
WEST VIRGINIA CODE CHAPTER 51
ARTICLE 2A

WV Legislature

§51-2A-1. Family courts established.

There is hereby created in each county in this state a family court to be designated as "The Family Court of _____ County, West Virginia."

WV Legislature

§51-2A-2. Family court jurisdiction; exceptions; limitations.

(a) The family court shall exercise jurisdiction over the following matters:

(1) All actions for divorce, annulment or separate maintenance brought under the provisions of §48-3-1 et seq., §48-4-1 et seq., or §48-5-1 et seq. of this code, except as provided in subsections (b) and (c) of this section;

(2) All actions to obtain orders of child support brought under the provisions of §48-11-1 et seq., §48-12-1 et seq., and §48-14-1 et seq. of this code;

(3) All actions to establish paternity brought under the provisions of §48-24-1 et seq. of this code and any dependent claims related to such actions regarding child support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child;

(4) All actions for grandparent visitation brought under the provisions of §48-10-1 et seq. of this code;

(5) All actions for the interstate enforcement of family support brought under §48-16-1 et seq. of this code and for the interstate enforcement of child custody brought under the provisions of §48-20-1 et seq. of this code;

(6) All actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, including actions brought under the Uniform Child Custody Jurisdiction and Enforcement Act, as provided in §48-20-1 et seq. of this code;

(7) All petitions for writs of habeas corpus in which the issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or domestic violence;

(9) All motions for modification of an order providing for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child or for child support or spousal support;

(10) All actions brought, including civil contempt proceedings, to enforce an order of spousal or child support or to enforce an order for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child;

(11) All actions brought by an obligor to contest the enforcement of an order of support through the withholding from income of amounts payable as support or to contest an

affidavit of accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

(12) All final hearings in domestic violence proceedings;

(13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

(14) All proceedings for payment of attorney fees if the family court judge has jurisdiction of the underlying action;

(15) All proceedings for property distribution brought under §48-7-1 et seq. of this code;

(16) All proceedings to obtain spousal support brought under §48-8-1 et seq. of this code;

(17) All proceedings relating to the appointment of guardians or curators of minor children brought pursuant to §44-10-3, §44-10-4 and §44-10-6 of this code, exercising concurrent jurisdiction with the circuit court; and

(18) All proceedings relating to petitions for sibling visitation.

(b) If an action for divorce, annulment, or separate maintenance does not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and does not require an award or any payment of child support, the circuit court has concurrent jurisdiction with the family court over the action if, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties.

(c) If an action for divorce, annulment, or separate maintenance is pending and a petition is filed pursuant to the provisions of §49-4-601 through §49-4-610 of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment, or separate maintenance action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the parents has been entered by the family court in the pending action for divorce, annulment, or separate maintenance, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility for the child between the parents and defer to the orders of the circuit court in the abuse or neglect proceedings.

(d) If a family court judge is assigned as a judicial officer of a domestic violence court then jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence as referenced in §48-27-301 of this code involving a family or household member as referenced in §48-27-204(1) through §48-27-204(6) and §48-27-204(7)(A), §48-27-204(7)(B), and §48-27-204(7)(H) of this code shall be concurrent with the circuit and magistrate courts.

(e) A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family

court is specifically authorized in this section and in chapter 48 of this code. A family court may not exercise the powers given courts of record in §51-5-1 of this code or exercise any other powers provided for courts of record in this code unless specifically authorized by the Legislature. A family court judge is not a “judge of any court of record” or a “judge of a court of record” as the terms are defined and used in §51-9-1 et seq. of this code.

WV Legislature

§51-2A-2a. Family court jurisdiction to restrict contact between parties.

(a) A family court in its discretion may, at any time during the pendency of any action prosecuted under chapter forty-eight of this code, restrict contact between the parties thereto without a finding of domestic violence under article twenty-seven of said chapter. This order shall not be considered a protective order for purposes of section five hundred seven, article twenty-seven, chapter forty-eight of this code. A court may enter a standing order regarding the conduct expected of the parties during the proceeding. Any standing order may restrict the parties from:

(1) Entering the home, school, business or place of employment of the other for the purpose of bothering or annoying the other;

(2) Contacting the other, in person, in writing, electronically or by telephone, for purposes not clearly necessary for the prosecution of the underlying action or any obligation related thereto or resulting therefrom.

