WEST VIRGINIA CODE CHAPTER 50 ARTICLE 4

WV Legislature

§50-4-1. Commencement of civil actions.

There shall be one form of civil action in magistrate court. Civil actions shall be commenced by the payment of the fees required by article three of this chapter and by providing any magistrate court clerk, magistrate court deputy clerk, or magistrate assistant with a concise statement, either oral or written, of the nature of the cause of action. Where such statement is filed by a commercial creditor, the statement shall include, but not be limited to, a setting forth of the amount of the original obligation, the portion thereof which constitutes principal, the portion thereof which represents interest, the date and amount of payments thereon, the amount, if any, credited for the sale of repossessed collateral, and the amount alleged to be due. The magistrate court clerk, the magistrate court deputy clerk, or magistrate assistant shall immediately prepare a summons in such form and containing such information as may be required by the rules of the Supreme Court of Appeals. The summons shall be dated the same day the request therefor is received and the appropriate fees received, and the action shall be deemed commenced as of that date. The magistrate assistant shall thereupon forward the matter to the magistrate court clerk together with any service of process fees which may have been collected.

Upon receipt of the matter by the magistrate court clerk, such clerk shall docket the same in a central docket, and shall sign the summons and forward it, together with any service of process fees, to the sheriff for service. Such clerk shall assign the action for trial in the manner as shall be prescribed by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, to promote and secure the convenient and expeditious transaction of the business of the court.

WV Legislature

§50-4-2. Commencement of criminal prosecutions.

Except where the provisions of this code or rule of the Supreme Court of Appeals permit the commencement of a criminal prosecution through the issuance of a citation, a criminal prosecution shall be commenced by the filing of a complaint in accordance with the requirements of rules of the Supreme Court of Appeals.

WV Legislature

§50-4-2a. Initial appearance and arraignment by video to be conducted by magistrate court wherein offense is charged; exceptions.

(a) Except as provided by the provisions of subsection (b) of this section, whenever a person already detained in a regional jail facility is served with a criminal complaint, the initial appearance or arraignment, if accomplished by the use of a video imaging system, shall to the extent practicable be before a magistrate of the charging jurisdiction. If such is not practicable, a magistrate of the jurisdiction in which the regional jail facility is located may preside over the proceeding.

(b) An order of the Supreme Court of Appeals authorizing a magistrate or magistrates to conduct pretrial proceedings by use of video imaging shall supercede the requirements set forth in subsection (a) of this section.

WV Legislature

§50-4-3. Appointment of counsel in criminal proceeding.

In any criminal proceeding in a magistrate court in which the applicable statutes authorize a sentence of confinement the magistrate shall at the time of the initial appearance advise a defendant of his right to counsel and his right to have counsel appointed if such defendant cannot afford to retain counsel. In the event a defendant requests that counsel be appointed and executes an affidavit that he is unable to afford counsel, the magistrate shall stay further proceedings and shall request the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, to appoint counsel. Such judge shall thereupon appoint counsel. If there is no judge sitting in the county at the time of the request, then the clerk of the circuit court shall appoint counsel from a list of attorneys in accordance with the rules established by such judge of the circuit court. Counsel shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty-nine of this code.

WV Legislature

§50-4-4. Long-arm jurisdiction; manner of service in civil cases.

Magistrate courts shall have long-arm jurisdiction as follows: Over domestic and foreign corporations as provided in section fifteen, article one, chapter thirty-one of this code; over nonresident holders of consumer instruments as provided in section one hundred thirty-seven, article two, chapter forty-six-a of this code; over domestic and foreign limited partnerships as provided in section four, article nine, chapter forty-seven of this code; over voluntary associations and business trusts as provided in section five, article nine-a, chapter forty-seven of this code; over nonresident motorists as provided in section thirty-one, article three, chapter fifty-six of this code; and over nonresidents with certain contacts with this state as provided in section thirty-three, article three, chapter fifty-six of this code.

Service of process in civil actions shall be made in the same manner as is provided for service of process in trial courts of record.

WV Legislature

§50-4-4a. Appearance in civil cases.

Any party to a civil action in a magistrate court may appear and conduct such action in person, by agent or by attorney. Appearance by an agent or attorney shall have the same effect as appearance by the party represented, and the appearance by an agent shall not constitute the unlawful practice of law. No magistrate may act as such agent or attorney.

WV Legislature

§50-4-5. Return date in civil action; setting of trial date; failure to appear or notify.

Except as may otherwise be provided by law, each summons in a civil action shall notify the defendant that he must appear within twenty days after service of the summons upon him or that he must otherwise notify the magistrate court by that time that he wishes to contest the matter.

If the magistrate court is notified by the defendant that he wishes to contest the matter a trial date shall be set in accordance with the supervisory rules of the Supreme Court of Appeals.

If no appearance or other notification is made within twenty days after the service of the summons on the defendant, or within such other time as may be provided by law, judgment by default may be entered in accordance with the provisions of section ten of this article.

At any trial in any matter involving unlawful entry and detainer and in the trial of any case in any way involving the possession, use or control of rental property, it is permissible for a party to plead, prove and obtain judgment for all rent due and owing the party.

WV Legislature

§50-4-6. Return date in criminal proceedings; setting trial date.

