

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

## **House Bill 2506**

BY DELEGATE STEELE

[Introduced January 17, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §4-1-17 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §29-21-9 of said code, all relating to providing that attorneys-at-law  
 3 may not be involuntarily appointed as counsel in any judicial matter; and that members of  
 4 the Legislature who are attorneys-at-law may not be involuntarily appointed as counsel in  
 5 any judicial matter, regardless of whether the Legislature is in session or out of session,  
 6 except that a lawyer may voluntarily request to receive court appointments.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 4. THE LEGISLATURE.**

**ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS;  
 INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL  
 BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING  
 COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.**

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

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

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

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

14 (A) The 10-day time period immediately before any regular or extraordinary session of the  
15 Legislature;

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

17 (C) The 30-day time period immediately following the adjournment sine die of any regular  
18 or extraordinary session of the Legislature;

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

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

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

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

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

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

34 (c) A notice filed with a tribunal pursuant to subsection (e) of this section operates as an  
35 automatic stay of a judicial or administrative action or proceeding commenced before or after the  
36 notice was filed. The automatic stay is in force for the applicable time period or periods described  
37 in the notice unless it is otherwise waived in accordance with the provisions of subsection (f) of  
38 this section. In the event a session or meeting of the Legislature is extended, the notice may be

39 amended to reflect a longer applicable time period. The filing of the notice and the automatic stay  
40 do not prohibit the commencement of an action or proceeding, the issuance or employment of  
41 process or other preliminary procedures that do not require the presence or personal attention of  
42 the member or designated employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 (k) Notwithstanding any other provision of this code or law, an attorney-at-law admitted to  
92 practice in this state may not be involuntarily appointed to represent an individual, cause, or  
93 judicial matter in any state court or by any judicial representative of a state court, whether that  
94 attorney is a member of the Legislature or a designated employee of the Legislature.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 21. PUBLIC DEFENDER SERVICES.

#### §29-21-9. Panel attorneys.

1 (a) In each circuit of the state, the circuit court shall establish and maintain regional and  
2 local panels of private attorneys-at-law who are available to serve as counsel for eligible clients.  
3 An attorney-at-law may become a panel attorney and be enrolled on the regional or local panel,  
4 or both, to serve as counsel for eligible clients by informing the court. An agreement to accept  
5 cases generally or certain types of cases particularly may not prevent a panel attorney from  
6 declining an appointment in a specific case.

7 (b) In all cases where an attorney-at-law is required to be appointed for an eligible client,  
8 the appointment shall be made by the circuit judge: *Provided*, That in family court contempt cases,  
9 the family court judge shall appoint an attorney-at-law when required, in the following order of  
10 preference:

11 (1) In circuits where a public defender office is in operation, the judge shall appoint the  
12 public defender office unless an appointment is not appropriate due to a conflict of interest or  
13 unless the public defender corporation board of directors or the public defender, with the approval  
14 of the board, has notified the court that the existing caseload cannot be increased without  
15 jeopardizing the ability of defenders to provide effective representation;

16 (2) If the public defender office is not available for appointment, the court shall appoint one  
17 or more panel attorneys from the local panel;

18 (3) If there is no local panel attorney available, the judge shall appoint one or more panel  
19 attorneys from the regional panel;

20 (4) If there is no regional panel attorney available, the judge may appoint a public defender  
21 office from an adjoining circuit if such public defender office agrees to the appointment;

22 (5) If the adjoining public defender office does not accept the appointment, the judge may  
23 appoint a panel attorney from an adjoining circuit; or

24 (6) If a panel attorney from an adjoining circuit is unavailable, the judge may appoint a  
25 panel attorney from any circuit.

26 (c) In any given case, the appointing judge may alter the order in which attorneys are  
27 appointed if the case requires particular knowledge or experience on the part of the attorney to  
28 be appointed: *Provided*, That any time a court, in appointing counsel pursuant to the provisions  
29 of this section, alters the order of appointment as set forth herein, the order of appointment shall  
30 contain the court's reasons for doing so.

31 (d) Notwithstanding any other provision of this code or law, an attorney-at-law admitted to  
32 practice in this state may not be involuntarily appointed to represent an individual, cause, or  
33 judicial matter in any state court or by any judicial representative of a state court: *Provided*, That  
34 an attorney-at-law may voluntarily agree to accept court appointments.

NOTE: The purpose of this bill is to provide that attorneys-at-law may not be involuntarily appointed as counsel in any judicial matter; and that members of the Legislature who are attorneys-at-law may not be involuntarily appointed as counsel in any judicial matter, regardless of whether the Legislature is in session or out of session. The bill also provides that a lawyer may voluntarily request to receive court appointments.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.