(b) Upon a finding of misconduct by a party, the court shall enter an order against the offending party enjoining the conduct which disturbs or interferes with the peace or liberty of the other party so long as such conduct does not rise to the level of or constitute domestic violence as defined in article twenty-seven, chapter forty-eight of this code. The court shall not issue orders under this section in cases where the conduct of either party has previously risen to the level of domestic violence.

(c) Nothing in this section shall preclude the court from entering an emergency protective order, or final protective order, as provided in article twenty-seven, chapter forty-eight of this code.

(d) Notwithstanding the provisions of section five hundred five, article twenty-seven, chapter forty-eight of this code, an order entered pursuant to the provisions of this section shall remain in effect for a period of time as specified in the order.

(e) The court may enforce orders under this section against the offending party through its powers of contempt, pursuant to section nine of this article.

(f) It is the express intent of the Legislature that orders issued pursuant to this section are to restrict behavior which is not of sufficient severity to implicate the provisions of article twenty-seven, chapter forty-eight of this code and 18 U. S. C. §922(g)(8).

§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.

(a) Beginning on the effective date of this subsection and until December 31, 2024, 47 family court judges shall serve throughout the state, allocated among a total of 27 family court circuits as follows:

(1) The counties of Brooke, Hancock, and Ohio shall constitute the first family court circuit and have two family court judges;

(2) The counties of Marshall, Wetzel, and Tyler shall constitute the second family court circuit and have one family court judge;

(3) The counties of Pleasants and Wood shall constitute the third family court circuit and have two family court judges;

(4) The counties of Roane, Calhoun, Gilmer, and Ritchie shall constitute the fourth family court circuit and have one family court judge;

(5) The counties of Mason, Jackson, and Wirt shall constitute the fifth family court circuit and have two family court judges;

(6) The county of Cabell shall constitute the sixth family court circuit and have three family court judges;

(7) The county of Wayne shall constitute the seventh family court circuit and have one family court judge;

(8) The county of Mingo shall constitute the eighth family court circuit and have one family court judge;

(9) The county of Logan shall constitute the ninth family court circuit and have two family court judges;

(10) The counties of Lincoln and Boone shall constitute the tenth family court circuit and have two family court judges;

(11) The county of Kanawha shall constitute the eleventh family court circuit and have five family court judges;

(12) The counties of McDowell and Mercer shall constitute the twelfth family court circuit and have three family court judges;

(13) The counties of Raleigh, Summers, and Wyoming shall constitute the thirteenth family court circuit and have three family court judges;

- (14) The county of Fayette shall constitute the fourteenth family court circuit and have one family court judge;
- (15) The counties of Greenbrier and Monroe shall constitute the fifteenth family court circuit and have one family court judge;
- (16) The counties of Clay and Nicholas shall constitute the sixteenth family court circuit and have one family court judge;
- (17) The counties of Braxton, Lewis, and Upshur shall constitute the seventeenth family court circuit and have one family court judge;
- (18) The counties of Harrison and Doddridge shall constitute the eighteenth family court circuit and have two family court judges;
- (19) The county of Marion shall constitute the nineteenth family court circuit and have one family court judge;
- (20) The counties of Monongalia and Preston shall constitute the twentieth family court circuit and have two family court judges;
- (21) The counties of Barbour and Taylor shall constitute the twenty-first family court circuit and have one family court judge;
- (22) The counties of Tucker and Randolph shall constitute the twenty-second family court circuit and have one family court judge;
- (23) The counties of Mineral, Hampshire and Morgan shall constitute the twenty-third family court circuit and have two family court judges;
- (24) The counties of Berkeley and Jefferson shall constitute the twenty-fourth family court circuit and have three family court judges;
- (25) The counties of Hardy, Pendleton, and Grant shall constitute the twenty-fifth family court circuit and have one family court judge;
- (26) The county of Putnam shall constitute the twenty-sixth family court circuit and have one family court judge; and
- (27) The counties of Webster and Pocahontas shall constitute the twenty-seventh family court circuit and have one family court judge.
- (b) Effective January 1, 2025, 48 family court judges shall serve throughout the state, allocated among a total of 27 family court circuits as follows:
- (1) The counties of Brooke, Hancock, and Ohio shall constitute the first family court circuit

