Code, §62-1C-1(b).

The Defendant requests a hearing on this motion, as provided for by Rule 46(h) of the Rules of Criminal Procedure.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO DEVELOP BAIL RECORD

Pursuant to Rule 46(h) of the Rules of Criminal Procedure, the Defendant moves the court to hold an evidentiary hearing to develop a bail record.

Though the Defendant is not entitled to have the circuit court set bail under the circumstances of this case, &HE-SHE& is entitled to develop a bail record to permit the Supreme Court to determine if post-conviction bail should be granted.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

No. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

---

CHARLESTON

---

STATE OF WEST VIRGINIA,  
Plaintiff Below,

Respondent,

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&PETITIONER&  
Defendant Below,

Petitioner.

---

SUMMARY PETITION FOR BAIL

---

Counsel for Petitioner:

&ATTORNEY&  
&ADDRESS1&  
&ADDRESS2&  
&ADDRESS3&  
&ADDRESS4&

SUMMARY PETITION FOR BAIL

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA:

Jurisdiction

This is a summary petition for bail presented in accordance with W.Va. Code, § 62-1C-1(c).

Facts of the Case

[INSERT CERTIFIED COURT ORDER MEETING REQUIREMENTS OF R.46(h)(5), R.Cr.P., AND OTHER FACTS SUPPORTED BY AFFIDAVITS INCLUDING:

1. PLACE OF INCARCERATION,
2. DATE OF INCARCERATION,
3. OFFENSE,
4. DATE OF CONVICTION, IF ANY,
5. DEFENDANT'S PRIOR RECORD,
6. HISTORY OF MAKING COURT APPEARANCES,
7. EMPLOYMENT HISTORY,
8. TIES TO COMMUNITY, ETC.]

Points and Authorities Relied Upon

[INSERT MEMORANDUM OF LAW]

Relief Prayed For

[INSERT RELIEF REQUESTED]

&PETITIONER&  
Petitioner, By Counsel

---

&ATTORNEY&  
&ADDRESS1&  
&ADDRESS2&  
&ADDRESS3&  
&ADDRESS4&

CERTIFICATE OF SERVICE

I certify I have served this SUMMARY PETITION FOR BAIL by mailing true copies thereof in the U.S. Mail, postage prepaid, to the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 198\_.

\_\_\_\_\_  
&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

CERTIFICATE OF SERVICE

I certify I have served this SUMMARY PETITION FOR BAIL by hand delivering true copies thereof to the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 198\_.

\_\_\_\_\_  
&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

## PRE-TRIAL MOTIONS

### B. CHALLENGES TO THE INDICTMENTS

Challenges to an anticipated indictment may be made by attacking the grand jury process before the indictment is returned. R.6(b)(1), R.Cr.P.

Once the grand jury has returned an indictment, certain defenses and objections based on defects in the institution of the prosecution or based on defects in the indictment must be raised before trial. R.12(b), subsections (1) and (2), R.Cr.P.

#### COMMENTARY TO FORMS

##### MOTION TO CHALLENGE THE GRAND JURY

and

##### MOTION TO CHALLENGE INDIVIDUAL GRAND JURORS

A defendant who has been bound over to the grand jury after a preliminary hearing may challenge the array of grand jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with the law. R.6(b)(1), R.Cr.P.

A defendant may challenge an individual grand juror on the ground that the juror is not legally qualified. R.6(b)(1), R.Cr.P.

These challenges must be made before the administration of the oath to the grand jurors and are tried by the circuit court. R.6(b)(1), R.Cr.P.

The procedure for summoning a grand jury and the qualifications of grand jurors are set forth in W.Va.Code, §§ 52-1-1, et seq. and §§ 52-2-1, et seq.

Motions to quash were abolished by the Supreme Court of Appeals of West Virginia when it adopted R.12(a), R.Cr.P., effective October 1, 1981. Subsequently in 1986 the state legislature rewrote the article governing the procedure used to select grand and petit jurors and reinstated motions to quash. Under the new article, within seven days after the moving party discovers or by the exercise of diligence could have discovered the grounds therefor, and in any event before the petit jury is sworn to try the case, a party may move to stay the proceedings and to quash the indictment or to grant other appropriate relief on the ground of substantial failure to comply with the procedure for selecting a jury. W. Va. Code § 52-1-15(a).

Such a motion must contain a sworn statement of facts which, if true, would constitute a substantial failure to comply with jury selection procedures. Accordingly, a verification page should be attached to the motion. W. Va. Code § 52-1-15(b).

### MOTION TO DISMISS THE INDICTMENT

Defenses and objections based on defects in the institution of the prosecution or based on defects in the indictment (other than it fails to show jurisdiction in the court or to charge an offense) must be raised prior to trial. This is generally done by a motion to dismiss one or more counts of the indictment. R.12(b), subsections (1) and (2), R.Cr.P.

There are many reasons an indictment may be dismissed, though the following are typical:

1. The indictment fails to allege an essential element of the offense;
2. Less than 12 legally qualified grand jurors concurred in the finding of the indictment;
3. The grand jury which returned the indictment was not selected, drawn or summoned in accordance with the law;
4. The defendant has been prejudiced by pre-indictment delay;
5. The defendant has been denied a speedy trial;
6. The defendant has previously been acquitted (or/convicted, or/punished) for this offense;
7. The indictment does not fairly appraise the defendant of the nature of the charge;
8. The statute on which the indictment is based is unconstitutional;
9. The indictment is barred by the statute of limitations;
10. The indictment fails to show jurisdiction in the court;
11. The indictment fails to charge an offense;
12. The indictment misjoins two or more offenses.

The contents of indictments are governed by Rule 7(c)(1) and Rule 8, R.Cr.P., and by W.Va.Code, §§62-2-1, et seq.

### MOTION TO STRIKE

The court on motion of the defendant may strike surplusage from the indictment. R.7(d), R.Cr.P.

Surplusage includes immaterial, unnecessary and harmless averments which might be omitted without affecting the charge. State v. McGraw, 140 W.Va. 547, 85 S.E.2d 849 (1955).

MOTION TO DISCLOSE MATTERS OCCURRING BEFORE THE GRAND JURY

Disclosure of grand jury minutes and testimony may be made when permitted by the court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. R.6(e)(3)(C)(ii), R.Cr.P.

This motion is a type of discovery device to aid the defendant in making a motion to dismiss the indictment; however, to obtain pretrial disclosure of grand jury minutes and testimony other than his own, the defendant must make a showing of particularized need. State v. Louk, 301 S.E.2d 596 (W.Va. 1983).

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO CHALLENGE THE GRAND JURY

Pursuant to Rule 6(b)(1) of the Rules of Criminal Procedure and in accordance with W. Va. Code §52-1-15, the Defendant challenges the array of the grand jury.

The grand jury was not selected, drawn and summoned in accordance with the law because of the following:

[STATE REASONS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO CHALLENGE INDIVIDUAL GRAND JURORS

Pursuant to Rule 6(b)(1) of the Rules of Criminal Procedure, the Defendant challenges the following individual grand jurors:

[LIST NAMES AND REASONS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO DISMISS THE INDICTMENT

Pursuant to Rule 12(b) of the Rules of Criminal Procedure, the Defendant moves the court to dismiss parts or all of the Indictment because of the following:

[LIST PARTS OR COUNTS TO BE DISMISSED AND STATE REASONS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO STRIKE

Pursuant to Rule 7(d) of the Rules of Criminal Procedure, the Defendant moves the court to strike surplusage from the indictment.

The following language is immaterial and unnecessary to the indictment and should be stricken:

[INSERT LANGUAGE WHICH SHOULD BE STRICKEN]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO DISCLOSE MATTERS OCCURRING BEFORE THE GRAND JURY

Pursuant to Rule 6(e)(3)(C)(ii) of the Rules of Criminal Procedure, the Defendant moves the court to order disclosure of matters occurring before the grand jury.

Disclosure is necessary because the following grounds may exist to dismiss the Indictment:

[INSERT GROUNDS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

## I. PRE-TRIAL MOTIONS

### C. DISCOVERY, RESPONSES AND SUPPRESSION MOTIONS

The West Virginia Rules of Criminal Procedure permit disclosure of certain types of evidence which the parties intend to use in their cases in chief. The forms in this section will be used by defendant's counsel both to request discoverable evidence and to answer discovery requests made by the State.

Notices relating to the defendant's intention to rely on an insanity defense or to rely on expert testimony relating to the defendant's mental condition are found in a later section dealing with the mental status of the defendant.

#### COMMENTARY TO FORMS

##### MOTION FOR DISCOVERY

At the arraignment or as soon thereafter as is practicable, the defendant may request notice of the State's intention to use (in its evidence in chief at the trial) any evidence which the defendant may be entitled to discover under Rule 16 of the rules of Criminal Procedure. R.12(d)(2), R.Cr.P.

This motion requests all pretrial discovery permitted under that rule. In addition, paragraph F requests disclosure of evidence which may be discoverable under case law. Finally, Paragraph G requests early disclosure of evidence which is discoverable under other rules.

##### MOTION FOR BILL OF PARTICULARS

The court may direct the filing of a bill of particulars. R.7(f) and R.12(b)(4), R.Cr.P. A bill of particulars is a discovery device and is for the purpose of furnishing details omitted from the accusation or indictment, to which the defendant is entitled before trial. The defendant is entitled to the information if nondisclosure would hamper the preparation of the defendant's case or would surprise the defendant on an issue material to the case. State v. Meadows, 304 S.E.2d 831 (W.Va. 1983).

DISCLOSURE OF EVIDENCE

and

DISCLOSURE OF ADDITIONAL EVIDENCE

The defendant, on request of the State, must permit the State to inspect and copy or photograph certain physical evidence in the possession, custody, or control of the defendant. This disclosure of evidence is contingent upon the State having complied with a similar request by the defendant.

Likewise, the defendant must disclose to the State names and addresses of witnesses the defendant intends to call in the presentation in the defendant's case in chief, if the State has complied with a similar request by the defendant. R.16(b)(1), subsections (A), (B), and (C), R.Cr.P.

If, prior to trial, the defendant discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under Rule 16, the defendant has a continuing duty to notify the State or the court of the existence of the additional evidence or material.

NOTICE OF ALIBI DEFENSE

NOTICE OF NO INTENTION TO RELY ON DEFENSE OF ALIBI

and

NOTICE OF ADDITIONAL ALIBI EVIDENCE

Upon written demand of the attorney for the State stating the time, date, and place at which the alleged offense was committed, the defendant must serve within 10 days, or at such different time as the court may direct, upon the attorney for the State a written notice of an intention to offer a defense of alibi. Such notice must state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. R.12.1(a), R.Cr.P.

The defendant has a continuing duty to disclose such evidence prior to and during trial. R.12.1(c), R.Cr.P.

MOTION TO SUPPRESS EVIDENCE

Motions to suppress evidence must be raised prior to trial, unless the grounds are not yet known to the defendant. R.12(b)(3), R.Cr.P.

MOTION IN LIMINE

"In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury. Where practicable, these matters should be determined upon a pretrial motion in limine." R.103(c), WVRE.

MOTION FOR APPROPRIATE RELIEF

Counsel may raise before trial any defense, objection, or request which is capable of determination without the trial of the general issue. R.12(b), R.Cr.P.

MOTION TO USE IMPEACHMENT EVIDENCE

For the purpose of attacking the credibility of any witness, other than the defendant in a criminal case, evidence that a witness has been convicted of a crime may be admitted under certain circumstances. R.609(a)(2), WVRE.

"Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect." The defendant must give to the State sufficient advance written notice of an intent to use such evidence to provide the State with a fair opportunity to contest the use of such evidence. R.609(b), WVRE.

