WEST VIRGINIA CODE: §3-7-3

§3-7-3. Contests before special court; procedure; enforcement.

(a) Where the election of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, a justice of the Supreme Court of Appeals, a judge of the Intermediate Court of Appeals, a judge of a circuit court, or a judge of a family court is contested, the case shall be heard and decided by a special court constituted as follows:

(1) The contestee shall select one, the contestant another, and the Governor a third person, who shall preside in said court; and the three, or any two of them, shall meet at a time and place within the state to be appointed by the Governor, and, being first duly sworn impartially to decide according to law and the truth upon the petition, returns, and evidence to be submitted to them, shall proceed to hear, and determine the case and certify their decision thereon to the Governor. They shall be entitled to $10 a day each, and the same mileage as members of the Legislature, to be paid out of the treasury of the state, and the special court may employ a stenographer at a reasonable compensation, to be also paid out of the treasury of the state.

(2) In all hearings or proceedings before the special court, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing by the special court, or any member thereof.

(3) If there is disobedience to a subpoena or other process of the special court, or any member thereof, the special court, or any member thereof, or either of the parties to the contest, may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. And the circuit court, in case of a refusal to obey the subpoena issued to any person, shall issue an order requiring that person to appear before the special court and produce all books and papers, if so ordered, and give evidence touching the matter in question. Any failure to obey the order of the circuit court may be punished by the court as a contempt thereof. A written record shall be kept of all testimony and other proceedings before the special court.

(4) Either party to the contest aggrieved by the final decision of the special court may present his or her petition in writing to the Supreme Court of Appeals, or a justice thereof in vacation, within 30 days after the final decision is certified to the Governor, as hereinbefore provided, praying for the suspension, setting aside, or vacation of the final decision. The applicant shall deliver, or cause to be delivered, a copy of the petition to the other party to the contest, or, in case of his or her absence from the state or from his or her usual place of abode, the applicant shall mail, or cause to be mailed a copy of the petition addressed to his or her last known post-office address, before presenting the petition to the court, or the justice. The court, or the justice, shall fix a time for the hearing on the application, but the hearing may not be held sooner than five days, unless by agreement of the parties, after the presentation of the petition, and notice of the time and place of the hearing shall be

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forthwith delivered to the other party to the contest, or, in case of absence from the state or from his or her usual place of abode, the notice may be given by mailing, or causing to be mailed, the notice, or a copy thereof, addressed to him or her at his or her last known post-office address. If the court, or the justice, after the hearing, is of the opinion that a suspending order should issue, the court, or the justice in his or her, discretion, may suspend the final decision and may require bond upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable; and the court, or the justice, shall fix a time for the final hearing on the application. The hearing of the matter shall take precedence over all other matters before the court. For the final hearing, and before the day fixed therefor, the special court shall file with the clerk of the Supreme Court of Appeals all papers, documents, testimony, evidence, and records, or certified copies thereof, which were before it at the hearing resulting in the final decision from which the petitioner appeals, together with a copy in writing of its final decision; and, after argument by counsel, the court shall decide the matter in controversy, both as to the law and the evidence, as it determines to be just and right.

(b) The Supreme Court of Appeals shall enforce the provisions of this section by writ of prohibition, mandamus, certiorari or other appropriate mechanism.

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