WEST VIRGINIA CODE CHAPTER 50 ARTICLE 5

WV Legislature

§50-5-1. General rules of procedure.

Except as the same may be inconsistent with the provisions of this chapter or with rules adopted by the Supreme Court of Appeals, the provisions of law relating to trials and admissibility of evidence in circuit courts shall apply to trials in magistrate courts.

WV Legislature

§50-5-2. Continuances.

A magistrate may continue the holding of a trial or hearing as provided in the supervisory rules of the Supreme Court of Appeals. In criminal proceedings when the defendant is in custody, the state shall not have the right to a continuance but may be granted a continuance for no more than five days if good cause is shown. In criminal proceedings when the defendant is in custody, the magistrate may continue the matter no more than once on his own motion over the objection of the defendant and such continuance over the objection of the defendant shall not be for more than two days.

WV Legislature

§50-5-3. Appointment of guardian ad litem.

No infant, incompetent person or incarcerated convict shall proceed or be proceeded against in a civil action in magistrate court unless the provisions of this section are complied with.

Whenever an infant, incompetent person or incarcerated convict has a duly qualified representative, such as a guardian, curator, committee or other like fiduciary, such representative may sue or defend on behalf of the infant, incompetent person or convict. If a person under any disability does not have a duly qualified representative he may sue by his next friend. The magistrate shall appoint some suitable person who shall not be required to be an attorney-at-law as guardian ad litem for an infant, incompetent person or incarcerated convict not otherwise represented in an action.

WV Legislature

§50-5-4. Subpoenas.

A magistrate, magistrate court clerk, magistrate court deputy clerk or magistrate assistant shall, upon the request of any party, issue a subpoena compelling the attendance and testimony of a witness or a subpoena duces tecum compelling the production of some writing or other object. The court shall require the sheriff to enforce such subpoena or subpoena duces tecum and may punish the willful disregard thereof by finding such person in contempt in accordance with the provisions of section eleven of this article. Witness fees and mileage shall be calculated and paid as in the circuit court.

WV Legislature

§50-5-5. Privileged communications; persons incompetent to testify.

No person shall be compelled to testify at any proceeding in magistrate court as to any communication privileged by law. No person shall be compelled to testify as to any matter as to which he is incompetent by law to testify.

WV Legislature

§50-5-6. Evidentiary depositions.

In a civil action the evidentiary deposition of any witness residing out of the county or unable to attend court may be taken for use at the trial by any party upon reasonable notice to all other parties.

WV Legislature

§50-5-7. Right to trial in criminal cases.

Every defendant charged in a magistrate court in a criminal proceeding which is within the jurisdiction of the court shall have the right to a trial on the merits in the magistrate court.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§50-5-9. Verdict and sentence.

(a) In every criminal case in which the defendant is in custody, a magistrate shall render a finding of guilty or not guilty immediately upon the conclusion of the trial or hearing. In all other proceedings, a magistrate shall render a finding of guilty or not guilty no later than the next succeeding day after the conclusion of the trial or hearing, excluding Saturdays, Sundays and legal holidays.

(b)(1) Sentence shall be imposed in open court within sixty days from the date of the finding of guilt except where sentence is required to be imposed within a lesser period under the provisions of subdivision (2) of this subsection.

(2) Sentence shall be imposed in open court upon a defendant in custody on or before the date of the expiration of the time equivalent to the maximum sentence that may be imposed for the offense. In determining the date, the magistrate shall include in the computation any credit to which the defendant is entitled for the time of confinement spent by the defendant in jail awaiting trial and sentencing.

WV Legislature

§50-5-10. Setting aside judgment.

Upon motion made within twenty days after judgment by any party in a civil action or by the defendant in a criminal action, the magistrate who heard the matter or his successor or designee may, upon good cause shown, set aside judgment and order a new trial. All parties shall be given notice of such motion and an opportunity to be heard.

WV Legislature

§50-5-11. Contempt.

A magistrate may punish for contempt of court a person guilty of any of the following acts:

(a) Contemptuous or insolent behavior toward such magistrate while engaged in the trial of a case or in any other judicial proceeding;

(b) Any breach of the peace, willful disturbance, or indecent conduct in the presence of such magistrate while so engaged, or so near as to obstruct or interrupt the proceedings;

(c) Violence or threats of violence to such magistrate, or any officer, juror, witness, or party going to, attending, or returning from, any judicial proceeding before the court with respect to anything done or to be done in the course of such proceeding;

(d) Flagrant misbehavior of any officer of the county acting in his official capacity with respect to any action or judicial proceeding had or pending before the court, or any process, judgment, order or notice therein; or

(e) Willful resistance by an officer of the court, juror, witness, party or other person to any lawful process or order of the court.

A magistrate may, if necessary, issue a warrant of arrest for such person, who shall be given an opportunity to be heard. In the event such person is adjudged guilty of contempt, the person may be fined not more than $50 for the first offense. For a second offense pertaining to the same matter the person may be fined not more than $100. For the third or any subsequent offense pertaining to the same matter the person may be fined not more than $100, or imprisoned in the county jail not more than ten days, or both fined and imprisoned.

