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## **Trial Handbook for West Virginia Lawyers 2024–2025 Edition Issued November 2024**

By

**Max C. Gottlieb**

Attorney

Hissam Forman Donovan Ritchie PLLC  
Charleston, West Virginia



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# INTRODUCTION TO 2024–2025 EDITION

Most lawyers who appear in court have developed their own individual trial notebook. These trial notebooks vary in size, content and completeness.

For many lawyers, the collection of cases relevant to their trial practice is helter skelter for which there is no planned organizational layout of material.

It is the hope of this writer that this trial handbook will be of assistance in that it will provide to the lawyer who appears in court a basic layout of the substantive and procedural law relating to the issues and questions that arise in a trial.

This handbook is not meant to contain comprehensive essays on all aspects of the law; for that I refer to the standard works which discuss those particular aspects of the law in depth. Hopefully, this handbook will be of practical value in that it provides quick reference for answers to basic questions arising in trial, and will be a medium which will lead the researcher to the specific case that touches upon his immediate concern.

## HIGHLIGHTS

- In bench trial for damages following judicial entry of liability as sanction for discovery conduct, circuit court erred by refusing to permit party to present witnesses on damages issue. *Warrior Oil and Gas, LLC v. Blue Land Services, LLC*, 248 W. Va. 1, 886 S.E.2d 336 (2023). (See § 2:3)

- In suit against hospital defendant brought by parents resulting from handling of fetal remains following still birth, circuit court erred in denying hospital defendant's motion to dismiss for failure to comply with presuit notice requirement of West Virginia Medical Professional Liability Act, West Virginia Code § § 55-7B-1, et seq. Mother was "patient" under that act and thus presuit notice requirement applied. *State ex rel. Charleston Area Medical Center, Inc. v. Thompson*, 248 W. Va. 352, 888 S.E.2d 852 (2023). (See § 2:21)

- In a suit against hospital brought by visitor for personal injuries resulting from fall, peer review privilege applied to protect against disclosure of incident report. Testimony elicited by party seeking to admit report did not “open the door” to permit admission of the report. *Toler v. Cornerstone Hospital of Huntington, LLC*, 248 W. Va. 537, 889 S.E.2d 259 (2023). (See § 18:13)

- Circuit court erred in denying motion to suppress evidence of firearm found during warrantless search of basement in defendant’s mother’s home, where defendant operated a t-shirt printing business. Plain view exception or officer safety concerns did not apply as to justify officers following defendant into basement without warrant. There was no articulable threat, and defendant had been compliant; generalized testimony about defendant being agitated did not suffice. *State v. Ward*, 249 W. Va. 347, 895 S.E.2d 202 (2023). (See § 30:19)

- West Virginia has adopted Restatement (Third) of Restitution and Unjust Enrichment § 29 (Am. Law Inst. 2022), in its entirety, as the law of this State, which permits attorneys’ fees to be taken out of a common fund upon satisfaction of certain conditions. *L&D Investments, Inc. v. Antero Resources Corporation*, 248 W. Va. 83, 887 S.E.2d 208 (2023). (See § 35:28)

- A circuit court abused its discretion in awarding a gross spousal support amount for supported spouse who generated three and a half times less income as the other spouse, where such amount left the supported spouse unable to meet basic needs. That award was not fair or equitable, and as such it constituted an abuse of discretion. *Jennifer W. v. Michael W.*, 249 W. Va. 146, 895 S.E.2d 1 (2023). (See § 45:1)

Thank you for subscribing to Trial Handbook for West Virginia Lawyers.

Max C. Gottlieb

Attorney

Hissam Forman Donovan Ritchie  
PLLC

Charleston, West Virginia  
mgottlieb@hfdrlaw.com

## **Dedication & Acknowledgement:**

As with all other efforts I have undertaken, this work is dedicated to my wife, Bridget, as well as my parents, Elizabeth and Richard, whose undying love and support propels my life. Of course, I cannot leave out my pup and stalwart work partner, Rufio.

This could not have been accomplished without the dedicated assistance and keen insights of my intrepid Chief Deputy Editor, Jared A. Phalen. And special thanks to Mr. Stephen P. Meyer who entrusted me to build upon his many years of fine work on this book. I hope I didn't let you down, Steve (but it's too late to take back the offer).

To all who peruse the pages of this book, I hope your careers are filled with great days to practice law.

Max C. Gottlieb

Attorney

Hissam Forman Donovan Ritchie  
PLLC

Charleston, West Virginia  
mgottlieb@hfdrlaw.com





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