WEST VIRGINIA CODE: §51-2A-8

§51-2A-8. Rules of practice and procedure; applicability of rules of evidence; record of hearings; duties of clerk of circuit court.

(a) Pleading, practice and procedure in matters before a family court judge are governed by rules of practice and procedure for family law promulgated by the Supreme Court of Appeals.

(b) The West Virginia Rules of Evidence apply to proceedings before a family court judge.

(c) Hearings before a family court shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family court judge and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family court judge, the magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a family court judge shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. For evidentiary purposes, a duplicate of such electronic recording prepared by the secretary-clerk shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia Rules of Evidence and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an original under such rule. The party requesting the copy shall pay the circuit clerk an amount equal to the actual cost of the tape or other medium or the sum of $5, whichever is greater. Unless otherwise ordered by the court, the preparation of a transcript and the payment of the cost thereof shall be the responsibility of the party requesting the transcript. The circuit clerk shall remit those amounts received monthly to the State Treasury for deposit in the West Virginia Supreme Court of Appeals fund designated for receipt of such moneys.

(d) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all documents filed in the proceeding, constitute the exclusive record and, on payment of lawfully prescribed costs, shall be made available to the parties.

(e) In any proceeding in which a party has filed an affidavit that he or she is financially unable to pay the fees and costs, the family court judge shall determine whether either party is financially able to pay the fees and costs based on the information set forth in the affidavit or on any evidence submitted at the hearing. If a family court judge determines that either party is financially able to pay the fees and costs, the family court judge shall assess the payment of such fees and costs accordingly as part of an order. The provisions of this subsection do not alter or diminish the provisions of section one, article two, chapter fifty-nine of this code.

(f) The clerks of the circuit court shall have, within the scope of the jurisdiction of family

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courts, all the duties and powers prescribed by law that clerks exercise on behalf of circuit courts: Provided, That a family court judge may not require the presence or attendance of a circuit clerk or deputy circuit clerk at any hearing before the family court.

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