WEST VIRGINIA CODE CHAPTER 3 ARTICLE 7

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§3-7-1. Contests for state offices and judgeships; procedure.

If the election of Governor, Secretary of State, treasurer, Auditor, Attorney General, commissioner of agriculture, a judge of the Supreme Court of Appeals or a judge of a circuit court, is contested, the contestant shall give notice, with specifications and affidavit, to the person whose election is contested within ten days after the election is certified and within ten days thereafter the return notice shall be given to the contestant. The parties shall finish taking depositions within forty days after the notice is delivered. The depositions shall be transmitted to the Clerk of the House of Delegates, to be delivered by him or her to the joint committee or special court hereinafter provided for. In other respects the regulations contained in this article respecting contests for a seat in the Legislature shall be observed, so far as they are applicable.

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§3-7-2. Procedure of Legislature on contest for office of Governor.

When the election of Governor is contested, the notice of contest and the depositions shall be referred to a joint committee of the two houses, for examination and report, which committee shall consist of two senators elected by ballot by the Senate, and three delegates elected in the same manner by the House of Delegates. The contest shall be determined by the Legislature, both houses thereof sitting in joint session in the hall of the House of Delegates, and the President of the Senate shall preside.

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§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 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-

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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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§3-7-4. Contests of seats in Legislature; notices and procedure.

Any person intending to contest the election of another as senator or delegate shall, within ten days after the election is certified, give him or her notice thereof in writing and a list of the votes he or she will dispute, with the objections to each, and of the votes rejected for which he or she will contend. If the contestant objects to the legality of the election or the qualification of the person returned, the notice shall set forth the facts on which the objection is founded. The person whose election is contested shall, within ten days after receiving the notice, deliver to the contestant a like list of the votes he or she will dispute and of the objection to each, and of the rejected votes he or she will claim; and, if he or she has any objection to the qualification of the contestant, shall specify in the notice the facts on which the objection is founded. Each party shall append to the notice an affidavit that the matters therein set forth, so far as they are stated of his or her knowledge, are true and that, so far as they are stated on the information of others, he or she believes them to be true. If new facts are discovered by either party after he or she has given notice, he or she may give an additional notice or notices to his or her adversary, with specifications and affidavit as above prescribed.

The notice of contest shall be presented to the proper branch of the Legislature, within ten days after its meeting.

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§3-7-5. Depositions; subpoenas; time; tie vote decision.

Either party may begin to take the depositions in such contests for seats in the Legislature at any time after the delivery of the original notice by the contestant. But reasonable notice of every such deposition shall be given, and such notice shall specify the names of the witnesses to be examined. The depositions may be taken before a justice, notary, or any officer authorized to take depositions in civil suits; and the officer before whom they are taken shall certify and seal the same, and endorse his name across the place where they are sealed, and address and transmit the same, by mail or otherwise, to the clerk of the body in which the seat is contested. When the contest is referred to a committee, the clerk shall deliver the depositions to such committee for examination and report. The parties shall finish taking depositions five days at least before the second Wednesday of January next following. Neither party shall have the benefit of any deposition taken otherwise than as aforesaid, unless further time be given by resolution of the proper branch of the Legislature.

Subpoenas for witnesses shall be issued by the clerk of the circuit court, or by a justice, upon application of either party; and witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as if summoned to attend before the circuit court in civil suits.

If it be ascertained that an equal number of legal votes was given for the contestant and the person returned, the Senate or the House of Delegates, as the case may be, in which the contest is pending, shall declare which of them is elected.

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§3-7-6. County and district contests; notices; time.

(a) In all cases of contested elections, the circuit court with jurisdiction over the county or district where the election took place shall be the judge of the election, qualifications, and returns of all county, district, and municipal officers.

(b) An election contest challenging the election of any person to any county, district, or municipal office, including the office of magistrate, must be brought within 10 days after the election result is certified. An election contest shall be filed as a civil action in the circuit court with jurisdiction over the county or district where the election took place.

(c) For an election contest challenging specific votes cast, votes rejected, or voters who participated in the election, the recount procedure set forth in §3-6-9 of this code is a prerequisite to the initiation of an election contest and that procedure and any related proceeding must be completed prior to the filing of an election contest on those grounds.

(d) For an election contest challenging an elected candidate's eligibility, the legality of the election, or fraud, an election contest civil action can be initiated without the completion of the recount procedure set forth in §3-6-9 of this code.

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§3-7-7. Circuit court to hear county, district, and municipal contests; procedure; review.

(a) The circuit court with jurisdiction over the county or district where the election took place shall hear and decide election contests initiated pursuant to §3-7-6 of this code.

(b) At the trial of the contest, the circuit court shall hear all legal and proper evidence that may be brought before it by either party, and may, if considered necessary, require the production of the poll books, certificates, and ballots deposited with the county clerk or municipal recorder or clerk, and examine the same.

(c) A contestant has the burden of proof in an election contest.

(d) At the conclusion of the trial of the contest, the circuit court shall direct that a certified copy of the order declaring the result of the contest shall be delivered by the clerk of the circuit court wherein the contest was held to the parties.

(e) An appeal of the decision of the circuit court shall be to the Supreme Court of Appeals.

(f) The Supreme Court of Appeals, exercising the rule-making power granted by §51-1-4 of this code, may promulgate rules and regulations consistent with this article governing the pleadings, practice, and procedure to be employed during county, district, and municipal election contests in the courts of this state.

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§3-7-8. Correction of returns; extent.

Though illegal votes be received, or legal votes be rejected, at any place of voting, the returns of the votes taken at such place shall not be set aside for that cause, but it may be shown, by proper evidence before the tribunal authorized by law to hear and determine contested elections, for whom such illegal votes or any of them were cast, or for whom the legal votes which were rejected would have been given, and the returns shall be corrected only to the extent that it is so shown.

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§3-7-9. Costs in election contests.

The cost of every contested election shall include only the expenses of serving notices, taking depositions and the allowances to witnesses; and shall be noted at the foot of every deposition or set of depositions, by the person taking the same. If the contestant fails in setting aside the election, there shall be awarded against him the amount of such costs incurred or expended by the person who was returned or declared elected. Otherwise, each party shall pay his own costs; unless it appears that the person returned or declared elected was guilty of fraud or malpractice in the election, or in procuring such return or declaration, in which case costs shall be awarded against him in favor of the contestant. Where costs are awarded in favor of either party, the amount thereof shall be ascertained under direction of the house joint session, or court, which decides the case, and a certificate thereof, authenticated by the signature of the presiding officer, shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment, and if such costs be not paid within ten days after the date thereof, the clerk of the circuit court, of the county in which the party against whom the costs were awarded resides, may issue execution on such certificate, upon its delivery to such clerk, in like manner as upon a judgment of the circuit court. But no person contesting the seat of another in the Legislature shall be entitled to pay or mileage if the contest fails.

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