and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(2) The counties of Marshall, Wetzel, and Tyler shall constitute the second family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(3) The counties of Pleasants and Wood shall constitute the third family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(4) The counties of Roane, Calhoun, Gilmer, and Ritchie shall constitute the fourth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(5) The counties of Mason, Jackson, and Wirt shall constitute the fifth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(6) The county of Cabell shall constitute the sixth family court circuit and have three family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(7) The county of Wayne shall constitute the seventh family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(8) The county of Mingo shall constitute the eighth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(9) The county of Logan shall constitute the ninth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(10) The counties of Lincoln and Boone shall constitute the tenth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(11) The county of Kanawha shall constitute the eleventh family court circuit and have five family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(12) The counties of McDowell and Mercer shall constitute the twelfth family court circuit and have three family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

- (13) The counties of Raleigh, Summers, and Wyoming shall constitute the thirteenth family court circuit and have three family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (14) The county of Fayette shall constitute the fourteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (15) The counties of Greenbrier and Monroe shall constitute the fifteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (16) The counties of Clay and Nicholas shall constitute the sixteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (17) The counties of Lewis and Upshur shall constitute the seventeenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (18) The counties of Harrison and Doddridge shall constitute the eighteenth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (19) The county of Marion shall constitute the nineteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (20) The counties of Monongalia and Preston shall constitute the twentieth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (21) The counties of Barbour and Taylor shall constitute the twenty-first family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (22) The counties of Tucker and Randolph shall constitute the twenty-second family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (23) The counties of Mineral, Hampshire, and Morgan shall constitute the twenty-third family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;
- (24) The counties of Berkeley and Jefferson shall constitute the twenty-fourth family court circuit and have four family court judges with the additional family court judge to be elected

at the regularly scheduled election held in 2024, and every eighth year thereafter;

(25) The counties of Hardy, Pendleton, and Grant shall constitute the twenty-fifth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(26) The county of Putnam shall constitute the twenty-sixth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter; and

(27) The counties of Webster, Braxton, and Pocahontas shall constitute the twenty-seventh family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter.

(c) Family court judges taking office January 1, 2025, shall be elected at the regularly scheduled election(s) occurring in the year 2024, and shall serve for a term of eight years.

(d) The Legislature has the authority and may determine to realign the family court circuits and has the authority and may determine to increase or decrease the number of family court judges within a family court circuit, from time to time. Any person appointed or elected to the office of family court judge acknowledges the authority of the Legislature to realign family court circuits and the authority of the Legislature to increase or decrease the number of family court judges within a family court circuit.

§51-2A-4. Qualifications of family court judges.

(a) A family court judge must be a resident of this state, a member in good standing of the West Virginia State Bar, admitted to practice law in this state for at least five years prior to election, and must, at the time he or she takes office, and thereafter during his or her continuance in office, reside in the family court circuit for which he or she is a judge.

(b) A family court judge may not engage in any other business, occupation or employment inconsistent with the expeditious, proper and impartial performance of his or her duties as a judicial officer. A family court judge is not permitted to engage in the outside practice of law and shall devote full time to his or her duties as a judicial officer.

(c) The Supreme Court of Appeals may establish requirements for family court judges to attend and complete courses of instruction and continuing educational instruction in principles of family law and procedure.

(d) A person's acceptance of the office of family court judge pursuant to appointment or election constitutes the person's consent, agreement and election during the term of office not to become a member of the judges retirement system solely by reason of or based upon service as a family court judge and an acknowledgment by the person of the sole authority of the Legislature to determine the eligibility of family court judges to participate in a retirement system. Notwithstanding any other provision of law to the contrary, upon final judicial determination that a person, individually or as a member of a class, is eligible for participation in the judges retirement system solely by reason of or based upon service as a family court judge, no additional persons except as may be provided for in this subsection may be admitted to the judges retirement system existing upon the effective date of the final judicial determination. A circuit judge or justice of the Supreme Court of Appeals who is a member of the existing judges retirement system whose employment continues beyond the final judicial determination shall continue to contribute to and participate in the existing judges retirement system without a change in plan provisions or benefits. Any person who was previously a member of the judges retirement system and who later returns to participating employment as a circuit judge or justice of the Supreme Court of Appeals after the final judicial determination has the right to elect to return to the existing judges retirement system and participate during the judge's or justice's term or terms of office.