An appeal to the circuit court of such conviction shall lie as in criminal cases.

WV Legislature

§50-5-12. Appeals in civil cases.

(a) Any person may appeal the judgment of a magistrate court to the circuit court as a matter of right by requesting such appeal not later than twenty days after such judgment is rendered or not later than twenty days after a decision is rendered upon a motion to set aside such judgment. Such person shall be required to post a bond with good security in a reasonable amount not less than the reasonable court costs of the appeal nor more than the sum of the judgment and the reasonable court costs of the appeal, upon the condition that such person will satisfy the judgment and any court costs which may be rendered against him on any such appeal. The bond and the circuit court filing fee shall be collected by the magistrate court clerk or deputy clerk at the time the appeal is filed, and be forwarded to the clerk of the circuit court along with other appropriate documents regarding the appeal. No bond shall be required of any governmental agency or authority or of a person who has been permitted to proceed without prepayment in accordance with the provisions of section one, article two, chapter fifty-nine of this code. If an appeal is not perfected within such twenty-day period, the circuit court of the county may, not later than ninety days after the date of judgment, grant an appeal upon a showing of good cause why such appeal was not perfected within such twenty-day period. The filing or granting of an appeal shall automatically stay further proceedings to enforce the judgment.

(b) In the case of an appeal of a civil action tried before a jury, the hearing on the appeal before the circuit court shall be a hearing on the record. In the case of an appeal of a civil action tried before the magistrate without a jury, the hearing on the appeal before the circuit court shall be a trial de novo, triable to the court, without a jury.

(c) In the case of an appeal of a civil action tried before a jury, the following provisions shall apply:

(1) To prepare the record for appeal, the party seeking the appeal shall file with the circuit court a petition setting forth the grounds relied upon, and designating those portions of the testimony or other matters reflected in the recording, if any, which he or she will rely upon in prosecuting the appeal. The responding party or parties may designate additional portions of the recording. Unless otherwise ordered by the circuit court, the preparation of a transcript of the designated portions of the recording and the payment of the cost thereof shall be the responsibility of the party requesting the transcript: Provided, That a party may be permitted to proceed without prepayment in accordance with the provisions of section one, article two, chapter fifty-nine of this code. The circuit court may, by general order or by order entered in a specific case, dispense with preparation of a transcript and review the designated portions of the recording aurally.

(2) The designated portions of the recording or the transcript thereof, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal and shall be made available to the parties.

(3) After the record for appeal is filed in the office of the circuit clerk, the court may, in its

discretion, schedule the matter for oral argument or require the parties to submit written memoranda of law. The circuit court shall consider whether the judgment or order of the magistrate is:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

(B) Contrary to Constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

(D) Without observance of procedure required by law;

(E) Unsupported by substantial evidence; or

(F) Unwarranted by the facts.

(4) The circuit court may take any of the following actions which may be necessary to dispose of the questions presented on appeal, with justice to the parties:

(A) Dismiss the appeal;

(B) Reverse, affirm, or modify the judgment or order being appealed;

(C) Remand the case for further proceedings, with instructions to the magistrate;

(D) Finally dispose of the action by entering judgment on appeal; or

(E) Retain the matter and retry the issues of fact, or some part or portions thereof, as may be required by the provisions of subdivision (5) of this subsection.

(5) If the circuit court finds that a record for appeal is deficient as to matters which might be affected by evidence not considered or inadequately developed, the court may proceed to take such evidence and make independent findings of fact to the extent that questions of fact and law may merge in determining whether the evidence was such, as a matter of law, as to require a particular finding. If the party appealing the judgment is also a party who elected to try the action before a jury in the magistrate court, and if the circuit court finds that the proceedings below were subject to error to the extent that the party was effectively denied a jury trial, the circuit court may, upon motion of the party, empanel a jury to reexamine the issues of fact, or some part or portions thereof.

(6) The review by the court and a decision on the appeal shall be completed within ninety days after the appeal is regularly placed upon the docket of the circuit court.

(d) In the case of an appeal of a civil action tried without a jury, the following provisions shall apply:

WV Legislature

(1) The party seeking the appeal shall file with the circuit court a petition for appeal and trial de novo. The exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal and shall be made available to the parties.

(2) If, after the appeal is regularly placed upon the docket of the circuit court, neither party brings the matter on to hearing before the end of the second term thereafter at which it is called for trial, unless good cause for a continuance is shown, the appeal shall be considered as abandoned and shall be dismissed at the cost of the appellant unless sufficient cause is shown for a further continuance and the judgment of the magistrate court shall stand. No appeal which shall have been so dismissed by the circuit court shall be reinstated after the close of the next regular term after such dismissal.

WV Legislature

§50-5-13. Appeals in criminal cases.

