WEST VIRGINIA CODE: §4-1-17

§4-1-17. Priority of legislative business for members and designated employees.

(a) In accordance with the Constitutional separation of powers and principles of comity, it is the purpose of this section to provide that members of the Legislature and certain designated legislative employees are not required to attend to matters pending before tribunals of the executive and judicial branches of government when the timing of those matters may present conflicts with the discharge of the public duties and responsibilities that are incumbent upon members or employees of the Legislature. During legislative sessions or meetings and for reasonable time periods before and after, the judicial and executive branches should refrain from requiring the personal presence and attention of a legislator or designated employee who is engaged in conducting the business of the Legislature.

(b) For the purposes of this section, the words or terms defined in this subsection have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Applicable time period" means and includes the following:

(A) The ten-day time period immediately before any regular or extraordinary session of the Legislature;

(B) The time period during any regular or extraordinary session of the Legislature;

(C) The thirty-day time period immediately following the adjournment sine die of any regular or extraordinary session of the Legislature;

(D) The four-day time period before any interim meetings of any committee of the Legislature or before any party caucus;

(E) The time period during any interim meetings of the Legislature or any party caucus; or

(F) The four-day time period following the conclusion of any interim meetings of any committee of the Legislature or party caucus.

(2) "Designated employee" means any legislative employee designated in writing by the Speaker of the West Virginia House of Delegates to the Clerk of the House of Delegates or by the President of the West Virginia Senate to the Clerk of the West Virginia Senate to be necessary to the operation of the Legislature, such that the legislative employee will be afforded the protections of this section.

(3) "Member" means a member of the West Virginia House of Delegates or the West Virginia Senate.

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(4) "Tribunal" means a judicial or quasijudicial entity of the judicial or executive branch of government, or any legislative, judicial or quasijudicial entity of a political subdivision, created or authorized under the Constitution or laws of this state.

(c) A notice filed with a tribunal pursuant to subsection (e) of this section operates as an automatic stay of a judicial or administrative action or proceeding commenced before or after the notice was filed. The automatic stay is in force for the applicable time period or periods described in the notice unless it is otherwise waived in accordance with the provisions of subsection (f) of this section. In the event a session or meeting of the Legislature is extended, the notice may be amended to reflect a longer applicable time period. The filing of the notice and the automatic stay do not prohibit the commencement of an action or proceeding, the issuance or employment of process or other preliminary procedures that do not require the presence or personal attention of the member or designated employee.

(d) During any applicable time period, a member or designated employee who does not otherwise consent to a waiver of the stay is not required to do any of the following:

(1) Appear in any tribunal, whether as an attorney, party, witness or juror;

(2) Respond in any tribunal to any complaint, petition, pleading, notice or motion that would require a personal appearance or the filing of a responsive pleading;

(3) File in any tribunal any brief, memorandum or motion;

(4) Respond to any motion for depositions upon oral examination or written questions;

(5) Respond to any written interrogatories, request for production of documents or things, request for admissions or any other discovery procedure, whether or not denominated as such; or

(6) Appear or respond to any other act or thing in the nature of those described in subdivision (1), (2), (3), (4) or (5) of this subsection; or

(7) Make any other appearance before a tribunal or attend to any other matter pending in a tribunal that in the discretion of the member or designated employee would inhibit the member or designated employee in the exercise of the legislative duties and responsibilities owed to the public.

(e) A member or designated employee who desires to exercise the protections afforded by this section shall not be required to appear in any tribunal to assert the protections. In all cases, it shall be sufficient if the member or designated employee notifies the tribunal in question orally or in writing, stating that he or she is invoking the protections of this section, describing the action, proceeding or act to be stayed, and further identifying the applicable period or periods for which the notice will operate as a stay. An oral communication with the tribunal shall be followed by a written notice or facsimile transmission to the tribunal mailed

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or transmitted no later than two business days after the oral communication. From the time of the oral communication or the mailing or transmission of the written notice, whichever is earlier, the notice operates as a stay of all proceedings in the pending matter until the applicable time periods have passed and expired.

(f) Notwithstanding the filing of a notice that operates as a stay, a member or designated employee may later consent to waive the stay and make an appearance or attend to a matter that would otherwise be stayed. However, a waiver as to a particular appearance or act does not terminate, annul, modify or condition the stay for any other purpose.

(g) The deference afforded by this section to members and designated employees who are serving a client in a representative capacity is also fully and completely extended to their clients, so that no person whose representative before a tribunal is a member or designated employee may be required, during any applicable time period, to do anything that his or her representative is not required to do under subsection (d) of this section.

(h) Unless the member or designated employee consents thereto, no cocounsel, partner, associate, spouse or employee of the member or designated employee may be required to make any appearance or do any act during any applicable time period in the place and stead of the member or designated employee.

(i) Any sentence, judgment, order, decree, finding, decision, recommendation or award made contrary to the provisions of this section in any action or proceeding in any tribunal, without the consent of the member or designated employee, is void.

(j) Tribunals of the federal government and those of other states are requested to honor the spirit and purpose of this section pursuant to the doctrines of comity and federalism. Further, it is the policy of this state that tribunals of this state shall afford to legislators and staff personnel of the federal government and other states the protections afforded by the provisions of this section if the tribunals of the federal government and the other jurisdictions afford members or designated employees of the West Virginia Legislature the same protections in their tribunals.

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