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR DISCOVERY

Pursuant to Rule 16 of the Rules of Criminal Procedure, the Defendant moves the court for an Order granting the Defendant permission to inspect, copy and photograph the following:

A. Statement of Defendant

Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody, or control of the State, the existence of which is known, or by some exercise of due diligence may become known, to the attorney for the State; the substance of any oral statement which the State intends to offer in evidence at the trial made by the Defendant whether before or after arrest; and recorded testimony of the Defendant before a grand jury which relates to the offense charged;

B. Defendant's Prior Record

A copy of the Defendant's prior criminal record, if any, as is within the possession, custody or control of the State, or the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the State;

C. Documents and Tangible Objects

Any books, papers, documents, photographs, tangible objects, photographs, maps or drawings of buildings or places, or copies or portions thereof, which are within the possession, custody, and control of the State, and which are material to the preparation of the defense or are intended for use by the State as evidence in chief at the trial, or were obtained from or belong to the Defendant;

D. Reports of Examinations and Tests

Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the State, the existence of which is known,

or by the exercise of due diligence may become known, to the attorney for the State, and which are material to the preparation of the defense or are intended for use by the State as evidence in chief at the trial;

E. State Witnesses

A written list of names and addresses of all State witnesses whom the attorney for the State intends to call in the presentation of the case in chief, together with any record of prior convictions of any such witnesses which is within the knowledge of the State;

F. Additional Disclosure

In addition to those items above which are required to be disclosed by Rule 16, the Defendant moves the court to require the State to disclose the following additional evidence:

1. Any evidence which may have a tendency to exculpate the Defendant. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and State v. McArdle, 156 W.Va. 409, 194 S.E.2d 174 (1973);

2. Any evidence which may be relevant and favorable to the Defendant. State v. Dudick, 213 S.E.2d 458 (W.Va. 1975), State v. Petry, W.Va., 273 S.E.2d 346, 351 (1980), and State v. Ashcraft, 309 S.E.2d 600 (W.Va. 1983);

3. Any evidence of uncharged crimes, wrongs or acts allegedly committed by the Defendant which the State intends to introduce. State v. Headley, 282 S.E.2d 872 (W.Va. 1981);

4. The terms of all plea bargains or special considerations offered by this State or any state or federal government to witnesses who will be called in the trial of this case. State v. Jones, 239 S.E.2d 763 (W.Va. 1977);

5. The names and addresses of all persons who have furnished the State with information concerning this case or who possess knowledge of the facts and circumstances of the charge. State v. Bennett, 339 S.E.2d 213 (W.Va. 1985) and State v. Mansfield, 332 S.E.2d 862 (W.Va. 1985);

6. The names of all witnesses who testified at the grand jury. W.Va.Code, Sec. 52-2-8;

7. All investigative reports prepared by the State and all witnesses' statements in the State's possession, which relate to the indictment. Woodall v. Laurita, 195 S.E.2d 717, 720 (W.Va. 1973) ["... trial by ambush is not only unsportsmanlike and ungentlemanly, it is also illegal."], State v. Petry, 273 S.E.2d 346, 351 (W.Va. 1980) ["... criminal discovery is by no means limited to the items enumerated in that

section..."], and State v. Sette, 242 S.E.2d 464, 470 (W.Va. 1978) ["... criminal discovery should not be limited, absent compelling reasons for its limitation."].

8. Any statements of co-conspirators of the Defendant which the State intends to introduce under W.V.R.E., R.801(d)(2)(E). W.V.R.Crim.P., R.16(a)(1)(A).

9. Any evidence of "flight" of the Defendant which the State intends to use to demonstrate guilty conscience or knowledge. Acord v. Hedrick, 342 S.E.2d 120 (W.Va. 1986);

10. The names and addresses of all witnesses who were parties to pre-trial identification procedures used to identify the Defendant. State v. Watson, 264 S.E.2d 628 (W.Va. 1980).

G. Early Disclosure

The Defendant moves the court to order pretrial production of all statements of witnesses which would be discoverable under Rule 26.2 of the Rules of Criminal Procedure.

&DEFENDANT&  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR BILL OF PARTICULARS

Pursuant to Rules 7(f) and 12(b)(4) of the Rules of Criminal Procedure, the Defendant moves the court to direct the State to furnish details omitted from the Indictment by answering the following:

[INSERT QUESTIONS HERE]

Nondisclosure of the requested information would hamper the preparation and presentation of the case and may surprise the Defendant on issues material to the case.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

DISCLOSURE OF EVIDENCE

Pursuant to Rule 16(b) of the Rules of Criminal Procedure, the Defendant makes this disclosure of evidence which &HE-SHE& intends to use as evidence in chief at the trial.

(A) Documents and Tangible Objects

1. The Defendant may use all of those documents and tangible objects which the State discloses in its discovery answers; and,
2. [LIST OTHERS OR STATE "NONE ADDITIONAL"]

(B) Reports of Examinations and Tests

1. The Defendant may use all of those reports of examinations and tests which the State discloses in its discovery answers; and,
2. [LIST OTHERS OR STATE "NONE ADDITIONAL"]

(C) Defense Witnesses

1. The Defendant may call all of those witnesses which the State lists in its discovery answers; and,
2. [LIST OTHERS OR STATE "NONE ADDITIONAL"]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
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Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

DISCLOSURE OF ADDITIONAL EVIDENCE

Pursuant to Rule 16(c) of the Rules of Criminal Procedure, the Defendant gives notice of the existence of additional evidence, material or witnesses which &HE-SHE& intends to use as evidence in chief at the trial.

- (A) Documents and Tangible Objects  
[LIST]
- (B) Reports of Examinations and Tests  
[LIST]
- (C) Defense Witnesses  
[LIST]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

NOTICE OF ALIBI DEFENSE

Pursuant to Rule 12.1 of the Rules of Criminal Procedure, the Defendant provides the State with this written notice of an intention to offer a defense of alibi.

The Defendant claims to have been at the following specific place or places:

[LIST PLACE(S) AND ADDRESS(S)]

The names and addresses of the witnesses upon whom the Defendant intends to rely to establish such alibi are as follows:

[LIST NAME(S) AND ADDRESS(S) OF WITNESSES]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

NOTICE OF NO INTENTION TO RELY ON DEFENSE OF ALIBI

Pursuant to Rule 12.1 of the Rules of Criminal Procedure, the Defendant informs the State that &HE-SHE& does not intend to rely upon the defense of alibi.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

NOTICE OF ADDITIONAL ALIBI EVIDENCE

Pursuant to Rule 12.1(c) of the Rules of Criminal Procedure, the Defendant gives notice of the existence and identity of additional alibi witnesses.

The names and addresses of the additional witnesses upon whom the Defendant intends to rely to establish the alibi are as follows:

[INSERT NAMES AND ADDRESSES HERE]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO SUPPRESS EVIDENCE

Pursuant to Rule 12(b)(3) of the Rules of Criminal Procedure, the Defendant moves the court to suppress the following evidence:

[LIST EVIDENCE TO BE SUPPRESSED WITH SHORT  
STATEMENT OF LEGAL GROUNDS REQUIRING  
SUPPRESSION]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION IN LIMINE

Pursuant to Rule 103(c) of the Rules of Evidence, the Defendant moves the court to prohibit the State, its representatives or its witnesses from disclosing the following inadmissible evidence in front of the jury:

[LIST EVIDENCE]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR APPROPRIATE RELIEF

Pursuant to Rule 12(b) of the Rules of Criminal Procedure, the Defendant moves the court to grant the following appropriate relief:

[INSERT RELIEF REQUESTED WITH A SHORT  
STATEMENT OF THE GROUNDS FOR GRANTING  
THE RELIEF]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO USE IMPEACHMENT EVIDENCE

Pursuant to Rule 609(b) of the Rules of Evidence, the Defendant moves the court to permit the impeachment of &WITNESS& with evidence that &HE-SHE& has been convicted of &CONVICTION&.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

## I. PRE-TRIAL MOTIONS

### D. COMPETENCY AND INSANITY

Competency refers to the defendant's mental ability at the time of trial to consult with his lawyer and understand the proceedings against him.

"A person cannot be tried, sentenced or punished while mentally incapacitated." State v. Demastus, 270 S.E.2d 649, 656 (W.Va. 1980).

"To be competent to stand trial, a defendant must exhibit a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational, as well as factual, understanding of the proceedings against him." Syl. Pt. 2, State v. Arnold, 219 S.E.2d 922, 923 (W.Va. 1975).

Insanity refers to the defendant's lack of mental responsibility at the time of the offense.

"When a defendant in a criminal case raises the issue of insanity, the test of his responsibility for his act is whether, at the time of the commission of the act, it was the result of a mental disease or defect causing the accused to lack the capacity either to appreciate the wrongfulness of his act or to conform his act to the requirements of the law." Syl. Pt. 2, State v. Myers, 222 S.E.2d 300, 302 (W.Va. 1976).

### COMMENTARY TO FORMS

#### MOTION FOR MENTAL STATUS EXAMINATION

"Whenever a court of record . . . believes that a defendant in a felony case or a defendant in a misdemeanor case in which an indictment has been returned, or a warrant or summons issued, may be incompetent to stand trial or is not criminally responsible by reason of mental illness, mental retardation or addiction, it may at any stage of the proceedings after the return of an indictment or the issuance of a warrant or summons against the defendant, order an examination of such defendant to be conducted by one or more psychiatrists, or a psychiatrist and a psychologist . . . ." W.Va.Code, §27-6A-1(a).

#### MOTION FOR FURTHER EXAMINATION

"After the examination described . . . [above], the court of record may order that the person be admitted to a mental health facility designated by the director of health for a period not to exceed twenty days for observation and further examination if the court has reason to believe that such further observation and examination are necessary in order to determine whether mental illness, mental retardation or addiction have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged." W.Va.Code, §27-6A-1(b).

#### MOTION FOR HEARING ON COMPETENCY

"Within five days . . . after the receipt of a report on the issue of competency to stand trial, . . . the court of record shall make a finding on the issue of whether the defendant is competent for trial. . . . If the court of record orders or if the defendant or his counsel on his behalf within a reasonable time requests a hearing on such findings, a hearing in accordance with . . . [§27-6A-2] shall be held by the court of record within ten days of the date such finding or such request has been made." W.Va.Code, §27-6A-1(d).

#### MOTION FOR EXAMINATION BY INDEPENDENT EXPERT

If the defendant has requested a hearing on his competency to stand trial, he has a right prior to the hearing "to be examined by an independent expert of his choice" and to have "testimony from this expert as a medical witness on his behalf at the competency hearing." W.Va.Code, §27-6A-2(a).

"All medical and psychological expenses attendant upon these proceedings are to be paid by the State." W.Va.Code, §27-6A-8(b).

#### MOTION FOR HEARING TO REVIEW COMPETENCY

If the defendant has previously been found incompetent to stand trial but has since regained competency, "the defendant may at any time petition the court to hold a new competency hearing." W.Va.Code, §27-6A-5.

#### MOTION FOR HEARING ON DEFENSE

A defendant who has been found incompetent to stand trial may request an opportunity to offer a defense to the charge, other than a defense of not guilty by reason of insanity, mental retardation or addiction. The granting of this request is discretionary with the court. If the request is granted, the evidence is heard by the court of record sitting without a jury. The indictment will be dismissed and the defendant released from criminal custody if the court finds insufficient evidence to support a conviction. W.Va.Code, §27-6A-6.

#### MOTION FOR RELEASE

"Notwithstanding any finding of incompetence to stand trial . . . the court of record may at any stage of the criminal proceedings allow a defendant to be released with or without bail." W.Va.Code, §27-6A-7.

#### NOTICE OF INSANITY DEFENSE

"If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, . . . he shall notify the attorney for the state in writing of such intention and file a copy of such notice with the clerk." If the defendant fails to give this notice, he may be prohibited from raising insanity as a defense. R.12.2(a), R.Cr.P.

#### NOTICE OF EXPERT TESTIMONY RELATING TO MENTAL STATE

"If a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of the defendant bearing upon the issue of his guilt, he shall . . . notify the attorney for the state in writing of such intention and file a copy of such notice with the clerk." R.12.2(b), R.Cr.P.

"If there is a failure to give notice . . . required by this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental condition." R.12.2(e), R.Cr.P.

#### MOTION FOR BIFURCATED TRIAL

If the defendant is going to rely on an insanity defense and a defense on the merits, a unitary trial at which both defenses are presented may be unfair to the defendant, since the insanity defense would imply guilt on the merits.

Under such circumstances, the defendant may move to sever his insanity defense from his defense on the merits.

