WEST VIRGINIA CODE CHAPTER 50

WV Legislature

§50-1-1. Magistrate court created.

There is hereby created in each county of this state a magistrate court with such numbers of magistrates for each court as are hereafter provided. There shall be elected by the voters of each county, at the general election to be held in 1976, and in every fourth year thereafter, such number of magistrates as is provided in section two of this article. The filing fee for the office of magistrate shall be one percent of the annual salary. The term of magistrates shall be for four years and shall begin on January 1, of the year following the year of election.

Effective with the primary election of 2016, all elections for magistrates will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for magistrates and all elections for magistrates are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for magistrate shall be omitted.

WV Legislature

§50-1-2. Number of magistrates.

(a) The number of magistrates to be elected in each county of this state shall be determined in accordance with the provisions of this section.

(b) Beginning on the effective date of this subsection and until December 31, 2024, the number of magistrates in each county of the state shall be as follows:

(1) Barbour County shall have two magistrates;

(2) Berkeley County shall have six magistrates;

(3) Boone County shall have two magistrates;

(4) Braxton County shall have two magistrates;

(5) Brooke County shall have two magistrates;

(6) Cabell County shall have seven magistrates;

(7) Calhoun County shall have two magistrates;

(8) Clay County shall have two magistrates;

(9) Doddridge County shall have two magistrates;

(10) Fayette County shall have four magistrates;

(11) Gilmer County shall have two magistrates;

(12) Grant County shall have two magistrates;

(13) Greenbrier County shall have three magistrates;

(14) Hampshire County shall have two magistrates;

(15) Hancock County shall have three magistrates;

(16) Hardy County shall have two magistrates;

(17) Harrison County shall have five magistrates;

(18) Jackson County shall have two magistrates;

(19) Jefferson County shall have three magistrates;

(20) Kanawha County shall have 10 magistrates;

WV Legislature

(21) Lewis County shall have two magistrates;

(22) Lincoln County shall have two magistrates;

(23) Logan County shall have three magistrates;

(24) Marion County shall have four magistrates;

(25) Marshall County shall have three magistrates;

(26) Mason County shall have two magistrates;

(27) McDowell County shall have three magistrates;

(28) Mercer County shall have five magistrates;

(29) Mineral County shall have two magistrates;

(30) Mingo County shall have three magistrates;

(31) Monongalia County shall have four magistrates: *Provided*, That effective July 1, 2023, Monongalia County shall have five magistrates, and the initial appointment for the additional magistrate shall be made in accordance with the provisions of §50-1-6 of this code;

(32) Monroe County shall have two magistrates;

(33) Morgan County shall have two magistrates;

(34) Nicholas County shall have three magistrates;

(35) Ohio County shall have four magistrates;

(36) Pendleton County shall have two magistrates;

(37) Pleasants County shall have two magistrates;

(38) Pocahontas County shall have two magistrates;

(39) Preston County shall have three magistrates;

(40) Putnam County shall have three magistrates;

(41) Raleigh County shall have five magistrates;

(42) Randolph County shall have three magistrates;

(43) Ritchie County shall have two magistrates;

WV Legislature

(44) Roane County shall have two magistrates;

(45) Summers County shall have two magistrates;

(46) Taylor County shall have two magistrates;

(47) Tucker County shall have two magistrates;

(48) Tyler County shall have two magistrates;

(49) Upshur County shall have two magistrates;

(50) Wayne County shall have three magistrates;

(51) Webster County shall have two magistrates;

(52) Wetzel County shall have two magistrates;

(53) Wirt County shall have two magistrates;

(54) Wood County shall have four magistrates; and

(55) Wyoming County shall have three magistrates.

(c) Beginning on January 1, 2025, the number of magistrates in each county of the state shall be as follows:

(1) Barbour County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(2) Berkeley County shall have seven magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(3) Boone County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(4) Braxton County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(5) Brooke County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(6) Cabell County shall have seven magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(7) Calhoun County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

WV Legislature

(8) Clay County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(9) Doddridge County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(10) Fayette County shall have four magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(11) Gilmer County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(12) Grant County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(13) Greenbrier County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(14) Hampshire County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(15) Hancock County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(16) Hardy County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(17) Harrison County shall have five magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(18) Jackson County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(19) Jefferson County shall have four magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(20) Kanawha County shall have 13 magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(21) Lewis County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(22) Lincoln County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(23) Logan County shall have four magistrates, who shall be elected at the regularly

WV Legislature

scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(24) Marion County shall have four magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(25) Marshall County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(26) Mason County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(27) McDowell County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(28) Mercer County shall have five magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(29) Mineral County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(30) Mingo County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(31) Monongalia County shall have six magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(32) Monroe County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(33) Morgan County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(34) Nicholas County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(35) Ohio County shall have four magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(36) Pendleton County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(37) Pleasants County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(38) Pocahontas County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

WV Legislature

(39) Preston County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(40) Putnam County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(41) Raleigh County shall have six magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(42) Randolph County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(43) Ritchie County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(44) Roane County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(45) Summers County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(46) Taylor County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(47) Tucker County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(48) Tyler County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(49) Upshur County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(50) Wayne County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(51) Webster County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(52) Wetzel County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(53) Wirt County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(54) Wood County shall have five magistrates, who shall be elected at the regularly

WV Legislature

scheduled election(s) to be held in the year 2024, and every fourth year thereafter; and

(55) Wyoming County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter.

(d) In the year 2026, the Supreme Court of Appeals shall conduct or otherwise arrange for a caseload study of the magistrate courts of this state for the purpose of determining how many magistrates are needed in each county. Based upon the results of this study and upon consideration of county population data from the most recent decennial census, the Supreme Court of Appeals shall enter an administrative order on or before January 5, 2027, containing the Supreme Court of Appeal's recommendations as to the number of magistrates who are needed in each of the state's 55 counties for the four-year terms of office to be filled by election in the year 2028. Attested copies of the administrative order shall be provided to the President of the West Virginia Senate, the Clerk of the Senate, the Clerk and the Speaker of the West Virginia House of Delegates, and the West Virginia Secretary of State.

(e) The West Virginia Legislature may reject the allocation of magistrates recommended by the Supreme Court of Appeals in its administrative order entered for the judicial elections to be held in 2028, and allocate magistrates for the four-year terms commencing in January of 2029, and serving through December of 2032, as the Legislature may choose by enactment of a bill containing such an allocation.

(f) If the Legislature does not enact a different allocation of the magistrates to be elected in 2028, pursuant to subsection (e) of this section, then the administrative order of the Supreme Court of Appeals required by subsection (d) of this section shall become the certification to the ballot commissioners of each county in this state of the number of magistrates to be elected in each county of this state at the judicial elections to be held concurrently with the primary election.