When a warrant has been duly executed or when a defendant appears in response to a summons, the defendant shall be notified of the return date set by the court. The defendant shall appear before the magistrate on or before the return date. In the event a trial or preliminary examination is not expressly waived by such defendant, the magistrate shall set a date for such trial or preliminary examination and shall notify all parties.

WV Legislature

§50-4-7. Disqualification of magistrate.

A motion for the disqualification of a magistrate in a magistrate court proceeding shall be filed in accordance with the requirements of the rules of the Supreme Court of Appeals.

WV Legislature

§50-4-8. Removal to circuit court.

At any time before trial in a civil action involving less than $5,000 the action may be removed to circuit court upon the concurrence of all parties and upon the payment of the circuit court filing fee. At any time before trial in a civil action involving $5,000 or more, any party may, upon payment of the circuit court filing fee, cause such action to be removed to the circuit court: Provided, That at any time before trial in any action for wrongful occupation or unlawful detainer involving $2,500 or more any party may, upon payment of the circuit court filing fee, cause such action to be removed to circuit court. All appropriate documents shall then be forwarded along with the fee to the clerk of the circuit court. The matter shall then be heard by the circuit court.

WV Legislature

§50-4-9. Counterclaim.

A defendant in a civil action may file a counterclaim and if such counterclaim arises from the same transaction or occurrence that is the subject matter of the initial claim they shall be tried together. The failure to institute a counterclaim permitted by this section shall not preclude the institution of an action on such claim at a later date. The adjudication of the original claim shall not constitute res judicata as to any such permitted counterclaim nor shall it act as an estoppel as to such permitted counterclaim.

WV Legislature

§50-4-10. Default judgment; confession of judgment.

(a) If a defendant in a civil action fails to appear or otherwise notify the magistrate court within the time limits prescribed by section five of this article that he wishes to contest the action, the magistrate may render judgment as justice may require as follows:

(1) The magistrate shall render judgment by default only upon affidavit or sworn testimony reflecting the nature of the claim, whether or not it is for a sum certain or for a sum which can by computation be made certain, the defendant's failure to appear or otherwise notify the court within the time limits prescribed by section five of this article that he wishes to contest the action and supporting the relief sought. In the event the plaintiff's claim is not for a sum certain or for a sum which can by computation be made certain, the court shall require such further proof by affidavit or sworn testimony as is necessary to determine the propriety of the relief sought.

(2)(A) No judgment by default shall be rendered against a person who is an infant, incompetent person or incarcerated convict unless such person is represented in the action by a guardian ad litem, guardian, committee, curator or other like fiduciary.

(B) No judgment by default may be rendered against a person in active military service of the United States who has not made an appearance unless the provisions of 50 App. U.S.C. §520 have been followed, including the appointment of an attorney upon motion of a plaintiff.

(b) Upon motion made by the defendant within twenty days after the date of such judgment, or, in the case of a person in the military service, within the time provided by 50 App. U.S.C. §520, the magistrate may, for good cause shown, set aside the judgment and set the matter for trial.

(c) If a defendant offers to confess judgment at any time, the magistrate shall take the same in writing and render judgment for the amount confessed plus costs. In the event the amount claimed by the plaintiff exceeds the amount confessed by the defendant the plaintiff may request that the matter be set for trial. If the plaintiff's recovery therein does not exceed the amount confessed, costs shall be assessed against the plaintiff.

WV Legislature

§50-4-11. Dismissal of actions for lack of jurisdiction.

If at any time a magistrate determines that an action involves a matter outside of or an amount in excess of the jurisdiction of the magistrate court, the action shall be dismissed without prejudice. Judgment shall be awarded against the plaintiff in such event for any costs incurred by defendant. A plaintiff may, at any time before such dismissal, forgive in writing any amounts which may be in excess of the monetary limitation of the court's jurisdiction and confer jurisdiction thereby.

WV Legislature

§50-4-12. Dismissal of actions for failure to appear, testify, etc.

A magistrate may render judgment against the plaintiff dismissing his action with prejudice to a new action and awarding costs to the defendant when (a) the plaintiff fails to appear and prosecute his action at the proper time for appearance; (b) the plaintiff fails or refuses to testify when properly required to do so; or (c) the plaintiff fails to give security for costs when properly required to do so. In cases (a) and (b) if the plaintiff shows cause why his action should not have been dismissed, the magistrate may set aside such judgment and continue the matter before him or may dismiss the action without prejudice.

A magistrate shall dismiss a claim without prejudice if the summons is defective or erroneous and cannot properly be amended.

A magistrate shall dismiss a claim without prejudice if the plaintiff requests such dismissal before trial.

The dismissal of a claim shall not affect the right of any party to proceed to trial upon a counterclaim.

WV Legislature

§50-4-13. Intercounty institution of civil actions.

A civil action may be instituted before a magistrate court clerk, magistrate court deputy clerk, or magistrate assistant in any county when the matter should be heard in another county. The clerk, deputy clerk, or magistrate assistant before whom such matter is instituted shall, in such event, forward all fees collected together with an appropriate statement of the matter to the magistrate court of the appropriate county. The clerk, deputy clerk, or magistrate assistant receiving such information and fees shall proceed with the matter as if it were actually instituted before him

WV Legislature