WEST VIRGINIA CODE CHAPTER 44 ARTICLE 3

WV Legislature

§44-3-1. Fiduciary commissioners.

The office previously known as commissioner of accounts is hereby abolished. The office of fiduciary commissioner is hereby created and any reference in this code to a commissioner of accounts shall, after the effective date of this section, mean fiduciary commissioner. Fiduciary commissioners shall be attorneys admitted to the practice of law in this state or shall meet the qualifications of fiduciary supervisors as set forth in §44-3A-1 *et seq.* of this code.

The county commission of each county shall appoint not more than four fiduciary commissioners. In counties in which there exists a separate tribunal for police and fiscal purposes, that tribunal shall appoint the fiduciary commissioners.

The fiduciary commissioner shall report to and settle accounts with the county clerk. On or before the last day of March, June, September, and December, the fiduciary commissioner shall file with the county clerk a report on the status and disposition of every active case referred to the fiduciary commissioner. In the next succeeding term of the county commission, the county clerk shall provide a copy of the report to the county commission, and shall inform the county commission of any cases referred to a fiduciary commissioner in which the fiduciary commissioner has not fulfilled duties relating to the case in accordance with deadlines established by law. The county commission shall take appropriate action to ensure that all deadlines established by law are observed including, if necessary, the removal of fiduciary commissioners who consistently fail to meet the deadlines.

WV Legislature

§44-3-2. Fiduciary commissioners; powers and duties generally.

The fiduciary commissioners shall have general supervision of all fiduciary matters that are referred to them, and of the fiduciaries in charge thereof, and shall make all ex parte settlements of the accounts of such fiduciaries. Fiduciary commissioners shall have power to summon and compel the attendance of witnesses, to swear and examine witnesses, take their depositions and certify their testimony, and the costs thereof may be charged as expenses of administration of the estate subject to administration.

WV Legislature

§44-3-3. Special fiduciary commissioners.

When, from any cause, none of the fiduciary commissioners can act as to any matter or matters which may be passed on under the provisions of this chapter, the county commission or tribunal referred to in section one of this article, may appoint some other person to act as to such matter or matters. That person shall have the power and compensation and perform the duties of a fiduciary commissioner. When any fiduciary commissioner resigns, or is removed, the county commission or tribunal may provide for the completion of the matters previously referred to that commissioner.

WV Legislature

§44-3-4. Matters that will disqualify fiduciary commissioner.

No person shall perform the duties of a fiduciary commissioner in any matter wherein he will be passing upon his own account or acts; nor, where he will be called to pass upon any account or acts with reference to which he served as attorney or counselor; nor shall he be in any manner interested in the fees or emoluments of any fiduciary whose account or acts are before him for any action required by this chapter; nor shall he be surety on the bond of the fiduciary whose accounts are before him or agent of, or pecuniarily associated with, another who may be such surety; nor shall he be qualified to act in or pass upon any matter before him in which, were he a judge of the circuit court, and the matter were therein pending, he would for any reason be disqualified to serve. Any person who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall, for each and every violation, be fined not less than fifty nor more than $500 or imprisoned in the county jail for not more than six months, or punished by both fine and imprisonment at the discretion of the court. Upon conviction he shall also forfeit the office of fiduciary commissioner.

WV Legislature

§44-3-5. Disposition by fiduciary commissioner of inventories.

The clerk of the county commission shall inspect all appraisements of sales returned to him by fiduciaries, require the same to be executed in quadruplicate and in proper form, and, within ten days after they are respectively approved and recorded by him deliver one copy thereof to the fiduciary commissioner and mail one copy to the Tax Commissioner of West Virginia. Any fiduciary commissioner who fails, refuses or declines to comply with the provisions of this section shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not less than $25 nor more than $500.

WV Legislature

§44-3-6. Fiduciary commissioner to inspect bonds of fiduciaries.

Each fiduciary commissioner shall, at least once each month, ascertain from the records of the county commission of his county what estates and fiduciary matters have been referred to him by the county commission, or the clerk thereof since the fiduciary commissioner's last inspection of the records. He shall examine, as to each fiduciary, in any such estate or matter, whether the fiduciary has given bond as the law requires, and, if it appears that he has given no bond, or that his bond is defective, or that the surety thereon has removed from the state, died, or become insolvent, or is bound already in too many other bonds, the fiduciary commissioner shall make report thereof to his county commission at its next term. He shall also have the fiduciary summoned to appear at that term to show cause why he should not give such bond as is required by law. At that term the fiduciary shall be required forthwith to give such bond as is required by law, or shall have his authority revoked. Until a fiduciary has fully administered the estate under his charge, and made his final account, the fiduciary commissioner shall annually make inspections of the bonds of that fiduciary, and make reports thereof. He shall issue a summons whenever the circumstances require, and the commission shall make an order as may be warranted by the facts then determined. An appeal from the order of the county commission shall lie to the circuit court of the county. An appeal may be taken on request of the fiduciary or of the fiduciary commissioner if applied for before the end of the term of the county commission at which the order was made. When an appeal is taken, the clerk of the county commission shall certify all papers in the matter, including a copy of the bond, to the clerk of the circuit court, where the same shall be docketed and proceeded with as other appeals from the county commission.

WV Legislature

§44-3-7. When county commission to refer controversies to fiduciary commissioner; rules of procedure.

The county commission, whenever any controversy arises in connection with the probate of any will, or with the appointment and qualification of personal representatives, guardians, committees or curators, or with the settlement of the accounts of any fiduciary, may, of its own motion, or on the motion of any party thereto and shall, on the joint demand of the parties then appearing of record to the proceeding, refer the matter to a fiduciary commissioner to hear proof on the same, to make findings thereon, and to advise the commission on the law governing the decision of the matter. Any party may except to the commissioner's finding of fact and law, and the commission shall hear the case on the commissioner's report and the exceptions thereto, without taking any additional evidence. In hearing and reporting on any such matter the fiduciary commissioner shall be governed as to procedure by the law and practice, so far as is applicable, governing commissioners in chancery.

WV Legislature