(g) The process set forth in this section shall be repeated every four years in the first and second years immediately preceding the quadrennial election of magistrates.

www.LegisLature

§50-1-2a. Addition of magistrate in Berkeley County.

(a) The Legislature hereby finds that, according to the statistics compiled by the administrative office of the Supreme Court of Appeals of West Virginia, the caseload in the magistrate court of Berkeley County in the year 2020 was as follows:

Civil cases: 4,139

Criminal cases: 7,782

Total: 11,921

With five elected magistrates in Berkeley County, each magistrate had a caseload of 2,384 cases in 2020. This caseload per magistrate is substantially higher than the statewide average total caseload of 957 cases per magistrate and is higher than the caseload per magistrate in any other county in West Virginia in 2020.

(b) Notwithstanding any other provisions of this article to the contrary, the allowable number of magistrates serving in the county of Berkeley as of March 1, 2022, shall be increased by one, effective July 1, 2022. The initial appointment for the position shall be made in accordance with the provisions of §50-1-6 of this code.

WV Legislature

§50-1-3. Salaries of magistrates.

Notwithstanding any provisions of this code to the contrary, beginning July 1, 2021, the annual salary of a magistrate shall be $60,375, and beginning July 1, 2022, the annual salary of a magistrate shall be $63,250. Beginning July 1, 2027, the annual salary of a magistrate shall be $70,000.

WV Legislature

§50-1-4. Qualifications of magistrates; training; oath; continuing education; time devoted to public duties.

Each magistrate shall be at least twenty-one years of age, shall have a high school education or its equivalent, shall not have been convicted of any felony or any misdemeanor involving moral turpitude and shall reside in the county of his election. No magistrate shall be a member of the immediate family of any other magistrate in the county. In the event more than one member of an immediate family shall be elected in a county, only the member receiving the highest number of votes shall be eligible to serve. For purposes of this section, immediate family means the relationship of mother, father, sister, brother, child or spouse. Notwithstanding the foregoing provisions of this section, each person who held the office of justice of the peace on November 5, 1974, and who served in or performed the functions of such office for at least one year immediately prior thereto shall be deemed qualified to run for the office of magistrate in the county of his residence.

No person shall assume the duties of magistrate unless he shall have first attended and completed a course of instruction in rudimentary principles of law and procedure which shall be given in accordance with the supervisory rules of the Supreme Court of Appeals.

All magistrates shall be required to attend such other courses of continuing educational instruction as may be required by supervisory rule of the Supreme Court of Appeals. Failure to attend such courses of continuing educational instruction without good cause shall constitute neglect of duty. Such courses shall be provided at least once every other year. Persons attending such courses outside of the county of their residence shall be reimbursed by the state for expenses actually incurred in accordance with the supervisory rules of the Supreme Court of Appeals.

Each magistrate shall, before assuming the duties of office, take an oath of office to be administered by the circuit judge of the county, or the chief judge thereof if there is more than one judge of the circuit court. Each magistrate shall maintain the qualifications for office at all times.

Each magistrate who serves five thousand or less in population shall devote such time to his public duties as shall be required by rule or regulation of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. Each magistrate who serves more than five thousand in population shall devote full time to his public duties. As nearly as practicable, the workload and the total number of hours required shall be divided evenly among the magistrates in a county by such judge.

WV Legislature

§50-1-5. Removal from office; disciplinary procedures.

A magistrate may be removed from office in the manner provided in section seven, article six, chapter six of this code. In addition to the grounds for removal enumerated in section three, article six, chapter six of this code, a magistrate may be removed from office for conviction of a felony, for conviction of a misdemeanor involving moral turpitude or a duty of the office, or for willful violation of this chapter or any rule, regulation or order provided for in this chapter. In addition to other methods provided by law, removal proceedings may be initiated upon the motion of a judge of the circuit court of the county.

A magistrate may be censured or temporarily suspended in accordance with the rules of the Supreme Court of Appeals.

WV Legislature

§50-1-6. Vacancy in office of magistrate.

(a) Subject to the provisions of §3-10-1 of this code, when a vacancy occurs in the office of magistrate, or upon the formal announcement by letter to the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, of an upcoming resignation or retirement that will result in the occurrence of a vacancy in the office of magistrate, including resignation of a magistrate-elect following the election of such magistrate-elect but prior to the magistrate-elect taking office in the term for which he or she has most recently been elected, such judge or chief judge shall fill the same by appointment.

(b) At a nonpartisan judicial election in which a magistrate is elected for an unexpired term, the circuit judge, or the chief judge thereof if there is more than one judge of the circuit court, shall cause a notice of such election to be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, and the publication area for such publication shall be the county involved.

WV Legislature

§50-1-6a. Temporary appointment of retired magistrates.

(a) The West Virginia Supreme Court of Appeals is authorized and empowered to create a panel of senior magistrates to consist of, and to utilize the talent and experience of, retired magistrates of this state.

(b) Senior magistrates recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed $200 for each day actually served: Provided, That the combined total of per diem compensation and retirement benefits paid to a senior magistrate during a single calendar year may not exceed the annual salary of a sitting magistrate, except as set forth in subsection (c) of this section.

(c) Notwithstanding subsection (b) of this section, for purposes of maintaining magisterial efficacy and continuity of magisterial decision making, a senior magistrate may continue to receive per diem compensation after the combined total of per diem compensation and retirement benefits paid to the senior magistrate during that calendar year exceeds the annual salary of a sitting magistrate if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying there are certain extraordinary circumstances involving the necessary absence of a sitting magistrate because of a protracted, but temporary, illness or medical condition or a lengthy suspension which necessitate the extended assignment of the senior magistrate. Immediately upon entering such an order, the chief justice shall submit copies of the order to the State Auditor and the State Treasurer.

(d) In addition to the compensation authorized by this section, senior magistrates recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

WV Legislature

§50-1-7. Chief magistrates; administrative responsibility; additional duties.

The judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, may appoint one of the magistrates, to serve at the will and pleasure of such circuit court judge, as the chief magistrate of the county. The chief magistrate, if there is one, shall be responsible for all of the administrative functions required of the magistrate court in each county by this code and as required by rules and regulations of the Supreme Court of Appeals. These functions shall include, but not be limited to, supervising the circuit clerk or magistrate court clerk in the establishment and maintenance of a centralized docketing system, submitting all reports required by law and promptly notifying such circuit court judge that additional magistrates are required to handle the cases then pending in the magistrate court of said county. Chief magistrates shall have the additional duties of acting as liaison between the magistrate court and the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, and such other additional duties as may be assigned by such judge.