The granting of such a motion lies in the "sound discretion of the trial court." State v. Daggett, 280 S.E.2d 545 (W.Va. 1981); State v. Bragg, 235 S.E.2d 466 (W.Va. 1977).

In support of this motion, defense counsel must proffer evidence sufficient in quality and quantity to enable the court to decide whether each defense is substantial; and, if so, "the court must then determine the likelihood of prejudice to the defendant which may result if both defenses are presented at a unitary trial." State v. Boyd, 280 S.E.2d 669 (W.Va. 1981).

#### MOTION FOR POST-CONVICTION EXAMINATION

"After a conviction and prior to sentencing, the court of record may order a psychiatric or other clinical examination" of the defendant to assist the court in making its sentencing decision; "and, after such examination, the court may further order a period of observation in a mental health facility designated by the director of health. Such a period of observation or examination may not exceed forty days." W.Va.Code, §27-6A-1(e).

#### MOTION FOR MENTAL HEALTH COMMITMENT

As part of the sentencing order of the court, a convicted defendant may be committed for treatment "in a mental health facility designated by the director of health." W.Va.Code, §27-6A-1(e).

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR MENTAL STATUS EXAMINATION

Pursuant to W.Va. Code, §27-6A-1(a), the Defendant moves the court to provide for a psychiatric examination to determine if &HE-SHE& is competent to stand trial and to determine &HIS-HER& criminal responsibility at the time of the alleged offense.

The Defendant may not be criminally responsible by reason of mental illness, mental retardation, or addiction, and &HE-SHE& cannot participate substantially in this defense or understand the nature and consequences of this proceeding.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR FURTHER EXAMINATION

Pursuant to W.Va.Code, §27-6A-1(b), the Defendant moves the court to order that &HE-SHE& be admitted to a mental health facility for observation and further examination to assist the court in determining whether &HE-SHE& is competent to stand trial or criminally responsible for &HIS-HER& actions.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR HEARING ON COMPETENCY

The Defendant moves the court for a hearing to determine &HIS-HER& competency to stand trial.

The court has found the Defendant competent to stand trial, and in accordance with W.Va.Code, § 27-6A-1(d), &HE-SHE& is entitled to a hearing on this finding.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR EXAMINATION BY INDEPENDENT EXPERT

The Defendant moves the court for an order permitting &HIM-HER& to be examined by an independent expert of &HIS-HER& choice to determine &HIS-HER& competency to stand trial.

The Defendant has requested a hearing on &HIS-HER& competency to stand trial, and in accordance with W.Va.Code, §27-6A-2(a), "&HE-SHE& is entitled to such an examination and testimony from an expert as a medical witness on &HIS-HER& behalf."

Furthermore, under W.Va.Code, §27-6A-8, the Defendant moves the court to order that all medical and psychological expenses attendant upon these proceedings be paid by the State.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR HEARING TO REVIEW COMPETENCY

In accordance with W.Va.Code, §27-6A-5, the Defendant moves the court for a hearing to review the determination of &HIS-HER& competency to stand trial.

Because it appears the Defendant is now competent to stand trial, &HIS-HER& commitment should be terminated, and &HE-SHE& should be returned to the place of trial.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR HEARING ON DEFENSE

In accordance with W.Va.Code, §27-6A-6, the Defendant moves the court for a hearing to establish a defense which is not based on mental illness, mental retardation or addiction.

The Defendant has been found incompetent to stand trial, but &HE-SHE& believes that &HE-SHE& can now establish a defense on the merits to the charges pending against &HIM-HER&.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR RELEASE

In accordance with W.Va.Code, §27-6A-7, the Defendant moves the court to order that &HE-SHE& be released from custody because of the following:

[INSERT SHORT STATEMENT OF REASONS WHY DEFENDANT  
SHOULD BE RELEASED]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CARR NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

NOTICE OF INSANITY DEFENSE

Pursuant to Rule 12.2(a) of the Rules of Criminal Procedure, the Defendant gives notice of an intent to rely on the defense of insanity at the time of the alleged crime.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

v. .

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

NOTICE OF EXPERT TESTIMONY RELATING TO MENTAL STATE

Pursuant to Rule 12.2(b) of the Rules of Criminal Procedure, the Defendant gives notice of an intent to introduce expert testimony relating to a mental disease, defect or other mental condition bearing upon the issue of &HIS-HER& guilt.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR BIFURCATED TRIAL

The Defendant moves the court to order a bifurcated trial on the issue of insanity and on the issue of &HIS-HER& defense on the merits.

The Defendant has a substantial insanity defense and a substantial defense on the merits, either of which would be prejudiced by a simultaneous presentation.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR POST-CONVICTION EXAMINATION

In accordance with W.Va.Code, §27-6A-1(e), the Defendant moves the court to order a psychiatric or other clinical examination of the Defendant, and if necessary, to further order a period of observation in a mental health facility designated by the director of the department of health.

Such an examination or period of observation will assist the court in making its sentencing decision.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR MENTAL HEALTH COMMITMENT

In accordance with W.Va.Code, §27-6A-1(e), the Defendant moves the court to order, as part of the sentence in this case, that &HE-SHE& be committed for treatment in a mental health facility designated by the director of the department of health.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

## I. PRE-TRIAL MOTIONS

### E. DISQUALIFICATION OF MAGISTRATE, JUDGE OR PROSECUTOR

The recusal of judicial and prosecutorial officials is governed by various procedural and statutory rules and by case-law. For an exhaustive treatment of this subject, see 2 F. Cleckley, Handbook on West Virginia Criminal Procedure, ch's 25 and 26 (Michie Co. 1985).

#### COMMENTARY TO FORMS

##### AFFIDAVIT OF PREJUDICE (to remove magistrate)

Any party to a criminal proceeding before a magistrate in any county wherein there is more than one magistrate may file an affidavit that the magistrate before whom the matter is pending has a personal bias or prejudice either against him or in favor of any opposite party or that such magistrate has counseled with any opposite party with respect to the merits of the proceeding. The affidavit must state the facts and reasons for belief in the truth thereof. The affidavit must be filed at least two days before the trial or hearing date unless the grounds for the affidavit are not discovered until after such time. The supreme court of appeals has provided a form affidavit which complies with these requirements. This affidavit is patterned after the supreme court's suggested form. W.Va.Code, §50-4-7.

##### MOTION TO DISQUALIFY THE CIRCUIT JUDGE (including verification page)

In any proceeding, except an injunction or a summary contempt proceeding, a written motion for disqualification of a judge may be filed. The motion must be verified and state the facts and reasons for disqualification and be accompanied by a certificate of counsel of record stating it is made in good faith and that he has evidence to support the motion. The motion must be filed at least seven days in advance of any trial date set in the proceedings. R. XVII. A.(1), T.C.R.

##### MOTION TO DISQUALIFY THE PROSECUTING ATTORNEY

Under circumstances where it can reasonably be inferred that the prosecuting attorney has an interest in the outcome of a criminal prosecution that goes beyond his ordinary dedication to duty to see that justice is done, the prosecuting attorney should be disqualified from prosecuting the case. State v. Knight, 285 S.E.2d 401 (W.Va. 1981).

As a rule, the disqualification of the prosecuting attorney also operates to disqualify his assistants. Moore v. Starcher, 280 S.E.2d 693 (W.Va. 1981).

In such a case, W.Va.Code, §7-7-8, will govern the appointment of a special prosecutor.

IN THE MAGISTRATE COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

AFFIDAVIT OF PREJUDICE

I, &DEFENDANT&, defendant, believe that Magistrate &MAGISTRATE&, before whom this case is pending, has:

\_\_\_\_\_ A personal bias or prejudice against me or in favor of another party to this case; or

\_\_\_\_\_ Counseled with the other party with respect to the merits of the proceeding.

The facts and reasons for this belief are:

[INSERT FACTS AND REASONS]

DATE: &DATES&

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Witnessed

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO DISQUALIFY THE CIRCUIT JUDGE

Pursuant to Rule 17 of the Trial Court Rules for Trial Courts of Record, the Defendant moves the court for an Order disqualifying Judge &JUDGE& as the presiding judge in this case because of the following:

[LIST FACTS AND REASONS FOR DISQUALIFICATION]

CERTIFICATE OF COUNSEL

I hereby certify that this motion is made in good faith and that I have evidence to support this motion.

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF &COUNTY&, to wit:

I, &DEFENDANT&, Defendant named in the foregoing Motion to Disqualify the Circuit Judge, say that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are stated to be on information, I believe them to be true.

\_\_\_\_\_  
&DEFENDANT&

Taken, sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO DISQUALIFY THE PROSECUTING ATTORNEY

Pursuant to Rule 12(b) of the Rules of Criminal Procedure, the Defendant moves the court to disqualify the prosecuting attorney because &HE-SHE& has an interest in the outcome of this case that goes beyond &HIS-HER& ordinary dedication to duty to see that justice is done.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

## I. PRE-TRIAL MOTIONS

### F. SEVERANCE, CONSOLIDATION AND ELECTION

A prosecutor may charge a defendant with two or more offenses in the same indictment or information if the offenses charged are of the same or similar character. "All offenses based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan shall be charged in the same indictment or information . . . ." R.8(a), R.Cr.P.

"Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count." R.8(b), R.Cr.P.

#### COMMENTARY TO FORMS

##### MOTION FOR CONSOLIDATION OF CHARGES

"The court may order two or more indictments or information or both to be tried together if the offenses, . . . could have been joined in a single indictment or information . . . ." R.13, R.Cr.P.

##### MOTION FOR SEVERANCE OF OFFENSES

"If it appears that a defendant or the state is prejudiced by a joinder of offenses in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of the counts or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the state to deliver to the court for inspection in camera any statements, . . . which the state intends to introduce in evidence at trial." R.14(a), R.Cr.P.

The Supreme Court of Appeals of West Virginia has recognized several factors which might militate in favor of a severance, including:

- 1.) Would trial on multiple offenses make it difficult to establish separate defenses to the individual charges?
- 2.) Does the defendant desire to testify on one charge but not another?
- 3.) Is the State's proof so minimal on one offense that to permit it to be tried with the other charges would result in bolstering the weak charge?
- 4.) Are the facts of one count not necessary to prove the elements of another count?

- 5.) Would the evidence relating to one count not punctuate the State's case concerning the events surrounding the other counts?
- 6.) Would the defendant be able to offer a better defense if the counts were severed? State v. Mitter, 285 S.E.2d 376 (W.Va. 1981), and State v. Cunningham, 290 S.E.2d 256 (W.Va. 1981).

MOTION FOR SEPARATE TRIALS  
(in felony case)

"Upon a joint indictment or information in a felony case against several persons, the court shall upon motion of any defendant or the state order separate trials." R.14(b), R.Cr.P.

MOTION FOR SEPARATE TRIALS  
(in misdemeanor case)

"If it appears that a defendant or the state is prejudiced by a joinder of defendants in a misdemeanor indictment or information, the court may order separate trials of the defendants. In ruling on a motion by a defendant for severance in a misdemeanor case, the court may order the attorney for the state to deliver to the court for inspection in camera any statements or confessions made by the defendants or other relevant information which the state intends to introduce into evidence at the trial." R.14(b), R.Cr.P.

MOTION TO REMAND TO MAGISTRATE COURT

"If the information or indictment charges a misdemeanor offense and the offense has not previously been brought before a magistrate, the case may be remanded to the magistrate for a trial on the merits . . . ." R.9(d), R.Cr.P.

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR CONSOLIDATION OF CHARGES

Pursuant to Rule 13 of the Rules of Criminal Procedure, the Defendant moves the court to order that the following charges be tried together:

[INSERT INDICTMENT NUMBERS]

These offenses could have been joined in a single charge, and the Defendant is prejudiced by having separate trials on these offenses.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR SEVERANCE OF OFFENSES

Pursuant to Rule 14(a) of the Rules of Criminal Procedure, the Defendant moves the court to sever the offenses in the charge and to order an election or separate trials of the offenses alleged in the charge.

