WEST VIRGINIA CODE CHAPTER 44 ARTICLE 7

WV Legislature

§44-7-1. Fiduciary desiring to resign to file petition; summons thereon.

A personal representative or curator desiring to resign his or her trust, may file his or her petition for that purpose in the county commission of the county in which he or she was appointed, stating the names of all persons, so far as known by him or her, interested in the estate in his or her hands or under his or her control, and to which his or her duties as fiduciary relate, and if any of them are under disability, or nonresidents of the state; or if there are persons interested in the estate whose names are unknown, all of these facts, and the names of the guardians and committees of the persons under disability, if there are guardians or committees, shall be stated in the petition. Upon the filing of the petition the clerk of the court shall issue a summons against all the persons so named and the guardians and the committees of those under disability, if they have any, and against "the unknown parties in interest", if any there are, mentioned in the petition, to appear before the court on a day to be named in the summons, which day may be not less than thirty days from the filing of the petition, and answer the petition, and state to the court the reasons, if any they have, why the petition should not be granted. If any of the persons interested reside in another county in this state, the summons as to them shall be directed and sent by mail by the clerk to the sheriff of that county to be served and returned by him or her; and as to the persons named in the petition who reside out of this state, or who cannot by the use of due diligence be found, and as to the unknown parties, an order of publication shall be awarded against them, which shall be published or posted and published, as in cases of appointment and qualification of personal representatives.

WV Legislature

§44-7-2. Copy of petition and summons to be served on fiduciary commissioner.

Such fiduciary as is mentioned in the preceding section shall cause to be served, on the fiduciary commissioner whom the county commissioner shall designate, a copy of his petition and a copy of the summons issued thereon, at least ten days before the return day of the summons. The fiduciary commissioner shall investigate the records of the county commission to see if such fiduciary has rendered such inventories, appraisements and accounts as the law requires, and whether any further accounts should be required of him and on or before the return day certify the facts relating to such matters to the county commission. For making such investigation and certificate the fiduciary commissioner shall be allowed a fee of not less than $1, nor more than $10, as the commission may direct, to be charged and collected as other costs on such petition.

WV Legislature

§44-7-3. Hearing on petition.

When the summons has been served upon all the parties named and referred to in the petition, and any necessary order of publication has been duly completed, the commission shall, on the day named in the summons, or on some later day to which a continuance may have been taken, proceed to hear the matter. If no objection is made to the resignation of the fiduciary by any person interested in the estate mentioned in the petition, and if the commissioner's certificate shows he has fully and properly rendered all inventories, appraisements and accounts due from him his resignation may be accepted and entered of record by the commission. But if objection be made by any such person on the ground that the fiduciary has not fully settled and accounted for the estate committed to his care, at the time of filing his petition, or for any other valid reason, or it appears from the commissioner's certificate that an inventory, an appraisement, or an account is due from the fiduciary, the petition and objections or commissioner's certificate shall be referred to the fiduciary commissioner or to some other fiduciary commissioner or to a special commissioner appointed for the purpose, to do and perform such duties, and report upon such matters and things as are stated in the order of reference, and report the same to the commission. The same proceedings shall be had on such order of reference and the report when made as are had in the circuit court in a suit in chancery in that court. If it shall appear to the commission in any such case that the fiduciary has not fully settled and accounted for the estate committed to his charge, or that there is money or other property in his hands, or under his control, not yet paid over or disposed of, such orders as may be necessary and proper for the disposition and safekeeping thereof shall be made by the commission, and when such orders are complied with by the fiduciary, his resignation may be accepted. His resignation when accepted shall not affect or impair the liability of the sureties on his official bond in force at the time of his resignation and the acceptance thereof, for any default by him in the discharge of his duties as such fiduciary, remaining unsettled or unsatisfied. The costs in such cases shall be paid as the court may order.

WV Legislature

§44-7-4. Application only to personal representatives, curators or minor guardians.

The provisions of this article apply only to personal representatives, curators and minor guardians, as the case may be, and do not apply to or affect guardians and conservators of an adult protected person who are governed by the provisions of the Guardian and Conservatorship Act in chapter forty-four-a of this code or trustees who are governed by the provisions of the West Virginia Uniform Trust Code in chapter forty-four-d of this code.

WV Legislature