WV Legislature

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

(a) In each county having three or more magistrates, the judge of the circuit court or the chief judge of the circuit court, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties the judge may appoint a magistrate court clerk or may, by rule, require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event the circuit court clerk is entitled to additional compensation in the amount of $2,500 per year. The magistrate court clerk serves at the will and pleasure of the circuit judge.

(b) Magistrate court clerks shall be paid at least twice per month by the state. The annual salary of all magistrate court clerks is $52,296. Beginning July 1, 2023, the annual salary of a magistrate court clerk shall be $54,596. Magistrate court clerks may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase, implemented after July 1, 2023.

(c) In addition to other duties that may be imposed by the provisions of this chapter or by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court, it is the duty of the magistrate court clerk to establish and maintain appropriate dockets and records in a centralized system for the magistrate court, to assist in the preparation of the reports required of the court and to carry out on behalf of the magistrates or chief magistrate if a chief magistrate is appointed, the administrative duties of the court.

(d) The magistrate court clerk, or if there is no magistrate court clerk in the county, the clerk of the circuit court, may issue all manner of civil process and require the enforcement of subpoenas and subpoenas duces tecum in magistrate court.

WV Legislature

§50-1-9. Magistrate assistants; salary; duties.

(a) In each county there shall be at least one magistrate assistant for each magistrate; however, the Supreme Court of Appeals may authorize additional magistrate assistants if the workload of a county's magistrate court requires extra staff support. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he or she shall serve. If more than one magistrate assistant per magistrate is approved by the Supreme Court of Appeals, then the chief magistrate, or chief circuit judge if no chief magistrate is designated, shall appoint, supervise, and assign job duties for any additional magistrate assistant as needed for that county. The assistant shall not be a member of the immediate family of any magistrate and shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the State of West Virginia. For the purpose of this section, "immediate family" means the relationships of mother, father, sister, brother, child, or spouse.

(b) A magistrate assistant shall have the duties, clerical or otherwise, assigned by the magistrate and prescribed by the rules of the Supreme Court of Appeals or the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and are accountable to the magistrate court clerks with respect to the following duties:

(1) The preparation of summons in civil actions;

(2) The assignment of civil actions to the various magistrates;

(3) The collection of all costs, fees, fines, forfeitures, and penalties which are payable to the court;

(4) The submission of moneys, along with an accounting of the moneys, to appropriate authorities as provided by law;

(5) The daily disposition of closed files which are to be located in the magistrate clerk's office;

(6) All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the Supreme Court of Appeals, the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court;

(7) All duties relating to the notification, certification, and payment of jurors serving pursuant to the terms of this chapter; and

(8) All other duties or responsibilities whereby the magistrate assistant is accountable to the magistrate court clerk as determined by the magistrate.

(c) Magistrate assistants shall be paid at least twice per month by the state. The annual

WV Legislature

salary of all magistrate assistants is $46,932. Beginning July 1, 2023, the annual salary of a magistrate assistant shall be $49,232. Magistrate assistants may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023.

WV Legislature

§50-1-9a. Magistrate court deputy clerks; duties; salary.

(a) Whenever required by workload and upon the recommendation of the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, the Supreme Court of Appeals may provide by rule for the appointment of magistrate court deputy clerks. The magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, to serve at his or her will and pleasure under the immediate supervision of the magistrate court clerk.

(b) Magistrate court deputy clerks shall have the duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the Supreme Court of Appeals, the judge of the circuit court, or the chief judge of the circuit court, if there is more than one judge of the circuit court. Magistrate court deputy clerks may also exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by the magistrate court clerk.

(c) A magistrate court deputy clerk may not be an immediate family member of any magistrate, magistrate court clerk, magistrate assistant, or judge of the circuit court within the same county; may not have been convicted of a felony or any misdemeanor involving moral turpitude; and must reside in this state. For purposes of this subsection, "immediate family member" means a mother, father, sister, brother, child, or spouse.

(d) Magistrate court deputy clerks shall be paid at least twice per month by the state. The annual salary of all magistrate court deputy clerks is $46,932. Beginning July 1, 2023, the annual salary of a magistrate court deputy clerk shall be $49,232. Magistrate court deputy clerks may receive any general salary increase granted to state employees whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase implemented after July 1, 2023.

WV Legislature

§50-1-9b. Appointment of senior magistrate court clerks.

The West Virginia Supreme Court of Appeals is authorized to create a panel of senior magistrate court clerks to utilize the talent and experience of former magistrate court clerks of this state. The Supreme Court of Appeals shall promulgate rules providing for senior magistrate court clerks to be assigned duties as needed to serve: (1) In the place of magistrate court clerks who are on authorized leave or are otherwise unavailable; or (2) while there is a vacancy in a magistrate court clerk's office. The Supreme Court of Appeals shall further promulgate rules to provide for: (1) Reimbursement of travel and other necessary expenses actually incurred while the senior clerk is serving outside the county of his or her residence; and (2) reasonable compensation on a per diem basis: Provided, That the per diem and retirement compensation of a senior magistrate court clerk may not exceed the salary of the magistrate court clerk in whose place the senior clerk is serving.

WV Legislature

§50-1-9c. Additional magistrate court support staff; duties; salary.

The Supreme Court of Appeals is authorized to create additional classifications of support staff that it deems necessary to adequately and efficiently staff the magistrate courts of this state, including, but not limited to cashiers, data entry clerks, and deputy magistrate assistants. The Supreme Court of Appeals may determine the authority to hire and terminate, supervise, and assign job duties for these positions pursuant to its own employment rules, policies, and procedures. The annual salary of additional support staff authorized by this section shall not exceed the regular annual salary of a magistrate assistant and shall be paid by the state on the same basis and in the same amounts established for magistrate assistants in each county, as provided in §50-1-9 of this code.

WV Legislature

§50-1-10. Clerks, deputy clerks and magistrate assistants to take oath and post bond.

Each magistrate court clerk, magistrate court deputy clerk, and magistrate assistant, shall take an oath of office and shall post a bond in the penalty of $25,000 with sufficient surety approved by the administrative director of the Supreme Court of Appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, which bond shall be conditioned upon the faithful performance of the duties of the office. The state shall pay the cost of such bond and the administrative director of the Supreme Court of Appeals may obtain, in lieu of individual bonds, a bond including more than one magistrate court clerk, magistrate court deputy clerk or magistrate assistant.

WV Legislature

§50-1-11. Offices for magistrates; location; expenses; copy of state code.

Subject to the rules of the Supreme Court of Appeals, the location of offices for magistrates shall be determined by order of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. When required by geography or population dispersion and in order to make such offices accessible to the public, an order may require more than one location for each magistrate. As near as practicable within a county, all office accommodations shall be comparable. All expenses of acquiring or renting offices and utility and telephone expenses shall be paid by the county. All other expenses, including, but not limited to, expenses for furniture, equipment and supplies, shall be paid by the state. The administrative director of the Supreme Court of Appeals shall supply each magistrate with a current copy of the West Virginia code which shall remain the property of the state.

