WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Secretary of State TITLE NUMBER: 153

RULE TYPE: Procedural ; CITE AUTHORITY § 3-1A-6 and 3-1-17

AMENDMENT TO AN EXISTING RULE: YES___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 24

TITLE OF RULE BEING PROPOSED: NUMBERED DIVISIONS FOR THE ELECTION OF CIRCUIT JUDGES

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 30, 1991 AT 4:30.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Bob Wilkinson, Deputy Secretary of State
Rm. 157, Capitol Bldg.
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Ken Hechler

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Summary of Series 24

In its 1990 session the Legislature amended § 3-1-17 of the code to provide for the election of circuit judges by divisions in those circuits in which there is more than one judge. This procedural rule is being established to provide potential candidates, and other interested parties, with notice of the process that will be used in 1992 because of existing requirements in chapter three of the code. This rule addresses issues such as filing fees, the effect of filing for more than one division (as required by § 3-5-7, amended in 1991), ballot arrangement and the continuity of the divisions established after the 1992 elections.

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Numbered Divisions for the Election of Circuit Judges

Type of Rule: ____ Legislative ____ Interpretive X Procedural

Agency Secretary of State Address Rm. 157, Capitol Bldg. Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL Increase	ANNUAL Decrease	FISCAL YEAR Current	FISCAL YEAR Next	FISCAL YEAR Thereafter
Estimated Total Cost	$ 0	$ 0	$ 0	$ 0	$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

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2. Explanation of above estimates:

The changes outlined in this rule will change the format of the ballots in West Virginia in the 1992 elections but there will be no fiscal impact on the state or counties because of these changes.

3. Objectives of these rules:

To provide a procedure for implementing HB 2305, which requires the election of judges by division in multi-judge circuits, when preparing ballots.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

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Date: May 21, 1991

Signature of Agency Head or Authorized Representative

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 153
PROCEDURAL RULES
SECRETARY OF STATE

SERIES 24
NUMBERED DIVISIONS FOR THE ELECTION OF CIRCUIT JUDGES

§153-24-1. General.

1.1. Scope. -- To make uniform the implementation of H.B. 2305 requiring that judges in multi-judge circuits be elected within numbered divisions each including only one judge.

1.2. Authority. -- W. Va. Code §§3-1A-6, 3-1-17

1.3. Filing Date. --

1.4. Effective Date. --

§153-24-2. Designation of numbered divisions.

2.1. Each judicial circuit shall contain as many divisions as there are judges within the circuit as established by W. Va. Code §51-2-1.

2.2. Within each circuit having more than one judge, the divisions shall be designated as in the following examples:

2.2.1. Full designation: 1st Judicial Circuit, 2nd Division

2.2.2. Short form: 1st Circ., 2nd Div.

2.2.3. Abbreviation: Circ. 1/2

2.3. When the number of judges in a circuit is increased or decreased by the Legislature, the number of divisions shall automatically be adjusted and any added position shall be assigned the next number in the sequence.

2.4. The secretary of state shall post a list of numbered divisions up for election and shall distribute that list to each circuit court clerk by the first Monday in January of each election year.

§153-24-3. Nomination of circuit judges in numbered divisions.

3.1. Certificate of candidacy.

3.1.1. Each person seeking nomination to the office of judge of the circuit court shall file a certificate of candidacy in the time, manner and place required by W. Va. Code §3-5-7, and shall pay the filing fee or file the petition in lieu of filing fee as required by W Va. Code §3-5-8 and §3-5-8a.

3.1.2. On the certificate of candidacy, the candidate shall state the numbered division of the judicial circuit which he or she is seeking, except in circuits having only one judge.

3.1.3. Any certificate of announcement for judge in a multi-judge circuit shall not be deemed to have been properly filed unless a circuit and a single numbered division within the circuit is clearly designated as the division sought. The secretary of state or the board of ballot commissioners, as the case may be, shall not certify the candidacy of any person who fails to designate a circuit and a single division.