The Defendant is prejudiced by a joinder of the offenses because of the following:

[INSERT WHICH COUNTS ARE TO BE SEVERED,  
AND INDICATE HOW THE DEFENDANT IS  
PREJUDICED BY A JOINT TRIAL.]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR SEPARATE TRIALS

Pursuant to Rule 14(b) of the Rules of Criminal Procedure, the Defendant moves the court to order that &HE-SHE& be tried separately from other co-defendants.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR SEPARATE TRIALS

Pursuant to Rule 14(b) of the Rules of Criminal Procedure, the Defendant moves the court to order separate trials of the defendants.

This Defendant has been prejudiced by a joinder of the defendants for trial because of the following:

[INSERT REASONS SHOWING PREJUDICIAL JOINDER  
OF DEFENDANTS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO REMAND TO MAGISTRATE COURT

Pursuant to Rule 9(d) of the Rules of Criminal Procedure, the Defendant moves the court to remand the misdemeanor &OFFENSE-OFFENSES& to the magistrate for a trial on the merits as provided for in W.Va.Code, §50-5-7.

&DEFENDANT&,  
Defendant, By Counsel

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&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

## I. PRE-TRIAL MOTIONS

### G. MOTIONS RELATING TO THE JURY

The right of an accused to a trial by an impartial jury is guaranteed by the Sixth Amendment of the United States Constitution and by Article III, §14 of the West Virginia Constitution.

While the Federal Constitution allows no constitutional right to a jury for petty offenses, the West Virginia Constitution accords the right to a jury trial in both misdemeanor and felony cases. Only if the judge signifies in advance of trial that no jail sentence will be imposed can trial proceed without a jury. Champ v. McGhee, 270 S.E.2d 445 (W.Va. 1980).

The motions in this section may be used to help secure these constitutional guarantees to a fair and impartial jury.

#### COMMENTARY TO FORMS

##### MOTION TO CHALLENGE JURY SELECTION PROCEDURE

Within seven days after the moving party discovers or by the exercise of diligence could have discovered the grounds therefor, and in any event before the petit jury is sworn to try the case, a party may move to stay the proceedings and to quash the indictment or to grant other appropriate relief on the ground of substantial failure to comply with the procedure for selecting a jury. W. Va. Code, §52-1-15(a).

Such a motion must contain a sworn statement of facts which, if true, would constitute a substantial failure to comply with jury selection procedures. Accordingly, a verification page should be attached to the motion. W. Va. Code, §52-1-15(b).

##### MOTION FOR A CHANGE OF VENUE

"The circuit court upon motion of the defendant shall order the proceedings transferred as to him to another county if the circuit court is satisfied that there exists in the county where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial at the place fixed by law for holding the trial." R.21(a), R.Cr.P., and W.Va.Code, §62-3-13.

"When a transfer is ordered the clerk shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceedings and any bail taken, and the prosecution shall continue in that county." R.21(b), R.Cr.P.

A motion to transfer under this rule may be made at or before arraignment or at such other time as the court or rules prescribe. R.22, R.Cr.P.

#### MOTION FOR A CHANGE OF VENIRE

In any criminal case in any court, if in the opinion of the court, qualified jurors, not exempt from serving, cannot be conveniently found in the county in which the trial is to be held, the court must enter an order of record to such effect and cause so many jurors as may be necessary to be summoned from any other county. In such order the court must fix a day on which the jurors shall be required to attend and in the order must indicate the county from which the jurors are to be drawn and the number of jurors to be drawn. An attested copy of the order must be certified to the circuit court of the county designated, and thereupon such circuit court shall, by order, direct that a jury be drawn in the manner provided by law for the drawing of petit jurors and proceedings respecting the drawing of the jurors, including the names of the jurors so drawn, shall be certified by the clerk of the circuit court of the county designated to the clerk of the court wherein the trial is to be. The clerk of the circuit court of the county from which the jurors are to be drawn shall summon the jurors so drawn to attend for jury service in the county where the trial is to be held. W.Va.Code, §52-1-14.

This motion should be filed during or immediately after voir dire. 1 F. Cleckley, Handbook on West Virginia Criminal Procedure, ch 14, pg. I-609 (Michie Co. 1985); Cosner v. See, 129 W.Va. 722, 42 S.E.2d 31 (1947).

#### MOTION TO SEQUESTER THE JURY

After a jury in a felony case is impaneled and sworn, the court, in its discretion, may order the jury to be placed in the custody of the sheriff or other officer or officers designated by the court until the jury agrees upon a verdict or is discharged by the court. While a jury is in the custody of the sheriff or other officer or officers, they shall be furnished with suitable board and lodgings by the sheriff or other officer. After a jury has been impaneled no sheriff or other officer may converse with, or permit anyone else to converse with, a juror unless by leave of the court. When the court orders a jury to be placed in the custody of the sheriff or other officer or officers, the court must, in its discretion, determine the manner in which the jury will be kept in custody by the sheriff or other officer or officers until the jury agrees upon a verdict or is discharged by the court. W.Va.Code, §62-3-6.

This motion should be supported by an affidavit or other evidence to "provide the trial court with an adequate basis to support a finding that there is a reasonable probability that, absent sequestration, the jury will be exposed to outside influences which could improperly taint their verdict." State v. Young, 311 S.E.2d 118 (W.Va. 1983).

The numerous factors to be considered by the court on this motion are listed in Young, at page 130.

MOTION FOR USE OF JUROR QUESTIONNAIRES

MOTION FOR SUPPLEMENTAL VOIR DIRE

and

MOTION TO PERMIT COUNSEL TO CONDUCT VOIR DIRE

"The court may permit the defendant or his attorney and the attorney for the state to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or his attorney and the attorney for the state to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper." R.24(a), R.Cr.P.

Any of these three motions may be used when counsel wants to supplement voir dire, either personally or through the court.

MOTION FOR A JURY VIEW

The jury may, at the request of either party, be taken to view the premises or place in question, or any property, matter or thing relating to the controversy between the parties, when it appears to the court that such view is necessary to a just decision, and in such case the judge presiding at the trial may go with the jury and control the proceedings; and in a felony case the judge and the clerk must go with the jury and the judge must control the proceedings, and the accused is likewise to be taken with the jury. W.Va.Code, §56-6-17.

MOTION TO WAIVE TRIAL BY JURY

The defendant may waive a jury trial in writing with the approval of the court and the consent of the state. R.23(a), R.Cr.P. and W.Va.Code, §56-6-11.

MOTION TO GRANT ADDITIONAL PEREMPTORY CHALLENGES

"If the offense charged is punishable by imprisonment for more than one year, the defendant shall have six peremptory challenges and the state shall have two peremptory challenges. The state shall first exercise its two challenges before the defendant is called upon to exercise his six peremptory challenges." R.24(b)(1)(A), R.Cr.P., and W.Va.Code, §62-3-3.

"If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to four peremptory challenges." R.24(b)(1)(B), R.Cr.P.

"For good cause shown, the court may grant such additional challenges as it, in its discretion, believes necessary and proper." R.24(b)(2)(A), R.Cr.P.

"If there is more than one defendant the court may allow the parties additional challenges and permit them to be exercised separately or jointly." R.24(b)(2)(B), R.Cr.P.

This rule requires a proper showing that the defense of one defendant is materially hostile to that of a co-defendant. If a proper showing is made, that defendant is entitled to the number of peremptory challenges allowed by statute from a panel increased by that number. Tawney v. Kirkhart, 130 W.Va. 550, 44 S.E.2d 634 (1947).

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO CHALLENGE JURY SELECTION PROCEDURE

In accordance with W. Va. Code, Sec. 52-1-15, the Defendant moves the court to stay the proceedings, quash the indictment or grant other appropriate relief because of the following:

[INSERT FACTS WHICH, IF TRUE, WOULD  
CONSTITUTE A SUBSTANTIAL FAILURE TO  
COMPLY WITH JURY SELECTION PROCEDURE.]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR A CHANGE OF VENUE

Pursuant to Rule 21 of the Rules of Criminal Procedure, the Defendant moves the court to order the proceeding transferred to another county because there exists in &COUNTY& County so great a prejudice against the Defendant that &HE-SHE& cannot obtain a fair and impartial trial.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR CHANGE OF JURY VENIRE

In accordance with W.Va.Code, §52-1-14, the Defendant moves the court to order qualified jurors from another county to be summoned for the trial of this case. The basis for this motion is that qualified jurors cannot be conveniently found in this county.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO SEQUESTER THE JURY

In accordance with W.Va.Code, §62-3-6, the Defendant moves the court to sequester the jury until it has agreed upon a verdict or is discharged by the court.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR USE OF JUROR QUESTIONNAIRES

Pursuant to Rule 24(a) of the Rules of Criminal Procedure, the Defendant moves the court to require all potential jurors in this case to complete a "Juror Personal History Questionnaire" prior to commencement of voir dire, such questionnaires to be used by all counsel and the court during voir dire.

The "Juror Personal History Questionnaire," a copy of which is attached to this motion, provides information which permits all counsel to make informed challenges to the qualifications of potential jurors thereby facilitating the selection of a fair and impartial jury, and reducing the time required to complete the voir dire process.

Counsel for the Defendant proposes to use the questionnaire as follows: a copy of the questionnaire would be distributed to each member of the venire from which the panel is drawn; when the questionnaires are completed, copies would be made for all counsel and for the court; these copies of the questionnaires would be put in alphabetical order for the use of the court and the attorneys during the voir dire process.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

JUROR PERSONAL HISTORY QUESTIONNAIRE

The questions asked in this form are questions which could be asked in open court. The questionnaire provides the information while preserving a greater degree of privacy for potential jurors. You are required to answer the questions truthfully. The questions must be personally answered by each juror. Do not permit another person to complete answers on your questionnaire. Please read carefully and answer each of the following questions:

1. Name \_\_\_\_\_ Age \_\_\_\_\_ Sex \_\_\_\_\_  
(First) (Middle) (Maiden) (Last)

2. Places(s) of residence in the last five (5) years:

City County State

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---

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3. Marital status? \_\_\_\_\_ Has that marital status changed within the last ten years? \_\_\_\_\_ If yes, please circle:

Death Divorce Marriage Remarriage

4. Number of children: \_\_\_\_\_ Children at home: \_\_\_\_\_  
Ages of children: \_\_\_\_\_

5. Provide the following information for all members of your family or other persons residing with you in your home: (Omit names)

Relationship: Age: Occupation: Employer:

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---

---

6. Your present occupation and employer: \_\_\_\_\_  
\_\_\_\_\_

Years employed: \_\_\_\_\_ List other occupations and employers during the past five (5) years:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. If you are retired, list your last occupation and employer, and date of retirement:

\_\_\_\_\_

8. If you are unemployed, circle reasons for unemployment:

/Choice/Unable to find work/Disabled/Other (specify):/

\_\_\_\_\_

9. If you are not working outside the home, what was your last paid employment?

\_\_\_\_\_

10. Spouse's name: \_\_\_\_\_ Age: \_\_\_\_\_

Previous name: \_\_\_\_\_

11. Spouse's occupation: \_\_\_\_\_ Employer: \_\_\_\_\_

12. If you are a widow or widower, list occupation and employer of deceased spouse:

\_\_\_\_\_

13. List organizations, fraternal societies, or groups in which you actively participate:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Have you served as a juror before? \_\_\_\_\_ If yes, where and when?

