WEST VIRGINIA CODE: §38-16-402

§38-16-402. Action on fraudulent judgment lien.

(a) A person against whom a purported judgment was rendered who has reason to believe that a document previously filed or recorded or submitted for filing or for filing and recording is fraudulent may complete and file with the clerk of the circuit court a motion, verified by affidavit, that contains, at a minimum, the information in the following suggested form:

IN THE CIRCUIT COURT OF _____COUNTY, WEST VIRGINIA

In Re: A Purported Judgment Lien Against

(Name of Purported Debtor)

MOTION FOR JUDICIAL REVIEW OF A DOCUMENT

PURPORTING TO CREATE A JUDGMENT LIEN

Now comes (name) and files this motion requesting a judicial determination of the status of a court, judicial entity, or judicial officer purporting to have taken an action that is the basis of a purported judgment lien filed in the office of the clerk of the county commission, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the person against whom the purported judgment was rendered.

II.

On (date), in the exercise of official duties as Clerk of the county commission of (county name) County, West Virginia, the county clerk received and filed or filed and recorded the attached documentation containing (number) pages. The documentation purports to have been rendered on the basis of a judgment, act, order, directive, or process of a court, judicial entity, or judicial officer called "(name of purported court)" against one (name of purported debtor).

III.

Movant alleges that the purported court referred to in the attached documentation is one described in W.Va. Code, §38-16-108, as not legally created or established under the Constitution or laws of this state or of the United States, and that the document therefore not be accorded lien status.

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IV.

Movant further attests that the assertions contained herein are true and correct.

PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The acknowledgment must be as follows:

THE STATE OF WEST VIRGINIA,

COUNTY OF _____, To-wit:

I, _____, a notary public of said county; (or other officer or person authorized to take acknowledgments), do certify that _____, whose name (or names) is (or are) signed to the attached motion, dated the _____ day of _____, _____, has (or have) this day acknowledged the same before me, in my said _____.

Given under my hand this _____ day of _____, _____.

Notary Public, State of West Virginia

Notary's printed name:

My commission expires:

(c) A motion filed under this section may be ruled on by a circuit judge in the county where the subject documentation was filed. The court's finding may be made solely on a review of the documentation attached to the movant's motion and without hearing any testimonial evidence. The court's review may be made ex parte without delay or notice of any kind.

(d) The clerk of the circuit court may not charge a filing fee for filing a motion under this section.

(e) After reviewing the documentation attached to a motion under this section, the circuit judge shall enter appropriate findings of fact and conclusions of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was

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originally filed.

(f) The county clerk may not collect a filing fee for filing a district judge's findings of fact and conclusions of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

IN THE CIRCUIT COURT OF_____ COUNTY,

WEST VIRGINIA

In Re: A Purported Judgment Lien Against

(Name of Purported Debtor)

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENTATION PURPORTING TO CREATE A JUDGMENT LIEN

On the (number) day of (month), (year), in the above entitled action, this Court reviewed a motion verified by (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the Court's review, the Court having made the determination that a decision could be made solely on review of the documentation under the authority vested in the Court under W.Va. Code, §38-16-101, et seq.

The Court finds as follows (only an item checked and initialed is a valid court ruling):

[ ] The documentation attached to the motion herein refers to a legally constituted court, judicial entity, or judicial officer created by or established under the Constitution or laws of this state or of the United States. This judicial finding and conclusion of law does not constitute a finding as to any underlying claims of the parties.

[ ] The documentation attached to the motion herein DOES NOT refer to a legally constituted court, judicial entity, or judicial officer created by or established under the Constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its findings of fact and conclusions of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.

Signed this _____ day of _____, _____.

_____

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Judge, circuit court of County, West Virginia

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