§51-2A-5. Term of office of family court judge; initial appointment; elections.

(a) Beginning with the election to be conducted in the year 2016, family court judges shall be elected. In family court circuits having two or more family court judges there shall be, for election purposes, numbered divisions corresponding to the number of family court judges in each area. Each family court judge shall be elected at large by the entire family court circuit. In each numbered division of a family court circuit, the candidates for nomination or election shall be voted upon and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the family court circuit. The candidate or candidates receiving the highest number of the votes cast within a numbered division shall be nominated or elected, as the case may be. Effective with the primary election of 2016, all elections for family court judges in the respective circuits will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for family court judges and all elections for family court judges 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 family court judge shall be omitted.

(b) The term of office for all family court judges elected in 2002 shall be for six years, commencing on January 1, 2003, and ending on December 31, 2008. Subsequent terms of office for family court judges elected thereafter shall be for eight years.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

(a) A family court judge is entitled to receive as compensation for his or her services an annual salary of \$62,500: *Provided*, That beginning July 1, 2005, a family court judge is entitled to receive as compensation for his or her services an annual salary of \$82,500: *Provided, however*, That beginning July 1, 2011, the annual salary of a family court judge shall be \$94,500: *Provided further*, That beginning July 1, 2020, the annual salary of a family court judge shall be \$103,950.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court shall be paid at least twice per month by the state. The annual salary of all secretary-clerks of the family court is \$42,576. Beginning July 1, 2023, the annual salary of a family court secretary-clerk shall be \$44,876. Family court secretary-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 enacted after July 1, 2023.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure: *Provided*, That the Supreme Court of Appeals may authorize additional family case coordinators if the workload of a circuit's family court requires extra staff support. The annual salary of the family case coordinator of the family court judge shall be established by the Administrative Director of the Supreme Court of Appeals but may not exceed \$54,576. Beginning July 1, 2023, the annual salary of a family court case coordinator shall not exceed \$56,876. Family court case coordinators 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. If more than one family case coordinator is approved by the Supreme Court of Appeals, then the chief family court judge of that circuit shall appoint, supervise, and assign job duties for any additional family case coordinator as needed for that circuit.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of Appeals.

(f) Family court judges and members of their staffs are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

(g) The Supreme Court of Appeals is authorized to create additional classifications of support staff that it deems necessary to adequately and efficiently staff the family courts of this state, including, but not limited to, receptionists, assistant case coordinators, and assistant secretary-clerks. 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 secretary-clerk and shall be paid by the state on the same basis established for secretary-clerks as provided in this section.

§51-2A-7. Powers; administrative and judicial functions of family court judge.

(a) The family court judge will exercise any power or authority provided in this article, in chapter forty-eight of this code or as otherwise provided by general law. Additionally, the family court judge has the authority to:

- (1) Manage the business before them;
- (2) Summon witnesses and compel their attendance in court;
- (3) Exercise reasonable control over discovery;
- (4) Compel and supervise the production of evidence, including criminal background investigations when appropriate;
- (5) Discipline attorneys;
- (6) Prevent abuse of process; and
- (7) Correct errors in a record.

(b) The family court judge has responsibility for the supervision and administration of the family court. A family court judge may promulgate local administrative rules governing the conduct and administration of the family court. In family court circuits with more than one family court judge, all family court judges must agree to the rules. If all of the family court judges in a family court circuit cannot agree, the chief judge of each circuit court in the counties in which the family court circuit is located shall promulgate the local administrative rules. If the chief judges of the circuit courts cannot agree, the Supreme Court of Appeals may promulgate the local administrative rules. Local administrative rules are subordinate and subject to the rules of the Supreme Court of Appeals or the orders of the chief justice. Rules promulgated by the family or circuit court are made by order entered upon the order book of the circuit court and are effective when filed with the Clerk of the Supreme Court of Appeals.

(c) Prior to the 2003 regular session of the Legislature and annually thereafter, the Supreme Court of Appeals shall report to the Legislature on the caseload in each family court circuit and shall recommend changes to the management of the family court as the Supreme Court of Appeals deems warranted or necessary to improve the family court.