\_\_\_\_\_

Did you serve on criminal cases? \_\_\_\_\_ Civil cases? \_\_\_\_\_ Grand Jury? \_\_\_\_\_

15. Have you or any member of your family ever been a witness in a trial? \_\_\_\_\_  
If yes, where and when? \_\_\_\_\_  
Was the trial civil or criminal? \_\_\_\_\_
16. Have you ever been charged with a crime? \_\_\_\_\_ Has any member of your family ever been charged with a crime? \_\_\_\_\_ Have you ever been convicted of a crime? \_\_\_\_\_ Has any member of your family? \_\_\_\_\_ If yes, please specify date \_\_\_\_\_ Court \_\_\_\_\_  
Crime \_\_\_\_\_ Have you ever been a victim of a crime? \_\_\_\_\_  
If yes, what crime and when? \_\_\_\_\_
17. Has any member of your family been a victim of a crime? \_\_\_\_\_ If yes, what crime and when? \_\_\_\_\_ Was any arrest ever made in connection with that crime? \_\_\_\_\_
18. Do you have any uncorrected defects of sight or hearing which prevent you from reading ordinary newsprint or from hearing an ordinary conversation? \_\_\_\_\_ Specify: \_\_\_\_\_
19. Do you have any physical or mental impairment or disability which could disqualify you from jury service? \_\_\_\_\_ Specify: \_\_\_\_\_
20. Do you know any reason why you should be excused from jury service? \_\_\_\_\_  
Specify: \_\_\_\_\_
21. Are you an employer? \_\_\_\_\_ Landlord? \_\_\_\_\_ Tenant? \_\_\_\_\_ Homeowner? \_\_\_\_\_
22. Have you ever studied law? \_\_\_\_\_
23. What is the highest level of education you have completed? \_\_\_\_\_
24. Where did you attend high school? \_\_\_\_\_  
College? \_\_\_\_\_  
If you attended college, what were your majors and minors?  
\_\_\_\_\_
25. What degrees do you have? \_\_\_\_\_
26. [Insert name of defendant, date of offense and brief description of offense].
- a. Have you read, seen or heard anything about this matter from any source, including but not limited to newspapers, television, radio, your friends, your neighbors, conversations at work, etc.?  
Yes \_\_\_\_\_; No \_\_\_\_\_;

- b. If yes, have you formed an opinion of the Defendant's guilt or innocence? \_\_\_\_\_
- c. If yes, what is that opinion? \_\_\_\_\_  
\_\_\_\_\_
- d. Do you know any reason why you could not serve as a fair and impartial juror in this particular case? \_\_\_\_\_ If yes, please explain in detail: \_\_\_\_\_  
\_\_\_\_\_

27. Do you have any knowledge of or any relationship with any of the lawyers listed below? \_\_\_\_\_ Does any member of your family? \_\_\_\_\_ Do you have personal relationships with any members of their families? \_\_\_\_\_ Does any member of your family? \_\_\_\_\_ Do you or does any member of your family have a business relationship with any of these lawyers or any members of their families? \_\_\_\_\_ If you have answered any of these questions "yes," please check in appropriate spaces below.

<u>Lawyer</u>	<u>Self Personal</u>	<u>Self Business</u>	<u>Family Personal</u>	<u>Family Business</u>
[Insert name or names of attorneys defending case]	_____	_____	_____	_____
Any other lawyer from the [Insert name of defense firm].	_____	_____	_____	_____
[List all attorneys in defense firm]	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
Any other lawyer from the &COUNTY& County Prosecutor's Office:	_____	_____	_____	_____
[List prosecutor and all assistant prosecutors]	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

28. Do you have any knowledge of or any relationship with &DEFENDANT'S? \_\_\_\_\_ Does any member of your family? \_\_\_\_\_ Do you have personal relationships with any member of &HIS-HER& family? \_\_\_\_\_ Does any member of your family? \_\_\_\_\_

29. Set forth below is an alphabetical list of persons who may appear as witnesses in this case. Please mark the appropriate blank to identify any relationships or knowledge that you or any member of your family may have of that person or any member of that person's family.

<u>Name</u>	<u>Have not</u> <u>Heard Of</u>	<u>Have</u> <u>Heard</u> <u>Of</u>	<u>I Know</u> <u>Or</u> <u>Have Met</u>	<u>I Know</u> <u>Family</u> <u>Member</u>	<u>Member Of My Family</u> <u>Knows Him/Her Or</u> <u>His/Her Family</u>
[INSERT NAMES OF WITNESSES]	---	---	---	---	---
	---	---	---	---	---
	---	---	---	---	---
	---	---	---	---	---
	---	---	---	---	---
	---	---	---	---	---
	---	---	---	---	---
	---	---	---	---	---
	---	---	---	---	---
	---	---	---	---	---

In the same manner in which persons are sworn under oath in open court to give truthful answers, I swear that the answers given above are truthful.

DATE: \_\_\_\_\_

\_\_\_\_\_  
(JUROR'S SIGNATURE)

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR SUPPLEMENTAL VOIR DIRE

Pursuant to Rule 24(a) of the Rules of Criminal Procedure, the Defendant moves the court to supplement the examination of prospective jurors with the following additional questions:

[INSERT LIST OF QUESTIONS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&,  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO PERMIT COUNSEL TO CONDUCT VOIR DIRE

Pursuant to Rule 24(a) of the Rules of Criminal Procedure, the Defendant moves the court to permit counsel to conduct the examination of each prospective juror.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&,  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR A JURY VIEW

In accordance with W.Va. Code, Sec. 56-6-17, the Defendant moves the court to order that the jury be taken to view the following premises, property or place:

[INSERT DESCRIPTION AND LOCATION OF PROPERTY]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO WAIVE TRIAL BY JURY

Pursuant to Rule 23(a) of the Rules of Criminal Procedure, the Defendant moves the court to approve a waiver of a trial by jury in this case. The written consent of the parties for this request is contained below:

I hereby waive my right to a trial by jury:

\_\_\_\_\_  
(Signature of Defendant)

DATE: \_\_\_\_\_

As the attorney for the State, I hereby consent to a trial without a jury:

\_\_\_\_\_  
(Signature of Attorney for State)

DATE: \_\_\_\_\_

&DEFENDANT&,  
Defendant, By Counsel

\_\_\_\_\_  
&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO GRANT ADDITIONAL PEREMPTORY CHALLENGES

Pursuant to Rule 24(b)(2) of the Rules of Criminal Procedure, the Defendant moves the court to grant additional peremptory challenges. The following good cause exists for this motion:

[INSERT GROUNDS ESTABLISHING GOOD CAUSE]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

## I. PRE-TRIAL MOTIONS

### H. MOTIONS RELATING TO WITNESSES

Witnesses can be compelled to attend to testify in a criminal case in this state if they are incarcerated in this state or if they reside in another state. Under exceptional circumstances depositions of witnesses may be used in lieu of the witness's personal appearance. The motions in this section may be used in these circumstances.

#### COMMENTARY TO FORMS

##### MOTION TO SECURE ATTENDANCE OF NONRESIDENT WITNESS

(without request for subpoena duces tecum)

and

##### MOTION TO SECURE ATTENDANCE OF NONRESIDENT WITNESS

(with subpoena duces tecum)

"If a person in any state, which by its laws has made provisions for commanding persons within its borders to attend and testify in criminal prosecutions, . . . in this State, is a material witness in a prosecution pending in a court of record in this State, . . . a judge of such court may issue a certificate under the seal of the court stating the facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found." W. Va. Code, Sec. 62-6A-3.

"A subpoena may also command the person whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys." R.17(c), R.Cr.P.

##### PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM

If a material witness is incarcerated, the defendant may compel the appearance of such witness by filing a petition for a writ of habeas corpus. W. Va. Code, Sec. 53-4-13.

MOTION TO TAKE DEPOSITION

(without subpoena duces tecum)

and

MOTION TO TAKE DEPOSITION

(with subpoena duces tecum)

"Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording or other material not privileged be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed, the court may discharge the witness." R.15(a), R.Cr.P.

"An order to take a deposition authorizes the issuance by the clerk of the court for the county in which the deposition is to be taken of subpoenas for the persons named or described therein." R.17(f)(1), R.Cr.P.

"The witness whose deposition is to be taken may be required by subpoena to attend at any place designated within the state by the trial court, taking into account the convenience of the witness and the parties." R.17(f)(2), R.Cr.P.

MOTION TO CHANGE MANNER OF TAKING DEPOSITION

"The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition." R.15(b), R.Cr.P.

MOTION TO APPOINT INTERPRETER

"In any court proceeding wherein a party or witness cannot readily understand or verbally communicate the English language because he is deaf or a deaf mute or because of any other hearing impairment, such person shall have the right to have a qualified interpreter to assist him at every stage of the proceeding." W. Va. Code, Sec. 57-5-7(a).

"Whenever an interpreter is necessary in any court proceeding because a witness or party speaks only a foreign language or for any other reason, an interpreter may be sworn truly to interpret." W. Va. Code, Sec. 57-5-7(e).

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO SECURE ATTENDANCE OF NONRESIDENT WITNESS

In accordance with W. Va. Code, Sec. 62-6A-3, the Defendant moves the court to issue a certificate under the seal of the court stating that &WITNESS& is a material witness in the prosecution; that &HE-SHE& will be required to attend for &No-DAY-DAYS&; and that &HE-SHE& will be required to appear on &DATE-TIME& &PLACES&.

Furthermore, in accordance with W. Va. Code, Secs. 9-1-16, 59-1-17, and 62-5-1, and Rule 17(b), R.Cr.P., the Defendant moves the court to order the sum to which this witness is entitled be tendered in advance out of the treasury of the State.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO SECURE ATTENDANCE OF NONRESIDENT WITNESS

In accordance with W. Va. Code, Sec. 62-6A-3, the Defendant moves the court to issue a certificate under the seal of the court stating that &WITNESS& &ADDRESS& is a material witness in the prosecution; that &HE-SHE& will be required to attend for &No-DAY-DAYS&; and that &HE-SHE& will be required to appear on &DATE-TIME& &PLACE&.

Furthermore, in accordance with W. Va. Code, Sec. 57-5-4, the Defendant moves the court to order the witness bring with &HIM-HER& the following books, papers, documents or other objects:

[LIST]

In accordance with W. Va. Code, Secs. 9-1-16, 59-1-17, and 62-5-1, and Rule 17(b), R.Cr.P., the Defendant moves the court to order the sum to which this witness is entitled be tendered in advance out of the treasury of the State.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

PETITION FOR A WRIT OF HABEAS CORPUS AD TESTIFICANDUM

Pursuant to Rule 17(b) of the Rules of Criminal Procedure and W. Va. Code, Sec. 53-4-13, the Defendant moves the court to order the attendance of the following incarcerated &WITNESS-WITNESSES&:

[INSERT NAME OF EACH WITNESS AND LOCATION WHERE INCARCERATED]

The presence of the &WITNESS-WITNESSES& is necessary to an adequate defense because of the following:

[INSERT REASONS]

Matters of record in the file indicate the Defendant has been declared an indigent, and &HE-SHE& is therefore unable to pay witness fees.

Accordingly, the Defendant moves the court to order the costs and fees for such attendance be paid out of the treasury of the State.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO TAKE DEPOSITION

Pursuant to Rule 15 of the Rules of Criminal Procedure, the Defendant moves the court to order the testimony of &WITNESS& be taken by deposition.

Due to exceptional circumstances of the case, it is in the interest of justice this testimony be taken by deposition and preserved for use at trial.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO TAKE DEPOSITION

Pursuant to Rule 15 of the Rules of Criminal Procedure, the Defendant moves the court to order the testimony of &WITNESS& be taken by deposition and to order the following books, papers, documents, records, recordings and other material be produced at the time and place of the deposition:

[INSERT MATERIAL]

Due to exceptional circumstances of the case, it is in the interest of justice this testimony be taken by deposition and preserved for use at trial.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO CHANGE MANNER OF TAKING DEPOSITION

Pursuant to Rule 15(b) of the Rules of Criminal Procedure, the Defendant moves the court to [EXTEND/SHORTEN THE TIME/CHANGE THE PLACE] for taking the deposition of &WITNESS&.

This change is necessary because of the following:

[INSERT REASONS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO APPOINT AN INTERPRETER

In accordance with W. Va. Code, Sec. 57-5-7, the Defendant moves the court to appoint an interpreter to assist the Defendant.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

POST-TRIAL MOTIONS

## II. POST-TRIAL MOTIONS

### A. CHALLENGING THE VERDICT

The three motions in this section are for the purpose of making a direct attack on the legality of the verdict. These motions are generally made within ten days after the verdict.

#### COMMENTARY TO FORMS

##### MOTION FOR JUDGMENT OF ACQUITTAL

"If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within ten days after the jury is discharged or within such further time as the court may fix during the ten-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury." R.29(c), R.Cr.P.

The court must order the entry of a judgment of acquittal if the evidence is insufficient to sustain a conviction of the offense. R.29(a), R.Cr.P.

##### MOTION FOR A NEW TRIAL

"The court on motion of a defendant may grant a new trial if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ten days after verdict or finding of guilty or within such further time as the court may fix during the ten-day period." R.33, R.Cr.P.

