

# **WEST VIRGINIA CODE: §3-7-3**

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

Where the election of Secretary of State, Auditor, Treasurer, Attorney General, commissioner of agriculture, or of a judge of the Supreme Court of Appeals, or of a circuit court, is contested, the case shall be heard and decided by a special court constituted as follows: 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 such special court is hereby given authority to employ a stenographer at a reasonable compensation, to be also paid out of the treasury of the state. In all hearings or proceedings before such special court, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing by such special court, or any member thereof; and in case of disobedience to a subpoena or other process of such special court, or any member thereof, such special court, or any member thereof, or either of the parties to such 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 such circuit court, in case of a refusal to obey the subpoena issued to any person, shall issue an order requiring such person to appear before such special court and produce all books and papers, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the circuit court may be punished by such court as a contempt thereof. A written record shall be kept of all testimony and other proceedings before such special court.

Either party to such contest feeling aggrieved by the final decision of such special court may present his petition in writing to the Supreme Court of Appeals, or a judge thereof in vacation, within thirty days after such final decision is certified to the Governor, as hereinbefore provided, praying for the suspension, setting aside, or vacation of such final decision. The applicant shall deliver, or cause to be delivered, a copy of such petition to the other party to such contest, or, in case of his absence from the state or from his usual place of abode, he shall mail, or cause to be mailed a copy of such petition addressed to his last known post-office address, before presenting the same to the court, or the judge. The court, or the judge, shall fix a time for the hearing on the application, but such hearing shall not be held sooner than five days, unless by agreement of the parties, after the presentation of such petition, and notice of the time and place of such hearing shall be forthwith delivered to the other party to such contest, or, in case of absence from the state or from his usual place of abode, such notice may be given by mailing, or causing to be mailed, the same, or a copy thereof, addressed to him at his last known post-office address. If the court, or the judge, after such hearing, be of the opinion that a suspending order should issue, the court in its, or

the judge in his, discretion, may suspend such 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 judge, 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 such 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 may seem to it to be just and right. The Supreme Court of Appeals is hereby given jurisdiction to enforce the provisions of this section by writ of prohibition, mandamus and certiorari, as may be appropriate.