(d) The Supreme Court of Appeals shall promulgate a procedural rule to establish time-keeping requirements for family court judges, family case coordinators and secretary-clerks of family court judges so as to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the location of absent parents, the establishment of paternity and the establishment, modification and enforcement of child support orders.

§51-2A-8. Rules of practice and procedure; applicability of rules of evidence; record of hearings; duties of clerk of circuit court.

(a) Pleading, practice and procedure in matters before a family court judge are governed by rules of practice and procedure for family law promulgated by the Supreme Court of Appeals.

(b) The West Virginia Rules of Evidence apply to proceedings before a family court judge.

(c) Hearings before a family court shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family court judge and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family court judge, the magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a family court judge shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. For evidentiary purposes, a duplicate of such electronic recording prepared by the secretary-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. The party requesting the copy shall pay the circuit clerk an amount equal to the actual cost of the tape or other medium or the sum of \$5, whichever is greater. Unless otherwise ordered by the court, the preparation of a transcript and the payment of the cost thereof shall be the responsibility of the party requesting the transcript. The circuit clerk shall remit those amounts received monthly to the State Treasury for deposit in the West Virginia Supreme Court of Appeals fund designated for receipt of such moneys.

(d) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all documents filed in the proceeding, constitute the exclusive record and, on payment of lawfully prescribed costs, shall be made available to the parties.

(e) In any proceeding in which a party has filed an affidavit that he or she is financially unable to pay the fees and costs, the family court judge shall determine whether either party is financially able to pay the fees and costs based on the information set forth in the affidavit or on any evidence submitted at the hearing. If a family court judge determines that either party is financially able to pay the fees and costs, the family court judge shall assess the payment of such fees and costs accordingly as part of an order. The provisions of this subsection do not alter or diminish the provisions of section one, article two, chapter fifty-nine of this code.

(f) The clerks of the circuit court shall have, within the scope of the jurisdiction of family courts, all the duties and powers prescribed by law that clerks exercise on behalf of circuit courts: Provided, That a family court judge may not require the presence or attendance of a circuit clerk or deputy circuit clerk at any hearing before the family court.

§51-2A-9. Contempt powers of family court judge.

(a) In addition to the powers of contempt established in chapter forty-eight of this code, a family court judge may:

- (1) Sanction persons through civil contempt proceedings when necessary to preserve and enforce the rights of private parties or to administer remedies granted by the court;
- (2) Regulate all proceedings in a hearing before the family court judge; and
- (3) Punish direct contempts that are committed in the presence of the court or that obstruct, disrupt or corrupt the proceedings of the court.

(b) A family court judge may enforce compliance with his or her lawful orders with remedial or coercive sanctions designed to compensate a complainant for losses sustained and to coerce obedience for the benefit of the complainant. Sanctions must give the contemnor an opportunity to purge himself or herself. In selecting sanctions, the court must use the least possible power adequate to the end proposed. A person who lacks the present ability to comply with the order of the court may not be confined for a civil contempt. Sanctions may include, but are not limited to, seizure or impoundment of property to secure compliance with a prior order. Ancillary relief may provide for an award of attorney's fees.

(c) Upon a finding that a person is in civil contempt, the court, when otherwise appropriate and in its discretion, and as an alternative to incarceration, may place the person on work release, in a weekend jail program, in an existing community service program, in an existing day-reporting center program, in any other existing community corrections program or on home confinement until the person has purged himself or herself of the contempt.

§51-2A-10. Motion for reconsideration of family court order.

(a) Any party may file a motion for reconsideration of a temporary or final order of the family court for the following reasons: (1) Mistake, inadvertence, surprise, excusable neglect or unavoidable cause; (2) newly discovered evidence which by due diligence could not have been available at the time the matter was submitted to the court for decision; (3) fraud, misrepresentation or other misconduct of an adverse party; (4) clerical or other technical deficiencies contained in the order; or (5) any other reason justifying relief from the operation of the order.

(b) A motion for reconsideration must be filed with the clerk of the circuit court within a reasonable time and for reasons set forth in subdivision (1), (2) or (3), subsection (a) of this section, not more than one year after the order was entered and served on the other party in accordance with rule 5 of the rules of civil procedure. The family court must enter an order ruling on the motion within thirty days of the date of the filing of the motion.

§51-2A-11. Petition for appeal.