Magistrates who serve at more than one location within the county, whether on a regular or temporary basis, shall be reimbursed travel expenses for travel between locations at a rate per mile equal to that allowed for reimbursement of travel expenses of officers in the judicial branch of state government.

WV Legislature

§50-1-12. Conduct of office; penalty.

Magistrates shall be subject to and shall abide by the code of judicial ethics as adopted and amended by the Supreme Court of Appeals. In addition to such conduct as may be regulated by the rules of the Supreme Court of Appeals, no magistrate, magistrate court clerk or magistrate court deputy clerk or magistrate assistant shall:

(a) Acquire or hold any interest in any matter which is before the magistrate court;

(b) Purchase, either directly or indirectly, any property being sold upon execution issued by the magistrate court;

(c) Act as agent or attorney for any party in any proceeding in any magistrate court in the state; or

(d) Engage in, or assist in, any remunerative endeavor, except the duties of his office, while on the premises of the magistrate court office.

Any person who violates the provisions of this section shall be guilty of official misconduct and shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $500.

Nothing contained in this section shall preclude a magistrate, magistrate court clerk, magistrate court deputy clerk, or magistrate assistant from being a party to an action in the magistrate court: Provided, That any action in which the magistrate court clerk is a party shall not be assigned to the chief magistrate nor shall any action in which a magistrate court deputy clerk or magistrate assistant is a party be assigned or heard by the magistrate for whom such magistrate assistant is employed or to whose court such deputy clerk is assigned.

WV Legislature

§50-1-13. Temporary service within or outside of county.

(a) The Chief Justice of the Supreme Court of Appeals or judge of the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may order a magistrate to serve temporarily at locations within the county other than at the regular office or offices of the magistrate.

(b) The Chief Justice of the Supreme Court of Appeals may by order direct a magistrate to serve on a temporary basis outside the county of his or her election or appointment while giving due consideration to travel time and geographic circumstance. A judge of the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may by order direct a magistrate to serve temporarily in any other county within the judicial circuit for any purposes directed by the judge. The magistrate's authority, to the extent ordered by the chief justice or judge, shall be equal to the jurisdiction and authority of a magistrate elected in the county to which the magistrate is ordered to serve. The temporary assignment may not exceed 60 days in length in any given calendar year, except with the consent of the transferred magistrate.

(c) A magistrate serving outside the county in which he or she is elected or appointed shall be reimbursed for reasonable expenses incurred in service outside of the county, as provided by rule of the Supreme Court of Appeals.

(d) The Supreme Court of Appeals is requested to develop a rule creating a system in which magistrates shall, on a periodic alternating basis, be assigned to preside over initial appearances, petitions for domestic violence, emergency protective orders, emergency mental health petitions, emergency juvenile delinquency petitions, and applications for the issuance of search warrants arising outside normal court hours or in an emergency on a circuit-wide or other regional basis as determined by the Supreme Court of Appeals. The authority of the after-hours or emergency magistrate shall be equal to the jurisdiction and authority of a magistrate elected or appointed in any county in which he or she is directed to preside.

(e) Nothing in this section may be construed to prohibit proceedings authorized by subsection (d) of this section being held remotely as determined appropriate by the Supreme Court of Appeals.

WV Legislature

§50-1-14. Duties of sheriff; service of process; bailiff.

(a) It shall be the duty of each sheriff to execute all civil and criminal process from any magistrate court which may be directed to such sheriff. Process shall be served in the same manner as provided by law for process from circuit courts.

Subject to the supervision of the chief justice of the Supreme Court of Appeals or of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, it shall be the duty of the sheriff, or his or her designated deputy, to serve as bailiff of a magistrate court upon the request of the magistrate. Such service shall also be subject to such administrative rules as may be promulgated by the Supreme Court of Appeals. A writ of mandamus shall lie on behalf of a magistrate to enforce the provisions of this section.

(b) The sheriff of any county may employ, by and with the consent of the county commission, one or more persons whose sole duties shall be the service of civil process and the service of subpoenas and subpoenas duces tecum. Any such person shall not be considered a deputy or deputy sheriff within the meaning of subdivision (2), subsection (a), section two, article fourteen, chapter seven of this code, nor shall any such person be authorized to carry deadly weapons in the performance of his or her duties: Provided, That the sheriff may authorize an employee whose sole duties involve service of civil process to carry a firearm if the employee completes all training requirements otherwise applicable to deputy sheriffs for the use and handling of firearms: Provided, however, That the sheriff may authorize previously certified West Virginia law-enforcement officers to carry a deadly weapon in the performance of the duties of the officers under the provisions of this section: Provided further, That these officers and employees maintain yearly weapons qualifications and are bonded through the office of the sheriff.

WV Legislature

§50-1-15. Transitional provisions.

Except as the same may be otherwise amended by act of the Legislature, and except for the provisions of article twenty of this chapter, all of the provisions of chapter fifty of this code existing immediately prior to the effective date of this chapter shall remain in full force and effect until January 1, 1977.

Immediately after the expiration of his term of office and in no event later than thirty days thereafter each justice of the peace shall pay over to appropriate authorities or persons such moneys as may be held by him and submit such reports to such authorities or persons as are required by law.

Every justice of the peace, upon the expiration of his term of office, shall forthwith deliver his official docket, together with such dockets of his predecessors as he may have, to the magistrate court clerk or, if there is no magistrate court clerk, to the clerk of the circuit court, who shall maintain such dockets as directed by the Supreme Court of Appeals or by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court.

No act done by a justice of the peace prior to January 1, 1977, shall be affected by virtue of the abolition of the office of justice of the peace. Matters pending before a justice of the peace prior to such date or which might otherwise require further action by a justice of the peace shall be handled by the magistrate to whom such matter is assigned or in such other manner as may be ordered by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court.

WV Legislature

§50-1-16. Supervisory rules.

The Supreme Court of Appeals is hereby authorized to promulgate rules to carry out the intent of this chapter and to exercise rule-making authority granted by article VIII of the Constitution of West Virginia. Rules promulgated by the judge of a circuit court, or the chief judge thereof, pursuant to the provisions of this chapter shall be subordinate and subject to the rules of the Supreme Court of Appeals or the orders of the chief justice thereof. Rules promulgated by the judge of a circuit court, or the chief judge thereof, shall be made by order entered upon the order book of the circuit court, as hereinafter provided, and shall be effective when filed with the clerk of the Supreme Court of Appeals and the magistrate court clerk for the magistrate court in which such rules apply. All rules promulgated under this section by the Supreme Court of Appeals, or by the judge of a circuit court, or the chief judge thereof, shall be entered upon an order book designated for the purpose of magistrate court rules by the clerk of the circuit court.