##### MOTION FOR ARREST OF JUDGMENT

"The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within ten days after verdict or finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the court may fix during the ten-day period." R.34, R.Cr.P. and W.Va.Code, §62-2-11.

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR JUDGMENT OF ACQUITTAL

Pursuant to Rule 29(c) of the Rules of Criminal Procedure, the Defendant moves the court to order the entry of a judgment of acquittal.

The evidence was insufficient to sustain a conviction because of the following:

[INSERT COUNTS AND REASONS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR A NEW TRIAL

Pursuant to Rule 33 of the Rules of Criminal Procedure, the Defendant moves the court to grant a new trial.

In the interest of justice, a new trial is required because of the following:

[INSERT REASONS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR ARREST OF JUDGMENT

Pursuant to Rule 34 of the Rules of Criminal Procedure, the Defendant moves the court to arrest the judgment because of the following:

[INSERT COUNTS AND REASONS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

## II. POST-TRIAL MOTIONS

### B. SENTENCING MOTIONS

Imposition of sentence is governed by Rule 32, R.Cr.P.

Motions at the sentencing hearing will relate both to the type of sentence to be imposed and to the execution of the sentence.

#### COMMENTARY TO FORMS

##### MOTION FOR PROBATION FOR MAGISTRATE COURT SENTENCE

"Whenever any person is found guilty of, or pleads guilty to, a crime in a court which is not a court of record, he may, at any time thereafter, file with the court of record to which an appeal would lie . . . a petition in writing, together with a transcript of the docket of the court in which he was convicted, requesting that he be placed on probation. Upon the filing of such petition and transcript, said court of record or the judge thereof, shall have the power to suspend the execution of the sentence of the lower court and to release the petitioner on probation . . . ." W.Va.Code, §62-12-4.

##### MOTION FOR PROBATION (for circuit court sentence)

"After conviction of an offense not punishable by life imprisonment, a defendant may be placed on probation if permitted by law." R.32(e), R.Cr.P.

Eligibility for probation is governed by W.Va.Code, §§62-12-2 and 62-12-3.

Also, see W.Va.Code, §61-2-10a (concerning probation for persons convicted of violent crimes against the elderly), W.Va.Code, §60A-4-407 (concerning mandatory probation for first offense possession of less than 15 grams of marijuana), and W.Va.Code, §62-12-9(4) (concerning jail commitment as a condition of probation).

Notwithstanding the 60 day time limitation contained in W.Va.Code, §62-12-3, a defendant may be granted probation if a motion to reduce the sentence has been filed within 120 days after sentence has been imposed or within 120 days after the Supreme Court has acted on the appeal. R.35(b), R.Cr.P.

##### MOTION FOR SENTENCING AS A YOUTHFUL OFFENDER

The circuit judge may suspend the imposition of sentence of any youth convicted of a criminal offense who has attained his or her sixteenth birthday but has not reached his or her twenty-first birthday at the time of the commission of the crime, and commit the youth to the custody of the West Virginia Commissioner of Corrections to be assigned to a center for youthful offenders. The period of confinement in the center will be for a period of six months, or longer if it is deemed advisable by the center superintendent,

but in any event the period of confinement may not exceed two years. If, in the opinion of the superintendent, the offender proves to be an unfit person to remain in the center, he or she will be returned to the court which committed him or her to be dealt with further according to law. In that event, the court may place the youth on probation or sentence the youth for the crime for which he or she has been convicted. W.Va.Code, §25-4-6.

"When, in the opinion of the superintendent, an offender has satisfactorily completed the center training program, such offender must be returned to the jurisdiction of the court which originally committed him, and the judge shall immediately place him on probation." W.Va.Code, §25-4-6.

W.Va.Code, §25-4-6, is applicable to both male and female youthful offenders. Flack v. Sizer, 322 S.E.2d 850 (W.Va. 1984).

Though the terms of this code section would appear to preclude such sentencing for a youth convicted of an offense punishable by life imprisonment, e.g. aggravated robbery, if the youth receives less than a life sentence, he may still be assigned to a center for youthful offenders, c.f. State ex rel. Faircloth v. Catlett, 267 S.E.2d 736 (W.Va. 1980).

#### MOTION FOR HEARING ON VICTIM IMPACT STATEMENT

In cases where a Victim Impact Statement has been prepared, and the defendant alleges that there are factual inaccuracies in the statement, the court, upon motion of the defendant, must grant the defendant a hearing to contest the alleged inaccuracies. W.Va.Code, §61-11A-3(d).

#### MOTION FOR RELEASE FOR WORK OR OTHER PURPOSES

"When a defendant is sentenced or committed for a term of one year or less by a court of record having criminal jurisdiction, such court may in its order grant to the defendant the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

- (a) To work at his employment;
- (b) To seek employment;
- (c) To conduct his own business or to engage in other self-employment, including, in the case of a woman, housekeeping and attending to the needs of her family;
- (d) To attend an educational institution;
- (e) To obtain medical treatment; or,
- (f) To devote time to any other purpose approved by the court. W.Va.Code, §62-11A-1(1)."

"An inmate sentenced to ordinary confinement may petition the court at any time after sentence for the privilege of leaving jail . . . and may renew his petition in the discretion of the court. The court may withdraw the privilege at any time by order entered with or without notice." W.Va.Code, §62-11A-1(3).

MOTION FOR ALTERNATIVE SENTENCING

"Any person who has been convicted in a court of record under any criminal provision of this code of a misdemeanor or felony, which may be punishable by confinement in the county jail, may, in the discretion of the sentencing judge, as an alternative to the sentence imposed by statute for such crime, be sentenced under one of the following programs:

- (1) The weekend jail program under which persons would be required to spend weekends or other days normally off from work, in jail;
- (2) The work program under which sentenced persons would be required to spend the first two or more days of their sentence in jail and then, in the discretion of the judge, be assigned to a county agency to perform labor within the jail, or in and upon the buildings, grounds, institutions, bridges, roads, including orphaned roads used by the general public, and public works within the county; . . . or,
- (3) The community service program under which persons sentenced would spend no time in jail but would be sentenced to a number of hours or days of community service work with tax supported agencies." W.Va.Code, §62-11A-1a(a).

MOTION FOR REDUCTION OF SENTENCE

"A motion to reduce a sentence may be made, or the court may reduce a sentence without motion within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court of Appeals denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court must determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation constitutes a permissible reduction of sentence under this subdivision." R.35(b), R.Cr.P.

"A defendant need not be present at a reduction of sentence." R.43(c)(4), R.Cr.P.

MOTION FOR CORRECTION OF SENTENCE

"The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided for a reduction of sentence." R.35(a), R.Cr.P.

MOTION TO STAY ORDER OF PROBATION

"An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court must specify when the term of probation shall commence. If the order is stayed, the court must fix the terms of the stay." R.38(a)(3), R.Cr.P.

MOTION TO STAY PAYMENT OF FINE OR COSTS

"Upon the request of the defendant, a sentence to pay a fine or a fine and costs, if an appeal is taken, must be stayed upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs to the clerk of the circuit court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets." R.38(a)(2), R.Cr.P.

MOTION TO STAY EXECUTION OF SENTENCE OF IMPRISONMENT

"Upon the request of the defendant, a sentence of imprisonment shall be stayed, pursuant to the 1931 amended W.Va.Code, §62-7-1. If stayed, but the defendant is not released pending disposition of the appeal, the court shall order that the defendant be retained at a place of confinement near the place of trial for a period reasonably necessary to permit the defendant to assist in the preparation of his appeal to the Supreme Court of Appeals." R.38(a)(1).

The court may order that the defendant be removed to the penitentiary when it is no longer necessary to retain the defendant near the place of trial to assist in the preparation of the appeal. W.Va.Code, §62-7-3.

See §I.A. "BAIL", for a MOTION FOR POST-CONVICTION BAIL.

NOTICE

and

MOTION FOR STAY OF PROCEEDINGS

If the circuit court should refuse to grant a stay, or if the relief afforded is not acceptable, the defendant may, upon written notice to the opposite party, apply to the Supreme Court for a stay. The application must show the reasons assigned by the circuit court for denying a stay or other relief, and further show the reasons for the relief requested and the grounds for the underlying appeal. If the facts are subject to dispute, the application must be supported by affidavits or other sworn statements. Such parts of the record as are relevant must be filed with the application. R.6(c), R.A.P.

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR PROBATION FOR MAGISTRATE COURT SENTENCE

In accordance with W.Va.Code, §62-12-4, the Defendant moves the court to suspend the execution of &HIS-HER& sentence and release &HIM-HER& on probation.

The Defendant was sentenced for this offense in magistrate court. A certified copy of that court action is attached to this motion.

The Defendant is eligible for probation under W.Va.Code, §62-12-2.

The Defendant is a good candidate for probation because the character of the Defendant and the circumstances of the case indicate &HE-SHE& is not likely again to commit crime and the public good does not require that &HE-SHE& be fined or imprisoned.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR PROBATION

Pursuant to Rule 32(e) of the Rules of Criminal Procedure, the Defendant moves the court to suspend the imposition or execution of the sentence and release &HIM-HER& on probation.

The Defendant is eligible for probation under W Va.Code, §62-12-2.

The Defendant is a good candidate for probation because the character of the Defendant and the circumstances of the case indicate &HE-SHE& is not likely again to commit crime and the public good does not require that &HE-SHE& be fined or imprisoned.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR SENTENCING AS A YOUTHFUL OFFENDER

In accordance with W.Va.Code, §25-4-6, the Defendant moves the court to suspend the imposition of sentence and commit &HIM-HER& to the custody of the West Virginia Commissioner of Corrections to be assigned to a facility for the housing of youthful offenders.

The Defendant has attained &HIS-HER& sixteenth birthday; &HE-SHE& was under the age of twenty-one at the time of the commission of the crime; and, &HE-SHE& will benefit and respond to the rehabilitative atmosphere of such a detention center.

Accordingly, the Defendant is eligible for such sentencing under W.Va.Code, §25-4-6.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR HEARING ON VICTIM IMPACT STATEMENT

In accordance with W.Va.Code, §61-11A-3(d), the Defendant moves the court to grant &HIM-HER& a hearing to contest information in the Victim Impact Statement.

The Defendant is entitled to a hearing to introduce testimony or other information relating to the following factual inaccuracies in the statement:

[INDICATE IN WHAT MANNER THE VICTIM  
IMPACT STATEMENT IS INACCURATE]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR RELEASE FOR WORK OR OTHER PURPOSES

Pursuant to W.Va.Code, Sec. 62-11A-1, the Defendant moves the court to grant &HIM-HER& the privilege of leaving the jail during necessary and reasonable hours to do the following:

[INSERT ONE OR MORE OF THE GROUNDS FOR  
RELEASE, AS CONTAINED IN W.VA.CODE,  
SECTION 62-11A-1]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR ALTERNATIVE SENTENCING

In accordance with W.Va.Code, §62-11A-1a, the Defendant moves the court to order that &HE-SHE& be sentenced, as an alternative to a jail sentence, to the following:

[INSERT ONE OR MORE OF THE FOLLOWING:

- (1) The weekend jail program under which &HE-SHE& would be required to spend weekends or other days normally off from work in jail.
- (2) The work program under which &HE-SHE& would be required to spend the first two or more days of &HIS-HER& sentence in jail and then, in the discretion of the judge, would be assigned to a county agency to perform labor within the jail, or in and upon the buildings, grounds, institutions, bridges, roads, including orphaned roads used by the general public, and public works within the county.
- (3) The community service program under which &HE-SHE& would spend no time in jail but would be sentenced to a number of hours or days on community service work with tax supported agencies.

]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR REDUCTION OF SENTENCE

Pursuant to Rule 35(b) of the Rules of Criminal Procedure the  
Defendant moves the court to reduce &HIS-HER& sentence.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION FOR CORRECTION OF SENTENCE

Pursuant to Rule 35(a) of the Rules of Criminal Procedure, the Defendant moves the court to correct an illegal sentence.

The Defendant's sentence is illegal because of the following:

[INSERT REASONS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO STAY ORDER OF PROBATION

Pursuant to Rule 38(a)(3) of the Rules of Criminal Procedure, the Defendant moves the court to stay the order placing &HIM-HER& on probation.