(a) Any person convicted of an offense in a magistrate court may appeal such conviction to circuit court as a matter of right by requesting such appeal within twenty days after the sentencing for such conviction. The magistrate may require the posting of bond with good security conditioned upon the appearance of the defendant as required in circuit court, but such bond may not exceed the maximum amount of any fine which could be imposed for the offense. The bond may be upon the defendant's own recognizance. If no appeal is perfected within such twenty-day period, the circuit court may, not later than ninety days after the sentencing, grant an appeal upon a showing of good cause why such appeal was not filed within the twenty-day period. The filing or granting of an appeal shall automatically stay the sentence of the magistrate.

(b) In the case of an appeal of a criminal proceeding tried before a jury, the hearing on the appeal before the circuit court shall be a hearing on the record. In the case of an appeal of a criminal proceeding tried before the magistrate without a jury, the hearing on the appeal before the circuit court shall be a trial de novo, triable to the court, without a jury.

(c) In the case of an appeal of a criminal proceeding tried before a jury, the following provisions shall apply:

(1) To prepare the record for appeal, the defendant shall file with the circuit court a petition setting forth the grounds relied upon, and designating those portions of the testimony or other matters reflected in the recording, if any, which he or she will rely upon in prosecuting the appeal. The prosecuting attorney may designate additional portions of the recording. Unless otherwise ordered by the circuit court, the preparation of a transcript of the portions of the recording designated by the defendant, and the payment of the cost thereof shall be the responsibility of the defendant: Provided, That such costs may be waived due to the defendant's indigency. The circuit court may, by general order or by order entered in a specific case, dispense with preparation of a transcript and review the designated portions of the recording aurally.

(2) The designated portions of the recording or the transcript thereof, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal, and shall be made available to the defendant and the prosecuting attorney.

(3) After the record for appeal is filed in the office of the circuit clerk, the court may, in its discretion, schedule the matter for oral argument or require the parties to submit written memoranda of law. The circuit court shall consider whether the judgment or order of the magistrate is:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

www.legislature

(B) Contrary to Constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

(D) Without observance of procedure required by law;

(E) Unsupported by substantial evidence; or

(F) Unwarranted by the facts.

(4) The circuit court may take any of the following actions which may be necessary to dispose of the questions presented on appeal, with justice to the defendant and the state:

(A) Dismiss the appeal;

(B) Reverse, affirm, or modify the judgment or order being appealed;

(C) Remand the case for further proceedings, with instructions to the magistrate;

(D) Finally dispose of the action by entering judgment on appeal; or

(E) Retain the matter and retry the issues of fact, or some part or portions thereof, as may be required by the provisions of subdivision (5) of this subsection.

(5) If the circuit court finds that a record for appeal is deficient as to matters which might be affected by evidence not considered or inadequately developed, the court may proceed to take such evidence and make independent findings of fact to the extent that questions of fact and law may merge in determining whether the evidence was such, as a matter of law, as to require a particular finding. If the party appealing the judgment is also a party who elected to try the action before a jury in the magistrate court, and if the circuit court finds that the proceedings below were subject to error to the extent that the party was effectively denied a jury trial, the circuit court may, upon motion of the party, empanel a jury to reexamine the issues of fact, or some part or portions thereof.

(6) The review by the court and a decision on the appeal shall be completed within ninety days after the appeal is regularly placed upon the docket of the circuit court.

(d) In the case of an appeal of a criminal proceeding tried without a jury, the party seeking the appeal shall file with the circuit court a petition for appeal and trial de novo. The exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal and shall be made available to the parties.

(e) Notwithstanding any other provision of this code to the contrary, there shall be no appeal from a plea of guilty where the defendant was represented by counsel at the time the plea was entered: Provided, That the defendant shall have an appeal from a plea of guilty where an extraordinary remedy would lie or where the magistrate court lacked jurisdiction.

WV Legislature

§50-5-14. Pleas in certain cases.

Except for violations of section one or two, article five, chapter seventeen-c of this code, and except for violations of any of the provisions of chapter twenty of this code which may subject the person charged therewith to confinement, any person charged with a violation of said chapter seventeen-c or said chapter twenty may plead guilty or nolo contendere thereto by appearing before a magistrate, magistrate court clerk, magistrate court deputy clerk or magistrate assistant in a county other than the county in which he is charged and pay an appropriate fine and costs as advised by such magistrate clerk or deputy clerk. The clerk, deputy clerk or magistrate assistant shall immediately forward the same to the appropriate magistrate court. The magistrate court may either accept or reject the same. In the event the same is rejected the plea shall be considered withdrawn and all moneys paid shall be returned and the matter shall proceed as if no such offer of plea had been made.

WV Legislature

§50-5-14a. Disposition without court appearance.

Tender of payment by a person charged by citation of the assessed fine and costs shall constitute a plea of no contest to such citation and signing of the citation by the person charged shall not be required for entry of a judgment of conviction.

WV Legislature

§50-5-15. Failure of defendant to appear at criminal trial or other criminal hearing; compulsion of appearance.

Whenever any defendant, properly notified, fails to appear for a criminal trial or other criminal hearing before a magistrate, the magistrate may issue a capias to compel that person to appear.

WV Legislature