

# WEST VIRGINIA CODE: §50-5-8

## **§50-5-8. Trial by jury; trial to the court.**

(a) A party to a civil action in magistrate court has the right to elect that the matter be tried with a jury when the amount in controversy exceeds \$20 or involves possession of real estate. The election must be made in writing at any time after the commencement of the action and not later than twenty days after the service of any first timely filed answer to the complaint. Failure to elect within such time constitutes a waiver of the right to trial by jury.

(b) A defendant in any criminal trial for a misdemeanor offense triable before a magistrate has the right to demand that the matter be tried with a jury, and the defendant shall be advised of the right to trial by jury in writing. A demand by the defendant for a jury trial must be made in writing not later than twenty days after the defendant's initial appearance before the magistrate: Provided, That in the case of an indigent for whom counsel is to be appointed, the twenty-day period shall not commence to run until counsel is appointed. Failure to demand within such time constitutes a waiver of the right to trial by jury.

(c) If a jury trial is elected or demanded to determine the issues of fact, the election or demand may not be withdrawn over the objection of any party appearing at the trial, and the magistrate shall cause a jury to be selected, empaneled and sworn which will hear the parties and their evidence, receive the instructions of the court relative to the law involved, and, after deliberation, deliver a verdict: Provided, That in a criminal proceeding, any such verdict must be unanimous.

(d) A magistrate court jury shall consist of six persons, to be selected from a panel of ten persons. The selection and summoning of jurors shall be conducted in accordance with the provisions of article one, chapter fifty-two of this code and the supervisory rules of the Supreme Court of Appeals. Jurors shall be paid by the state in accordance with such rules.

(e) For purposes of appeal, when a jury trial is had in magistrate court, the magistrate court shall be a court of limited record. Trials before a magistrate when a jury is empaneled shall be recorded electronically. A magnetic tape or other electronic recording medium on which a trial is recorded shall be indexed and securely preserved by the magistrate court clerk. When requested by either of the parties in a civil action, by the state or the defendant in a criminal proceeding, or by any interested person, the magistrate court clerk shall provide a duplicate copy of the tape or other electronic recording medium of each trial held. For evidentiary purposes, a duplicate of such electronic recording prepared by the magistrate court clerk shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia rules of evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule. Unless a party requesting the copy has been permitted to proceed in a civil action without prepayment in accordance with the provisions of section one, article two, chapter fifty-nine of this code, or

in a criminal proceeding as an indigent, the party shall pay to the magistrate court an amount equal to the actual cost of the tape or other medium or the sum of \$5, whichever is greater.

(f) If neither party to a civil action demands a jury trial, or if the defendant in a criminal proceeding waives the right to trial by jury, the matter shall be tried by the magistrate sitting without a jury. For purposes of appeal, when a nonjury trial is had in magistrate court, the magistrate court shall not be a court of limited record and the magistrate shall not electronically record the action or proceeding.

(g) The designation in this section of magistrate courts as "courts of limited record" shall not be construed to give standing or eligibility to magistrates to participate or be included in the retirement system for judges of courts of record established under the provisions of article nine, chapter fifty-one of this code.