WV Legislature

§50-1-17. Reference to justice of the peace; abolition of the office of constable.

On and after January 1, 1977, the phrase "justice of the peace" and the word "justice," when used in a context meaning "justice of the peace," shall be construed to mean magistrate as created by the provisions of this chapter. At such time the office of constable shall be abolished, and the duties previously performed by constables shall be assumed by deputy sheriffs or by such other persons as elsewhere provided in this code.

WV Legislature

§50-2-1. Civil jurisdiction.

Except as limited herein and in addition to jurisdiction granted elsewhere to magistrate courts, such courts shall have jurisdiction of all civil actions wherein the value or amount in controversy or the value of property sought, exclusive of interest and cost, is not more than $20,000. Magistrate courts shall have jurisdiction of all matters involving unlawful entry or detainer of real property or involving wrongful occupation of residential rental property, so long as the title to such property is not in dispute. Except as the same may be in conflict with the provisions of this chapter, the provisions of article three, chapter fifty-five of this code, regarding unlawful entry and detainer, shall apply to such actions in magistrate court. Magistrate courts shall have jurisdiction of actions on bonds given pursuant to the provisions of this chapter. Magistrate courts shall have continuing jurisdiction to entertain motions in regard to post-judgment process issued from magistrate court and decisions thereon may be appealed in the same manner as judgments.

Magistrate courts do not have jurisdiction of actions in equity, of matters in eminent domain, of matters in which the title to real estate is in issue, of proceedings seeking satisfaction of liens through the sale of real estate, of actions for false imprisonment, of actions for malicious prosecution or of actions for slander or libel or of any of the extraordinary remedies set forth in chapter fifty-three of this code.

Magistrates, magistrate court clerks, magistrate court deputy clerks and magistrate assistants shall have the authority to administer any oath or affirmation, to take any affidavit or deposition, unless otherwise expressly provided by law, and to take, under such regulations as are prescribed by law, the acknowledgment of deeds and other writings.

WV Legislature

§50-2-2. Venue; change of venue.

(a) The provisions of article one, chapter fifty-six of this code, relating to venue of actions in circuit courts, shall apply to venue of actions in magistrate courts as if the same were set forth fully herein.

(b) The circuit court may, on the petition of the accused and for good cause shown, order the venue of the trial of a criminal case in magistrate court to be removed to some other county. Upon the filing of the petition, the proceedings in magistrate court shall be stayed until disposition by the circuit court. When the venue is so changed, the court making the order shall determine the county to which the case is to be removed and order the defendant to appear on some certain day before the court to which the case is removed. Where the defendant is in custody, the court may, if appropriate, order the defendant confined in a jail convenient to the court to which the case is removed. Upon receipt of the order changing venue, the magistrate court shall certify copies of its file of the case to the court to which the case is removed, and such court shall proceed with the case as if the prosecution had been originally therein, and for that purpose the certified copies aforesaid shall be sufficient.

WV Legislature

§50-2-3. Criminal jurisdiction; limitations on bail.

In addition to jurisdiction granted elsewhere to magistrate courts, magistrate courts shall have jurisdiction of all misdemeanor offenses committed in the county and to conduct preliminary examinations on warrants charging felonies committed within the county and, upon order of referral from the circuit courts, to conduct preliminary examinations on probation violations, which examinations shall be conducted without delay and in all events not later than thirty days from the date any probation violation petition or motion has been filed in circuit court. A magistrate shall have the authority to issue arrest warrants in all criminal matters, to issue warrants for search and seizure and, except in cases involving capital offenses, to set and admit to bail: Provided, That in cases punishable only by the fine such bail or recognizance shall not exceed the maximum amount of the fine and applicable court costs permitted or authorized by statute to be imposed in the event of conviction.

WV Legislature

§50-2-3a. Sentencing; probation.

(a) In addition to sentencing authority granted in other provisions of this code to magistrate courts, magistrate courts have authority to suspend sentences and impose periods of unsupervised probation for a period not to exceed two years, except for offenses for which the penalty includes mandatory incarceration and offenses defined in sections eight and nine, article eight-b, chapter sixty-one of this code and subsection (c), section five, article eight-d of said chapter.

(b) Notwithstanding any other provision of law to the contrary, magistrate courts have the authority to impose periods of supervision or participation in a community corrections program created pursuant to article eleven-c, chapter sixty-two of this code. Periods of supervision or participation in community corrections programs imposed pursuant to this subsection are not to exceed two years.

(c) Release on probation is subject to the following conditions:

(1) That the probationer may not, during the term of his or her probation, violate any criminal law of this state, any other state of the United States or the United States;

(2) That he or she may not, during the term of his or her probation, leave the state without the consent of the court which placed him or her on probation;

(3) That he or she shall comply with the rules or terms prescribed by the court;

(4) That he or she shall make reasonable restitution if financially able to do so, in whole or in any part, immediately or within the period of probation: Provided, That the magistrate conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay restitution without undue hardship; and

(5) That he or she shall pay any fine and the costs assessed as the court may direct: Provided, That the magistrate conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the costs without undue hardship.

(d) On motion by the prosecuting attorney, and upon a hearing and a finding that reasonable cause exists to believe that a violation of any condition of probation has occurred, the magistrate may revoke probation and order execution of the sentence originally imposed.

WV Legislature

§50-3-1. Costs in civil actions.

The following costs shall be charged in magistrate courts in civil actions and shall be collected in advance:

(a) For filing and trying any civil action and for all services connected therewith, but excluding services regarding enforcement of judgment, the following amounts dependent upon the amount of damages sought in the complaint:

Where the action is for $500 or less $30.00

Where the action is for more than $500 but not more than $1,000 $35.00

Where the action is for more than $1,000 but not more than $2,000$ 40.00

Where the action is for more than $2,000 $50.00

Where the action seeks relief other than money damage $30.00

Five dollars from each of the filing fees listed above shall be deposited in the Court Security Fund created by the provisions of section fourteen, article three, chapter fifty-one of this code.

Five dollars from each of the filing fees listed above shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(b) For each service regarding enforcement of a judgment including execution, suggestion,

garnishment and suggestee execution $5.00

(c) For each bond filed in a case $1.00

(d) For taking deposition of witness for each hour or portion thereof $1.00

(e) For taking and certifying acknowledgmentof a deed or other writing

or taking oath upon an affidavit $ .50

(f) For mailing any matter required or provided by law to be mailed by

certified or registered mail with return receipt $1.00

(g) For filing and trying any civil action $20.00

Costs incurred in a civil action shall be reflected in any judgment rendered thereon. The provisions of section one, article two, chapter fifty-nine of this code, relating to the payment

WV Legislature

of costs by poor persons, shall be applicable to all costs in civil actions.