The Defendant is taking an appeal and is eligible for a stay in accordance with Rule 38.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO STAY PAYMENT OF FINE OR COSTS

Pursuant to Rule 38(a)(2) of the Rules of Criminal Procedure, the Defendant moves the court to stay the order requiring the payment of a fine or costs.

The Defendant is taking an appeal, and such a stay is mandatory under Rule 38.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO STAY EXECUTION OF SENTENCE OF IMPRISONMENT

Pursuant to Rule 38(a)(1) of the Rules of Criminal Procedure, the Defendant moves the court to stay the execution of the sentence of imprisonment and order that &HE-SHE& be retained at a place of confinement near the place of trial to assist in the preparation of an appeal.

In accordance with W.Va.Code, §62-7-1, such a stay is mandatory upon application of the Defendant.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

NOTICE

Please take notice that a MOTION FOR STAY OF PROCEEDINGS has been filed with the Supreme Court of Appeals of West Virginia, as provided for by Rules 6 and 17 of the Rules of Appellate Procedure.

A copy of that motion is attached to this NOTICE.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

NO. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

-----  
CHARLESTON  
-----

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&DEFENDANT&,

Defendant.

-----  
MOTION FOR STAY OF PROCEEDINGS  
-----

Counsel for Petitioner:

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

M O T I O N

Pursuant to Rules 6 and 17 of the Rules of Appellate Procedure, the Defendant moves the court to grant a stay of the circuit court proceedings.

STATEMENT OF FACTS OF THE CASE

[INSERT HERE A BRIEF STATEMENT OF THE FACTS OF THE CASE]

REASONS ASSIGNED BY THE CIRCUIT COURT  
FOR DENYING A STAY OR OTHER RELIEF

[INSERT REASONS]

RELIEF SOUGHT

[INSERT RELIEF REQUESTED FROM SUPREME COURT]

REASONS FOR THE RELIEF REQUESTED

[INSERT REASONS]

GROUND FOR THE UNDERLYING APPEAL

[INSERT GROUND ON WHICH CASE IS TO BE APPEALED]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

CERTIFICATE OF SERVICE

I certify that the attached NOTICE and MOTION FOR STAY OF PROCEEDINGS  
were served upon \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

at the following address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

by placing copies thereof, postage prepaid, in the U.S. mail, on this \_\_\_\_ day  
of \_\_\_\_\_, 198\_\_.

\_\_\_\_\_  
&ATTORNEYS  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

**APPEALS**

### III. APPEALS

#### A. PREPARING THE PETITION FOR APPEAL

Upon the conviction of a defendant and the disposition of post-trial motions, trial counsel is generally reappointed to prosecute the appeal, unless the trial court for good cause determines that other counsel should be appointed. Carter v. Bordenkircher, 226 S.E.2d 711 (W.Va. 1976).

Public Legal Services appellate defender division in Charleston, West Virginia, may also be appointed to prosecute litigation on the behalf of indigent clients in the Supreme Court; however, the appellate advocacy division represents eligible clients in only those instances where the trial attorney or other local counsel is unwilling or unable to serve as appellate counsel. W.Va.Code, §29-21-7(e).

The forms in this section are filed by appellate counsel with the trial court to assist in preparing and filing the petition for appeal.

The forms in Section III.B. will be used by appellate counsel if the Supreme Court grants the petition for appeal.

Motions to determine what will happen with the defendant and his sentence pending disposition of an appeal should be made by trial counsel immediately after sentencing. Accordingly, those types of motions are included in the previous section relating to sentencing (Section II.B.).

#### COMMENTARY TO FORMS

##### NOTICE OF INTENT TO APPEAL

In all criminal cases where the defendant intends to appeal his sentence and conviction, appellate counsel must file a notice of such intention with the clerk of the trial court within 60 days after sentencing. The notice should concisely state the grounds for appeal; however, the listing of the grounds in the notice does not restrict the right to assign additional grounds in the petition. R.37(b)(1), R.Cr.P.; R.3(b), R.A.P.; and, W.Va.Code, §58-5-4.

Counsel should be aware that this requirement is jurisdictional, and the failure to file this notice may foreclose an appeal and lead to an allegation of ineffective assistance of counsel. State v. Legg, 151 W.Va. 401, 151 S.E.2d 215 (1966).

##### MOTION TO PREPARE TRANSCRIPT

and

##### ORDER TO PREPARE TRANSCRIPT

As soon as a defendant has filed a notice of his intention to appeal, counsel must secure a court order directing the court reporter to furnish a transcript of the proceedings. In some West Virginia judicial circuits, the reporter will transcribe only the trial, unless specifically directed to do

otherwise. Accordingly, if counsel wants other hearings transcribed, such as the arraignment, a suppression hearing, etc., counsel should specify those hearing dates in the motion and order. To receive a complete transcript of all proceedings in the case, counsel should simply specify "all proceedings". W.Va.Code, §58-5-7.

MOTION TO EXTEND APPEAL PERIOD (when transcript has not been completed)  
and  
MOTION TO EXTEND APPEAL PERIOD (when transcript has been completed)

Ordinarily, a petition for appeal must be presented to the Supreme Court within eight months after the defendant has been sentenced. Circumstances may arise, however, where the transcript either is not going to be completed within the eight month appeal period or will be prepared so late as to hinder counsel in presenting the petition on time. In either case, counsel may file one of these motions to have the appeal period extended by up to four additional months. The request for the extension and the order granting it must be filed before the eight month appeal period has expired. W.Va.Code, §58-5-4.

PETITION FOR APPEAL (for use with transcript)

The original and seven copies of the petition for appeal must be filed in the office of the clerk of the circuit court where the defendant was sentenced. R.4(a), R.A.P.

The format of this petition is to be used when a transcript of testimony taken in the lower court will accompany the petition to the Supreme Court.

Attached to the petition is a memorandum of appearance showing all the parties who have appeared in the action from which the appeal is sought, together with the names and addresses of their counsel of record. R.4(a), R.A.P.

PETITION FOR APPEAL (for use without transcript)

In order to provide an inexpensive and expeditious method of appeal, a petitioner may file a petition without the transcript of testimony taken in the trial court. The original and seven copies of the petition must be filed in the office of the circuit court where the defendant was sentenced. The format of this petition differs from the previous one in that it includes a certificate by the petitioner's attorney that the facts alleged are faithfully represented and that they are accurately presented to the best of counsel's ability. R.4A, R.A.P.

Also, a Certificate of Service is attached to this petition, since this method of appeal requires counsel to serve two additional copies of the petition on the prosecutor. R.4A, R.A.P.

DESIGNATION OF RECORD FOR APPEAL

After the petition has been prepared, the defendant must designate by itemization to the clerk of the circuit court all transcripts, pleadings, orders and exhibits in the file which counsel wants the clerk to send to the Supreme Court to enable the Court to decide the matters arising in the petition for appeal. R.4(c), R.A.P.

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

NOTICE OF INTENT TO APPEAL

Pursuant to Rule 37 of the Rules of Criminal Procedure, the Defendant gives notice of an intent to appeal the judgment of conviction and sentence entered in this case on &DATE&, in the Circuit Court of &COUNTY& County; and, without restricting the right to assign additional grounds of error in the petition, the defendant sets forth the following grounds:

[INSERT GROUNDS]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO PREPARE TRANSCRIPT

Pursuant to W.Va.Code, §51-7-7, the Defendant moves the court to authorize and direct the court reporter to furnish the Defendant a transcript of the testimony and proceedings of this trial, without charge, for use in seeking an appeal.

The Defendant requests that the transcript contain the following:

[INSERT DATES AND PROCEEDINGS TO BE TRANSCRIBED  
OR SIMPLY STATE "ALL PROCEEDINGS".]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

ORDER TO PREPARE TRANSCRIPT

Pursuant to the motion of the Defendant, the court finds the Defendant is entitled to a transcript under W.Va.Code, Sec. 51-7-7.

Accordingly, it is ORDERED that the court reporter furnish to the Defendant a transcript of this proceeding containing the following:

[INSERT DATES AND PROCEEDINGS TO BE TRANSCRIBED  
OR SIMPLY STATE "ALL PROCEEDINGS".]

A copy thereof shall be filed with the clerk of this court, and the entire cost thereof is to be certified to the Supreme Court of Appeals for payment.

The Clerk of the Court is directed to transmit an attested copy of this order to the court reporter.

ENTER: \_\_\_\_\_

\_\_\_\_\_  
JUDGE

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

MOTION TO EXTEND APPEAL PERIOD

In accordance with W.Va.Code, §58-5-4, the Defendant moves the court to extend the time for an appeal by a period of up to four additional months. Though the Defendant requested a transcript within 60 days of the sentencing order, the transcript has not been completed and additional time will be needed for counsel to prepare the petition for appeal.

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,

Defendant

DEFENDANT'S

MOTION TO EXTEND APPEAL PERIOD

In accordance with W.Va.Code, §58-5-4, the Defendant moves the court to extend the time for an appeal by a period of up to four additional months. Though the transcript has been completed, good cause exists for such an extension because of the following:

[INSERT REASONS WHY MORE TIME IS NEEDED TO PRESENT  
PETITION FOR APPEAL]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

NO. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

---

CHARLESTON

---

STATE OF WEST VIRGINIA,  
Plaintiff Below,

Respondent.

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&DEFENDANT&,  
Defendant Below,

Petitioner.

---

PETITION FOR APPEAL

---

Counsel for Petitioner:

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

P E T I T I O N

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA:

THE KIND OF PROCEEDING AND NATURE OF  
THE RULING IN THE LOWER TRIBUNAL

STATEMENT OF THE FACTS OF THE CASE

ASSIGNMENTS OF ERROR RELIED UPON ON  
APPEAL AND THE MANNER IN WHICH  
THEY WERE DECIDED IN THE LOWER TRIBUNAL

POINTS AND AUTHORITIES RELIED UPON,  
DISCUSSION OF THE LAW,  
AND THE RELIEF PRAYED FOR

RELIEF PRAYED FOR

&DEFENDANT&  
Petitioner, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

MEMORANDUM OF APPEARANCE

FOR THE STATE:

FOR THE PETITIONER:

No. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

---

CHARLESTON

---

STATE OF WEST VIRGINIA,  
Plaintiff Below,

Respondent.

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&DEFENDANT&,  
Defendant Below,

Petitioner.

---

PETITION FOR APPEAL

---

Counsel for Petitioner:

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

P E T I T I O N

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA:

THE KIND OF PROCEEDING AND NATURE OF  
THE RULING IN THE LOWER TRIBUNAL

STATEMENT OF THE FACTS OF THE CASE

In accordance with Rule 4A of the Rules of Appellate Procedure, the following facts are provided in lieu of a transcript of testimony taken in the lower court. I certify the facts alleged are faithfully represented, and they are accurately presented to the best of my ability.

---

&ATTORNEY&

F A C T S

ASSIGNMENTS OF ERROR RELIED UPON ON  
APPEAL AND THE MANNER IN WHICH THEY  
WERE DECIDED IN THE LOWER TRIBUNAL

POINTS AND AUTHORITIES RELIED  
UPON, DISCUSSION OF THE LAW,  
AND THE RELIEF PRAYED FOR

RELIEF PRAYED FOR

&DEFENDANT&  
Petitioner, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041  
(304) 845-0225

MEMORANDUM OF APPEARANCE

FOR THE STATE:

FOR THE PETITIONER:

CERTIFICATE OF SERVICE

I certify that I have served this PETITION FOR APPEAL by mailing true copies thereof in the U.S. Mail, postage prepaid, to the following:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 198\_.

---

&ATTORNEY&  
Public Defender Corporate  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

CERTIFICATE OF SERVICE

I certify that I have served this PETITION FOR APPEAL by hand delivering true copies thereof to the following:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 198\_.

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant.

DEFENDANT'S

DESIGNATION OF RECORD FOR APPEAL

Pursuant to Rule 4(c) of the Rules of Appellate Procedure, the Defendant designates the following pleadings, orders and exhibits to accompany the Petition to the Supreme Court of Appeals of West Virginia:

[LIST SEPARATELY OR SIMPLY STATE ALL PLEADINGS,  
ORDERS, EXHIBITS AND TRANSCRIPTS CONTAINED IN  
THE COURT FILE.]