- (a) Within thirty days following the entry of a final order of a family court judge or the entry of a final order of any senior status circuit judge, circuit judge or other judicial officer appointed to serve pursuant to the provisions of section nineteen of this article, any party may file a petition for appeal with the circuit court. No appeal may be had under the provisions of this article from any order of a family court judge or from any order of another judicial officer temporarily serving as a family court judge other than a final order.
- (b) A petition for appeal of a final order of the family court shall be filed in the office of the clerk of the circuit court. At the time of filing the petition, a copy of the petition for appeal must be served on all parties to the proceeding in the same manner as pleadings subsequent to an original complaint are served under rule 5 of the rules of civil procedure.
- (c) The circuit judge may require, or a party may choose to submit with the petition for appeal, a brief in support of the petition.
- (d) A respondent shall have fifteen days after the filing of a petition to file a reply to the petition for appeal. The reply must be served on all parties to the proceeding in the same manner required for service of the petition. The circuit judge may require, or a party may choose to submit with the reply, a brief in opposition to the petition.
- (e) In addition to the reply, the respondent may file a cross-petition to the petition for appeal within fifteen days after the filing of the petition. The respondent to the cross-petition shall have fifteen days after the filing of the cross-petition to file a reply. The cross-petition and any reply must be served in the same manner required for service of the original petition. The circuit judge may require or either party may choose to submit a brief on the cross-petition.
- (f) The Supreme Court of Appeals shall develop and provide forms for appeals filed pursuant to this section. The forms shall be made available for distribution in the offices of the clerks of the circuit courts and in the offices of the secretary-clerks to the family court judges.
- (g) The Supreme Court of Appeals shall promulgate a supervisory rule setting forth educational requirements in domestic relations matters for circuit court judges.
- (h) An appeal from the final order of any judicial officer assigned or appointed pursuant to the provisions of section nineteen of this article shall be perfected and treated in all respects as an appeal from an order of the family court. The terms "family court" or "family court judge" as provided in this section and in sections twelve, thirteen, fourteen and fifteen of this article mean the judicial officer who entered the final order which is the subject of an appeal.

§51-2A-12. Stay of proceedings pending appeal.

(a) Any person desiring to file a petition for appeal from a final order of the family court may file a motion for a stay of proceedings to the family court in which the order was entered. The motion for a stay shall be filed with the clerk of the circuit court and served on the respondent in accordance with rule 5 of the rules of civil procedure. The family court may, sua sponte, order a stay of all or part of a final order pending appeal. Subject to the provisions of subsection (c) of this section, the family court may order a stay for the period of time allowed for the filing of a petition for appeal to the circuit court or for any additional period of time pending disposition of the appeal. If the circuit court refuses to consider the petition for appeal, the stay is vacated.

(b) If the family court judge denies a motion for a stay of the proceedings pending appeal, or if the relief afforded is not acceptable, the person desiring to file the petition for appeal may file a motion for a stay of the proceedings to the circuit court. The motion for stay shall be filed with the clerk of the circuit court and served upon the other party in accordance with rule 5 of the rules of civil procedure. Subject to the provisions of subsection (c) of this section, the circuit court may order a stay for the period of time allowed for the filing of a petition for appeal to the circuit court or for any additional period of time pending disposition of the appeal. If the circuit court refuses to consider the petition for appeal, the stay is vacated.

(c) An order granting a motion for a stay under the provisions of this section may not include a stay of an award for the payment of spousal support or child support pending the appeal, except that an award of past-due child support may be stayed pending an appeal.

§51-2A-13. Motion to dismiss appeal.

At any time following the filing of a petition for appeal of a final order of a family court, either party may move the circuit court to dismiss the appeal on any of the following grounds: (1) A joint agreement of the parties to the dismissal; (2) failure to properly perfect the appeal; (3) failure to obey an order of the family court or circuit court; (4) lack of an appealable order; or (5) lack of jurisdiction. Such motion shall be filed with the clerk of the circuit court and served on the respondent in accordance with rule 5 of the rules of civil procedure. No oral argument shall be held on such motion unless requested by the court.

§51-2A-14. Review by circuit court; record; standard of review; temporary order upon demand.