WV Legislature

§50-3-1a. Costs assessed against losing party.

Except as otherwise provided by law, costs shall be assessed against the losing party or parties.

WV Legislature

§50-3-2. Costs in criminal proceedings.

(a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there is imposed, in addition to other costs, fines, forfeitures, or penalties allowed by law:

(1) Costs in the amount of $60, of which $5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code;

(2) an amount equal to the one-day per diem provided for in §15A-3-16(g) of this code; and

(3) costs in the amount of $30 to be deposited in the Regional Jail Operations Partial Reimbursement Fund created by §15A-3-16 of this code. A magistrate may not collect costs in advance. Notwithstanding any other provision of this code, a person liable for fines and court costs in a criminal proceeding in which the defendant is confined in a jail or prison and not participating in a work-release program shall not be held liable for the fines and court costs until 180 days after completion of the term in jail or prison. A magistrate court shall deposit $5 from each of the criminal proceedings fees collected pursuant to this section in the Court Security Fund created in §51-3-14 of this code. A magistrate court shall, on or before the 10th day of the month following the month in which the fees imposed in this section were collected, remit an amount equal to the one-day per diem provided for in §15A-3-16(g) of this code from each of the criminal proceedings in which the fees specified in this section were collected to the magistrate court clerk, or if there is no magistrate court clerk to the clerk of the circuit, together with information required by the rules of the Supreme Court of Appeals and the rules of the Office of Chief Inspector. These moneys are paid to the sheriff who shall distribute the moneys solely in accordance with the provisions of §7-5-15 of this code. Amendments made to this section during the 2001 regular session of the Legislature are effective after June 30, 2001.

(b) A magistrate shall assess costs in the amount of $2.50 for issuing a sheep warrant and the appointment and swearing appraisers and docketing the proceedings.

(c) In each criminal case which must be tried by the circuit court in which a magistrate renders some service, costs in the amount of $10 shall be imposed by the magistrate court and shall be certified to the clerk of the circuit court in accordance with the provisions of §62-5-6 of this code.

(d) The clerk of a magistrate court shall charge and collect a fee of $10 for services rendered by the clerk for processing criminal bonds and the fees which shall be assessed as costs of the proceeding due only upon conviction.

(e) All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code. Nothing in this subsection may be construed to impose a fee for the processing of a personal recognizance bond.

WV Legislature

(f) The clerk of a magistrate court shall charge and collect a fee of $25 for services rendered by the clerk for processing a bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code.

WV Legislature

§50-3-2a. Payment by electronic payments, credit card payments, cash, money orders, or certified checks; payment plan; failure to pay fines results in a late fee and judgment lien.

(a) A magistrate court may accept electronic payments, credit cards, cash, money order, or certified check for payment of all costs, fines, fees, forfeitures, restitution, or penalties in accordance with rules promulgated by the Supreme Court of Appeals. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, forfeiture, restitution, or penalty.

(b) Upon request and subject to the following requirements, the magistrate clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk, an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within 30 calendar days after release.

(c) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of magistrate clerks, and magistrate clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

(d)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which the payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person’s annual income divided by 12, or $10, whichever is greater: *Provided*, That if this calculation results in a payment plan lasting more than three years, the monthly payments shall be set by dividing the total amount owed by 36.

(3) The court may review the reasonableness of the payment plan, and may on its own

WV Legislature

motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(e)(1) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan, and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(f)(1) If after 180 days of a judgment, a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (g) of this section; or

WVLegislature

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(g) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(h) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(i)(1) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a hunting violation described in chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify

the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

(2) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a fishing violation described in Chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

(j)(1) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Commissioner of the Division of Motor Vehicles thereof within 90 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Division of Motor Vehicles shall suspend any privilege the person failing to appear or otherwise respond may have to operate a motor vehicle in this state, including any driver's license issued to the person by the Division of Motor Vehicles, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of §17B-3-6 of this code.

(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in Chapter 20 of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any fishing violation described in Chapter 20 of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including

WVLegislature

any fishing license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

(k) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.

(l) Notwithstanding any provision of this code to the contrary, except as authorized by this section, payments of all costs, fines, fees, forfeitures, restitution, or penalties imposed by the magistrate court in civil or criminal matters shall be made in full. Partial payments of costs, fines, fees, forfeitures, restitution, or penalties made pursuant to this section shall be credited to amounts due in the following order:

(1) Regional Jail Fund;

(2) Worthless check payee;

(3) Restitution;

(4) Magistrate Court Fund;

(5) Worthless Check Fund;

(6) Per diem regional jail fee;

(7) Community Corrections Fund;

(8) Regional Jail Operational Fund;

(9) Law-Enforcement Training Fund;

(10) Crime Victims Compensation Fund;

(11) Court Security Fund;

(12) Courthouse Improvement Fund;

(13) Litter Control Fund;

(14) Sheriff arrest fee;

(15) Teen Court Fund;

(16) Other costs, if any; and

(17) Fine.

WV Legislature

§50-3-2b. Additional costs in certain criminal proceedings.

In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, under the provisions of section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code, there shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of $55. A magistrate court shall, on or before the tenth day of the month following the month in which the costs imposed in this section were collected, remit an amount equal to the amount from each of the criminal proceedings in which the costs specified in this section were collected to the magistrate court clerk or, if there is no magistrate court clerk, to the clerk of the circuit, together with information as may be required by the rules of the Supreme Court of Appeals and the rules of the office of chief inspector. At the end of each month, for purposes of further defraying the cost to the county of enforcing the provisions of section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code and related provisions, these moneys shall be paid to the sheriff of the county and deposited in the General Revenue Fund of the county. The provisions of this section shall be effective after June 30, 2004.

WV Legislature

§50-3-2c. Withholding from personal income tax refunds for unpaid fines and costs in magistrate criminal actions, in magistrate criminal appeals to circuit court and for failure to appear in court.

(a) If costs, fines, fees, forfeitures, restitution or penalties imposed by the magistrate court upon conviction of a person for a criminal offense as defined by this code, imposed by the circuit court upon judgment on an appeal to circuit court of that conviction, or imposed by either court for failure to appear are not paid in full within one year of the judgment, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Tax Commissioner that the defendant has failed to pay the costs, fines, forfeitures or penalties assessed by the court. The notice provided by the magistrate clerk or the circuit clerk to the Tax Commissioner must include the defendant's Social Security number. The Tax Commissioner, or his or her designee, shall withhold from any personal income tax refund due and owing to a defendant the costs, fines, fees, forfeitures, restitution or penalties due, the Tax Commissioner's administration fee for the withholding and any and all fees or other amounts that the magistrate court and the circuit court would have collected had the defendant appeared: *Provided*, That no withholding shall be made under this section if there is an unsatisfied withholding request made pursuant to section two-b, article ten, chapter eight of this code. The Tax Commissioner's administration fee shall not exceed $25, unless this maximum amount is increased by legislative rule promulgated in accordance with article three, chapter twenty-nine-a of this code. The administrative fees deducted shall be deposited in the special revolving fund hereby created in the State Treasury, which shall be designated as the Magistrate Fines and Fees Collection Fund, and the Tax Commissioner shall make such expenditures from the fund as he or she deems appropriate for the administration of this subsection.