3.1.4. No candidate for circuit judge shall be permitted to be a candidate for office in more than one division, as required by §3-5-7(f).

a. A candidate who files two (2) or more certificates of announcement designating different divisions and pays the required filing fee for each different division shall not be eligible to be certified as a candidate for any division unless a signed notarized statement of withdrawal from all but one designated division is filed no later than the close of candidate filing. All filing fees are non-refundable.

b. The secretary of state, or circuit clerk, as the case may be, shall immediately reject and return the filings of a candidate who simultaneously files two (2) or more certificates of announcement designating different divisions accompanied by a single filing fee.

3.2. Ballot arrangement of candidates for circuit judge.

3.2.1. Divisions shall be placed on primary and general election ballots in numerical order.

3.2.2. The heading for each division on the primary election ballot shall be as nearly as possible as follows:

For Circuit Court Judge
(No) Judicial Circuit, (No.) Division
(Vote for One)

3.2.3. Only those candidates certified for placement on the ballot within a specific numbered division shall appear under that division heading.

3.3. Nomination of candidates in numbered divisions.

3.3.1. Each political party may nominate only one candidate for circuit judge for each numbered division of a judicial circuit for multi-judge circuits.

3.3.2. The board of canvassers, in issuing the certification of results for candidates for circuit judge, shall designate the circuit, the numbered division, the candidates for judge within that division and the votes received in words and numbers.

3.3.3. The secretary of state for multi-county circuits, and the board of ballot commissioners for single county circuits, shall certify the nomination of the candidate of each party receiving the highest number of votes within each division.

§153-24-4. Election of circuit judges in numbered divisions.

4.1. Only candidates who have filed a proper certificate of announcement within the time required and who have been nominated in the primary election or by petition shall be certified for placement on the general election ballot.

4.2. The board of canvassers shall, in issuing the certificate of results of the general election, designate the judicial circuit, the numbered division, the candidates for judge within that division and the votes received in words and numbers.

4.3. The governor shall, upon ascertaining the results within each numbered division, proclaim the results of the election and thereafter proclaim those judges duly elected.

§153-24-5. Continuity of numbered divisions.

5.1. The numbered divisions as designated shall continue to be so designated for election purposes.

5.2. Provisions relating to the designation of chief judge or the assignment of terms of court within various counties within a circuit are not affected by the designation of divisions.

LAW OFFICE OF RICHARD G. GAY, P.C.
ATTORNEY AT LAW
202 CONGRESS STREET
BERKELEY SPRINGS, WV 25411
(304) 258-1966

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1991 JUN 17 AM 8:31

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

RICHARD G. GAY
ADMITTED TO PRACTICE IN
WV, PA, OHIO &
THE DISTRICT of COLUMBIA

June 10, 1991

OF COUNSEL TO:
MAY & DUNNE
1156-15th St. N.W.
WASHINGTON D.C.
20005

Bob Wilkinson, Deputy Secretary of State
Room 157, Capitol Building
Charleston, WV 25305

Re: Title Number - 153
Series Number - 24
NUMBERED DIVISIONS FOR THE ELECTION OF CIRCUIT JUDGES
Implementation of H.B. 2305

Dear Mr. Wilkinson:

Thank you very much for sending me the proposed Procedural Rules for the election of circuit judges in multiple judicial districts.

I have been considering filing for one of the three judges to be elected in the Twenty-Third Judicial District which consists of Morgan, Berkeley and Jefferson Counties.

I have reviewed the Proposed Rules of the Secretary of State for implementation of H.B. 2305 concerning the election of judges in multi-judge circuits and the three divisions do not appear to be based on geography, population or any other tangible fact upon which one could make a decision as to which particular division within which to file.

Further, the rules are very confusing since there is no tangible point of reference as to the divisions from which a reader could focus in order to understand what the rules are attempting to accomplish.

It would appear to be more logical to establish three distinct geographical districts based on population in which each candidate would compete. This would of course be more in keeping with the one-man-one-vote rule and would allow new entrants a better opportunity to challenge an incumbent. Also, a candidate should have to reside in the geographical boundary in order to file in that district.

Very truly yours,

Richard G. Gay

RGG/pag