&DEFENDANT&,  
Defendant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

### III. APPEALS

#### B. PRESENTING THE APPEAL IN THE SUPREME COURT

"At any time after the transmission of the petition and record to the Clerk of the Supreme Court, . . . counsel may request oral presentation on the petition . . . . Such request shall be made to the Clerk of the Supreme Court in writing [by letter] or by telephone." R.5(a), R.A.P.

If counsel is going to waive oral presentation, counsel should inform the Clerk in writing (by letter) that an oral presentation is not desired. R.5(c), R.A.P.

If the petition for appeal is granted by the Supreme Court, the forms in this section will be used by appellant's counsel to complete the appeal.

#### COMMENTARY TO FORMS

##### DESIGNATION OF ADDITIONAL PARTS OF THE RECORD

If appellant's counsel considers the record previously prepared under Rule 4(c) or Rule 4A(c), R.A.P., to be inadequate to present all matters encompassed in the appeal, he must file with the circuit clerk a designation of such additional parts of the record as he considers material to the questions presented upon the appeal. R.8(a)(1), R.A.P.

##### NOTICE OF ADEQUATE RECORD

If appellant's counsel considers the record adequate as already prepared, he must notify the clerk of the circuit court that he does not desire to supplement the record. R.8(a)(1), R.A.P.

##### ADDITIONAL DESIGNATION

If the appellee has designated additional parts of the record, the appellant has another chance to designate other parts of the record as he considers necessary in view of the parts designated by the appellee. R.8(a)(3), R.A.P.

##### JOINT DESIGNATION

In lieu of the designation as provided in Rule 8(a), R.A.P., the parties may file this written stipulation with the circuit clerk within thirty days after the date of the clerk's notice under Rule 8(a)(1), R.A.P., and jointly designate the parts of the record to be prepared for appeal. R.8(b), R.A.P.

#### STATEMENT OF THE CASE

"In lieu of the designations provided for in subdivisions (a) and (b) of Rule 8, R.A.P., the parties may prepare and sign a statement of the case, setting forth the manner in which the issues presented by the appeal arose and were decided by the circuit court, and only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented." This agreement must be presented to the circuit court within thirty days after the date of the clerk's notice, as provided in Rule 8(a)(1), R.A.P. "The circuit court may attach thereto an addendum containing such additions as it feels are necessary to fully present the issues raised by the appeal. The agreed statement, with or without any additions by the circuit court, is to be filed in the circuit clerk's office within fifteen days after its presentation to the circuit court." R.8(c), R.A.P.

#### STIPULATION TO CORRECT RECORD

The parties may correct any omission, misstatement, or error, either clerical or otherwise, in the record at any time by filing a stipulation with the Supreme Court. R.8(f), R.A.P.

#### MOTION TO CORRECT RECORD

The Court, upon motion of the appellant, may direct that an omission, misstatement, or error in the record be corrected, and, if necessary, that a supplemental record be transmitted or certified. R.8(f), R.A.P.

Since Rule 15, R.A.P., requires service of motions on opposing counsel, a Certificate of Service must be attached to this motion. This motion should comply with Rule 17, R.A.P., and should be supported by affidavits or other papers. The motion must state with particularity the grounds on which it is based.

#### APPELLANT'S BRIEF

Within 30 days of the date of the notice of the filing of the appellate record, appellant's counsel must file the original and eight copies of the appellant's brief with the Clerk of the Supreme Court. The appellant's brief must follow the same form as the petition for appeal. Rule 10(d), R.A.P. Since a copy must be served on opposing counsel, a Certificate of Service is attached to the brief. R.10(a), R.A.P.

#### APPELLANT'S REPLY BRIEF

Within 15 days of receiving the Appellee's Brief, the appellant may file a reply brief with the Clerk of the Supreme Court. A Certificate of Service is attached to indicate service on opposing counsel. R.10(c), R.A.P.

MOTION TO POSTPONE ORAL ARGUMENT

A request by appellant's counsel to postpone oral argument on the appeal must be made by written motion stating the grounds for the continuance. The motion should be filed at least 10 days before the date set for oral argument and should be supported by an affidavit, with service made on opposing counsel. R.12(a), R.15, and R.17, R.A.P.

PETITION FOR REHEARING

If the Supreme Court has decided the case adversely to the appellant, a petition for rehearing may be filed within 30 days after entry of the Court's judgment. The petition must state with particularity the points of law or fact which in the opinion of the petitioner the Court overlooked or misapprehended. The petition should contain such argument in support of the petition as the appellant desires to present. R.24(a), R.A.P.

The petition must be served on opposing counsel, and, except by permission of the Court, the petition must not exceed 15 pages of double-spaced standard typographical printing. R.24(b), R.A.P.

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff Below, Appellee,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant Below, Appellant.

APPELLANT'S

DESIGNATION OF ADDITIONAL PARTS OF THE RECORD

Pursuant to Rule 8(a)(1) of the Rules of Appellate Procedure, the Appellant designates the following additional parts of the record to accompany the appeal to the Supreme Court:

[INSERT DESIGNATION]

&DEFENDANT&,  
Appellant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff Below, Appellee,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant Below, Appellant.

APPELLANT'S

NOTICE OF ADEQUATE RECORD

Pursuant to Rule 8(a)(1) of the Rules of Appellate Procedure, the Appellant considers the record adequate and does not desire to supplement the record.

&DEFENDANT&,  
Appellant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff Below, Appellee,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant Below, Appellant.

APPELLANT'S

ADDITIONAL DESIGNATION

Pursuant to Rule 8(a)(3) of the Rules of Appellate Procedure, the Appellant designates the following additional parts of the record to accompany the appeal to the Supreme Court:

[INSERT DESIGNATION]

&DEFENDANT&,  
Appellant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff Below, Appellee,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant Below, Appellant.

JOINT DESIGNATION

Pursuant to Rule 8(b) of the Rules of Appellate Procedure, the parties jointly designate the following parts of the record to be prepared for the appeal:

[INSERT JOINT DESIGNATION]

&DEFENDANT&,  
Appellant, By Counsel

State of West Virginia,  
Appellee, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

---

Counsel for Appellee

IN THE CIRCUIT COURT OF &COUNTY& COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff Below, Appellee,

vs.

CASE NO.  
&CASE&

&DEFENDANT&,  
Defendant Below, Appellant.

STATEMENT OF THE CASE

Pursuant to Rule 8(c) of the Rules of Appellate Procedure, the parties set forth the following statement of the case:

[INSERT THE MANNER IN WHICH THE ISSUES PRESENTED BY THE APPEAL AROSE AND WERE DECIDED BY THE CIRCUIT COURT, AND ONLY SO MANY OF THE FACTS AVERRED AND PROVED OR SOUGHT TO BE PROVED AS ARE ESSENTIAL TO A DECISION OF THE ISSUES PRESENTED]

&DEFENDANT&,  
Appellant, By Counsel

State of West Virginia,  
Appellee, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

---

Counsel for Appellee

No. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

-----  
CHARLESTON  
-----

STATE OF WEST VIRGINIA,  
Plaintiff Below,

Appellee,

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&DEFENDANT&,  
Defendant Below,

Appellant.

STIPULATION TO CORRECT RECORD

Pursuant to Rule 8(f) of the Rules of Appellate Procedure, the parties submit this stipulation to correct the following omissions, misstatements or errors in the record:

[INSERT CORRECTIONS]

&DEFENDANT&,  
Appellant, By Counsel

STATE OF WEST VIRGINIA  
Appellee, By Counsel

\_\_\_\_\_  
&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

\_\_\_\_\_  
Counsel for Appellee

No. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

-----  
CHARLESTON  
-----

STATE OF WEST VIRGINIA,  
Plaintiff Below,

Appellee,

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&DEFENDANT&,  
Defendant Below,

Appellant.

APPELLANT'S

MOTION TO CORRECT RECORD

Pursuant to Rule 8(f) and Rule 17 of the Rules of Appellate Procedure, the Appellant moves the Court to correct the following omissions, misstatements or errors in the record:

[INSERT CORRECTIONS]

&DEFENDANT&,  
Appellant, By Counsel

\_\_\_\_\_  
&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

No. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

-----  
CHARLESTON  
-----

STATE OF WEST VIRGINIA,  
Plaintiff Below,

Appellee,

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&DEFENDANT&,  
Defendant Below,

Appellant.

-----  
APPELLANT'S BRIEF  
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Counsel for Appellant:

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

A P P E L L A N T ' S B R I E F

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA:

THE KIND OF PROCEEDING AND NATURE OF  
THE RULING IN THE LOWER TRIBUNAL

STATEMENT OF THE FACTS OF THE CASE

ASSIGNMENTS OF ERROR RELIED UPON ON  
APPEAL AND THE MANNER IN WHICH  
THEY WERE DECIDED IN THE LOWER TRIBUNAL

POINTS AND AUTHORITIES RELIED UPON,  
DISCUSSION OF THE LAW,  
AND THE RELIEF PRAYED FOR

RELIEF PRAYED FOR

&DEFENDANT&,  
Appellant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

CERTIFICATE OF SERVICE

I certify that I have served this APPELLANT'S BRIEF by mailing true copies thereof in the U.S. Mail, postage prepaid, to the following: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 198\_.

\_\_\_\_\_  
&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

No. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

-----  
CHARLESTON  
-----

STATE OF WEST VIRGINIA,  
Plaintiff Below

Appellee,

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&DEFENDANT&,  
Defendant Below,

Appellant.

-----  
APPELLANT'S REPLY BRIEF  
-----

Counsel for Appellant:

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

A P P E L L A N T ' S R E P L Y B R I E F

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA:

Pursuant to Rule 10(c) of the Rules of Appellate Procedure, the Appellant submits this memorandum in reply to the Appellee's Brief.

&DEFENDANT&  
Appellant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV Z6041

CERTIFICATE OF SERVICE

I certify that I have served this APPELLANT'S REPLY BRIEF by mailing true copies thereof in the U.S. Mail, postage prepaid, to the following:

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 198\_.

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**&ATTORNEY&**  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

No. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

-----  
CHARLESTON  
-----

STATE OF WEST VIRGINIA,  
Plaintiff Below,

Appellee,

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&DEFENDANT&,  
Defendant Below,

Appellant.

APPELLANT'S

MOTION TO POSTPONE ORAL ARGUMENT

Pursuant to Rule 12(a) of the Rules of Appellate Procedure, the Appellant moves the court for an order postponing oral argument because of the following:

[INSERT DATE ARGUMENT IS SET AND REASONS  
WHY CONTINUANCE IS NECESSARY]

&DEFENDANT&,  
Appellant, By Counsel

\_\_\_\_\_  
&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

CERTIFICATE OF SERVICE

I certify that I have served this APPELLANT'S MOTION TO POSTPONE ORAL ARGUMENT by mailing true copies thereof in the U.S. Mail, postage prepaid, to the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 198\_.

\_\_\_\_\_  
ATTORNEY &  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041  
(304) 845-0225

No. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

-----  
CHARLESTON  
-----

STATE OF WEST VIRGINIA,  
Plaintiff Below,

Appellee,

vs.

&COUNTY& COUNTY  
CASE NO. &CASE&

&DEFENDANT&,  
Defendant Below,

Appellant.

-----  
APPELLANT'S  
PETITION FOR REHEARING  
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Counsel for Appellant:

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

P E T I T I O N   F O R   R E H E A R I N G

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA:

Pursuant to Rule 24(a) of the Rules of Appellate Procedure, the Appellant petitions the Court for a rehearing.

RELIEF PRAYED FOR

&DEFENDANT&,  
Appellant, By Counsel

---

&ATTORNEY&  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041

CERTIFICATE OF SERVICE

I certify that I have served this PETITION FOR REHEARING by mailing true copies thereof in the U.S. Mail, postage prepaid, to the following:

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Dated this \_\_\_\_ day of \_\_\_\_\_, 198\_.

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**&ATTORNEY&**  
Public Defender Corporation  
Second Judicial Circuit  
727 Lafayette Avenue  
Moundsville, WV 26041