(b) (1) After deduction of the Tax Commissioner's administration fee, the Tax Commissioner shall remit all remaining amounts withheld pursuant to this section to the clerk of the court that notified the Tax Commissioner of the failure to pay under subsection (a) of this section.

(2) From the amounts received from the Tax Commissioner, the circuit clerk shall distribute the portion thereof that is attributable to costs, fines, fees, forfeitures, restitution or penalties owed to magistrate court to the magistrate clerk and distribute the remainder that is attributable to costs, fines, fees, forfeitures, restitution or penalties owed to circuit court to the appropriate fund or payee, as applicable and listed in section twenty-eight-a, article one, chapter fifty-nine of this code and as otherwise required by law.

(3) From the amounts received from the Tax Commissioner, or from the circuit clerk under subdivision (2) of this subsection, the magistrate clerk shall distribute applicable costs, fines, fees, forfeitures, restitution or penalties owed to the appropriate fund or payee, as applicable and listed in subsection (g), section two-a of this article and as otherwise required by law.

(4) After the costs, fines, fees, forfeitures, restitution or penalties are withheld, the Tax Commissioner shall refund any remaining balance due the defendant.

WV Legislature

(5) If the refund is not sufficient to cover all the costs, fines, fees, forfeitures, restitution or penalties to be withheld pursuant to this section, the Tax Commissioner's administration fee shall be retained by the Tax Commissioner and the remaining money withheld shall be remitted by the Tax Commissioner to the appropriate clerk. The clerk shall then allocate the money so remitted on a pro rata basis as provided in the applicable provisions of subdivisions (2) or (3) of this subsection.

(c) In the event the costs, fines, fees, forfeitures, restitution or penalties exceed the defendant's income tax refund, the Tax Commissioner shall withhold the remaining balance in subsequent years until such time as the costs, fines, fees, forfeitures, restitution or penalties owed are paid in full. The Tax Commissioner shall remit the moneys that he or she collects to the appropriate clerk no later than July 1 of each year. If the circuit court or the magistrate court subsequently determines that any costs, fines, fees, forfeitures, restitution or penalties were erroneously imposed, the clerk of the court shall promptly notify the Tax Commissioner. If the amounts due are paid in full to the court from a source other than the Tax Commissioner after the clerk of the court has provided notice of the failure to pay to the tax commissioner, the clerk of the court shall promptly notify the Tax Commissioner of the payment. If the refunds have not been withheld and remitted, the Tax Commissioner may not withhold and remit payment to the appropriate court and shall so inform the clerk of the court. If the refunds have already been withheld and remitted to the court, the Tax Commissioner shall so inform the clerk of the court. In either event, all refunds for erroneously imposed costs, fines, forfeitures or penalties shall be made by the appropriate court and not by the Tax Commissioner.

(d) *Rules.* -- The Tax Commissioner may propose for legislative approval such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. Rules shall be promulgated in accordance with article three, chapter twenty-nine-a of this code.

WV Legislature

§50-3-3. Disposition of fines, forfeitures and penalties.

All fines, forfeitures and penalties collected in magistrate courts in a criminal proceeding shall be submitted on or before the tenth day of the month following the month of their collection to the magistrate court clerk or, if there is no magistrate court clerk, to the clerk of the circuit court together with such information as may be required by the rules of the supreme court and by the rules of the chief inspector of public offices. Such moneys shall thereupon be paid to the sheriff subject to, and to be distributed in accordance with the provisions of section fifteen, article five, chapter seven of this code.

WV Legislature

§50-3-4. Disposition of costs; magistrate court fund.

(a) All costs collected in magistrate courts in a civil proceeding pursuant to the provisions of section one of this article and all costs collected in magistrate courts in a criminal proceeding pursuant to the provisions of section two of this article shall be submitted on or before the tenth day of the month following the month of their collection to the magistrate court clerk along with any information that may be required by the rules of the Supreme Court of Appeals and by the rules of the State Auditor.

(b)(1) The special county fund known as the magistrate court fund established in each county by chapter thirty-three, Acts of the Legislature, 1976 regular session, as amended and reenacted in subsequent Acts of the Legislature, is hereby continued. The moneys credited to the fund may be used solely for the purposes provided in this section.

(2) The magistrate court clerk of each county shall pay the sum of $10 collected in magistrate court for each civil and criminal proceeding into the magistrate court fund during each fiscal year until there is paid a sum equal to $15,000 multiplied by the number of magistrates authorized for the county.

(3) A county may, in accordance with the supervisory rules of the Supreme Court of Appeals, appropriate and spend from the fund such sums as are necessary to defray the expenses of providing services to magistrate courts.

(c)(1) There is hereby created in the state Treasury a special escrow account designated as the Magistrate Court Surplus Account. The moneys credited to the account may be used solely for the purposes provided in this subsection.

(2) Beginning on July 1, 2000, all costs collected during a fiscal year in excess of the sum specified in subdivision (2), subsection (b) of this section shall be deposited in the Magistrate Court Surplus Account in the state Treasury.

(3) Beginning on September 1, 2001, and on September 1, of each year thereafter, in accordance with the supervisory rules of the Supreme Court of Appeals, funds from the Magistrate Court Surplus Account deposited therein as excess costs collected in the prior fiscal year pursuant to the provisions of subdivision (2) of this subsection shall be disbursed as a supplement to any county magistrate court fund which generated less than $15,000 per magistrate in the prior fiscal year in accordance with the provisions of this subsection.

(4) The amount disbursed to a county magistrate court fund from the Magistrate Court Surplus Account, when combined with the court costs generated by the magistrate court fund of the county in the prior fiscal year, may not exceed $15,000 per magistrate.

(5) The disbursements described in subdivision (3) of this subsection shall be made as follows:

(A) There shall be distributed to each county magistrate court fund that generated less than

WV Legislature

$9,000 in the prior fiscal year the sum of $9,000 less the amount of court costs generated by the county magistrate court fund in the prior fiscal year. To the extent that the funds available for this disbursement are insufficient to fully fund this disbursement, the funds available shall be disbursed to these counties on a pro rata basis.

(B) Any funds that remain available for disbursement after disbursements made pursuant to paragraph (A) of this subdivision shall be disbursed in equal shares to each county magistrate court fund that generated less than $15,000 per magistrate in the prior fiscal year. The shares to be disbursed to each county magistrate court fund are to be equal to the number of magistrates in the county. Any disbursement made under this paragraph shall be subject to the limitations specified in subdivision (4) of this subsection.

(6) Any funds that remain available in the Magistrate Court Surplus Account after the disbursements have been made pursuant to the provisions of paragraphs (A) and (B), subdivision (5) of this subsection shall be deposited by the state Treasurer into the General Revenue Fund of the state.

WV Legislature

§50-3-4a. Disposition of criminal costs and civil filing fees into State Treasury account for Regional Jail and Prison Development Fund.

(a) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail and Prison Development Fund in the state Treasury an amount equal to $40 of the costs collected in each criminal proceeding and all but $10 of the costs collected for the filing of each civil action.

(b) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in §15A-3-17 of this code the fees collected pursuant to subsection (g), section one and subdivision (3), subsection (a), section two of this article.

WV Legislature

§50-3-5.

Repealed.

Acts, 2007 Reg. Sess., Ch. 40.

WV Legislature

§50-3-6. Collection of costs and fines.

On motion of the prosecuting attorney, the magistrate court may issue execution or employ other means of enforcing judgment to collect fines and costs imposed in proceedings before the court and tax the cost thereof as a part of the execution or other process. Such execution or other process shall be directed to the sheriff for collection. The sheriff shall collect the fees prescribed for his services from the party from whom the fine or costs are being collected. Money so collected shall be paid by the sheriff to the magistrate court and shall be paid by the magistrate court in the manner provided by law.

WV Legislature

§50-3-6a. Deposits in interest-bearing accounts; payment of interest to General Revenue Fund of State Treasury.

Magistrate court clerks or circuit clerks acting in that capacity, subject to the rules and regulations of the Supreme Court of Appeals, may establish and maintain interest-bearing checking accounts in secure and properly insured financial institutions for the deposit and disbursement of all moneys collected by the magistrate court. In addition to making other remittances as required by law, the clerk of each magistrate court shall, on a monthly basis, remit all interest earned on such accounts to the State Treasurer for deposit in the state General Revenue Fund.

WV Legislature

§50-3-7. Records of magistrate court; reports.

(a) Records of the judicial transactions of magistrate court shall be kept as required by the rules of the Supreme Court of Appeals. If, after judgment is rendered in a matter, no appeal is filed within the time allotted, the records of the proceedings shall be forwarded to the magistrate court clerk. The records shall be maintained by the magistrate court clerk in accordance with the rules of the Supreme Court of Appeals.

Records of the financial dealings of the magistrate court shall be kept as may be required by the rules of the State Auditor, who shall promulgate the rules only after consultation with the Supreme Court of Appeals.

The magistrate court shall prepare and submit the reports as may be required by the rules of the Supreme Court of Appeals or by the State Auditor.

(b) (1) Upon receipt of a written request, the magistrate court clerk shall perform a criminal history record search of criminal records in his or her possession. Each request shall be accompanied by a $25 fee for each name that is to be the subject of the records search.

(2) The provisions of this subsection shall not apply to:

(A) Federal, state, county or municipal officials;

(B) Court-appointed attorneys;

(C) Prosecuting attorneys; and

(D) Persons utilizing court provided public access terminals.

(3) All moneys collected pursuant to this subsection shall be remitted to the General Fund in the state Treasury on or before the tenth day of the following month.

WV Legislature

§50-3-8. Audits.

The chief inspector of public offices shall perform an annual financial audit of each magistrate court. In addition to and in conjunction with the financial audit, the chief inspector of public offices shall perform or cause to be performed an audit of the case filings of each magistrate court. The chief inspector shall report the annual number of case filings of each magistrate court to be included in the financial audit report to be made to the Supreme Court of Appeals, circuit court of the county and the Legislative Auditor. The Supreme Court of Appeals shall make a written finding that it has examined the report and that the annual number of case filings in each magistrate court accurately represents the total number of cases actually brought before that magistrate court. This finding shall be made prior to any redistribution of magistrates which is based upon the increase or decrease of case filings in any magistrate court.

WV Legislature

§50-3-9. Magistrate court officials to issue receipts of collections; deposit of funds.

(a) Any magistrate, magistrate court clerk, magistrate assistant or magistrate deputy clerk who receives a fee, cost, percentage, penalty, commission, allowance, bond, deposit, surety or other cash payment or sum shall issue a receipt to the payor thereof, in duplicate, on a form approved by the chief inspector, in accordance with the provisions of article nine, chapter six of this code. The magistrate court official shall issue the original of such receipt to the payor and shall retain the copy. The chief inspector shall prescribe the minimum information to be included on such receipt forms.

(b) All money collected shall be deposited in accordance with rules promulgated by the Supreme Court of Appeals.

WV Legislature

§50-3-10. Removal of magistrate court official.

If any magistrate, magistrate court clerk, magistrate assistant or magistrate court deputy clerk shall fail to comply with the provisions of this article, the chief inspector may, in addition to any other remedies provided by law, seek the removal from office of such official, in accordance with provisions of section seven, article six, chapter six of this code.

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

§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

WV Legislature

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

§50-6-1. Enforcement of judgments.

(a) The provisions of articles three, four, five, five-a, five-b and six, chapter thirty-eight of this code, except as the same are in conflict with the provisions of this chapter or are clearly applicable only to courts of record, shall apply to the enforcement of judgments rendered in magistrate court and process therefor shall issue from magistrate court. Process issued in violation of such provisions shall be void. The form of such process shall be in accord with the rules of the Supreme Court of Appeals. No such process shall issue until after twenty days after the judgment is rendered or, if a motion to set aside such judgment is then pending, until after twenty days after the determination of such motion.

(b) A magistrate court clerk, deputy clerk or magistrate assistant before whom a suggestion of salary and wages is instituted pursuant to the provisions of articles five-a and five-b, chapter thirty-eight of this code shall forward all post judgment process directly to the sheriff of any county in the same manner and with the same authority as has been given to circuit clerks, pursuant to section five, article three, chapter fifty-six.

WV Legislature

§50-6-2. Filing of transcript in office of circuit clerk; entry on lien docket.

A certified transcript of judgment rendered by a magistrate court may be filed in the office of the circuit court upon payment of a fee of $1. The circuit clerk shall keep such records and indices as may be required by the rules of the Supreme Court of Appeals. Such judgments may also be docketed in the judgment lien book kept in the office of the clerk of the county commission in the same manner and with the same effect as circuit court judgments.

WV Legislature

§50-6-3. Attachment.

Except as the same may be in conflict with the provisions of this chapter, the provisions of article seven, chapter thirty-eight of this code, regarding attachment shall apply to actions in magistrate court.

WV Legislature