- (a) The circuit court may refuse to consider the petition for appeal may affirm or reverse the order, may affirm or reverse the order in part or may remand the case with instructions for further hearing before the family court judge.
- (b) In considering a petition for appeal, the circuit court may only consider the record as provided in subsection (d), section eight of this article.
- (c) The circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard.
- (d) If the circuit court agrees to consider a petition for appeal, the court shall provide the parties an opportunity to appear for oral argument, upon the request of either party or in the discretion of the court. The provisions of this subsection are effective until the adoption of rules by the Supreme Court of Appeals governing the appellate procedures of family courts.
- (e) If the proceeding is remanded to the family court, the circuit court must enter appropriate temporary orders for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or such other temporary relief as the circumstances of the parties may require. If the circuit court remands the case to the family court, it must state the legal or factual issues to be considered by the family court on remand. If the family court determines that the consideration of those issues also requires consideration of collateral or interdependent issues, the family court may also consider those other collateral or interdependent issues.
- (f) The circuit court must enter an order ruling on a petition for appeal within sixty days from the last day a reply to the petition for appeal could have been filed. If the circuit court does not enter the order within the sixty-day period or does not, within the sixty-day period, enter an order stating just cause why the order has not been timely entered, the circuit clerk shall send a written notice to the parties that unless the parties both file an objection within fourteen days of the date of the notice, the appeal will be transferred to the Supreme Court of Appeals as provided in section fifteen of this article due to the failure of the circuit court to timely enter an order. The appeal shall be transferred without the necessity of the filing of any petition or further document by the petitioner.

§51-2A-15. Review by Supreme Court of Appeals; assistance for pro se appellants.

(a) If both of the parties file, either jointly or separately, within fourteen days following the entry of the final order of a family court judge, a notice of intent to file an appeal from the final order of the family court directly to the Supreme Court of Appeals and to waive their right to file a petition for appeal with the circuit court, the petition for appeal of the final order of the family court may be filed with the Supreme Court of Appeals in accordance with the provisions of article five, chapter fifty-eight of this code and the rules of appellate procedure, except that the standard of review for any such appeal is the same as set forth in subsection (b), section fourteen of this article.

(b) If a circuit court judge refuses to consider a petition for appeal or if a party is adversely affected by the order entered by the circuit court upon review of the final order of the family court, the party may seek review of the order of the circuit court by the Supreme Court of Appeals. If a petition for appeal to the circuit court is transferred to the Supreme Court of Appeals pursuant to the provisions of subsection (d), section fourteen of this article, the petition for appeal filed in the circuit court will be considered as a petition for appeal to the Supreme Court of Appeals. The Supreme Court of Appeals has jurisdiction to hear and entertain an appeal from an order of a circuit court or the transfer of an appeal to the Supreme Court of Appeals as provided in this article in the same manner provided for civil appeals in article five, chapter fifty-eight of this code and in the rules of appellate procedure, except that the standard of review for any such appeal is the same as set forth in subsection (b), section fourteen of this article.

(c) The Supreme Court of Appeals shall promulgate rules to assist pro se litigants in the filing and processing of family court appeals to the circuit court and to the supreme court. Such rules may address, but are not limited to, expedited means of transcribing family court records, use of asynchronous data communication network or other alternate forms of transmission for conducting appellate hearings, alternate requirements for the number of copies to be provided to the Supreme Court of Appeals and other appropriate measures which will provide meaningful appellate access to the courts pursuant to section seventeen, article III of the West Virginia Constitution.

§51-2A-16. Expiration of appellate procedures; exceptions; report requirements.

(a) The provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article shall expire and be of no force and effect after June 30, 2011, except as otherwise provided by subsection (b) of this section.

(b) Appeals that are pending before a circuit court or the Supreme Court of Appeals on June 30, 2011, but not decided before July 1, 2011, shall proceed to resolution in accordance with the provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article, notwithstanding the provisions of subsection (a) of this section that provide for the expiration of those sections. The Supreme Court of Appeals shall, by rule, provide procedures for those appeals that are remanded but not concluded prior to July 1, 2011, in the event that the appeals process set forth in sections eleven, twelve, thirteen, fourteen and fifteen of this article is substantially altered as of July 1, 2011.

(c) Prior to the 2011 regular session of the Legislature and annually thereafter, the Supreme Court of Appeals shall provide a detailed report to the Joint Committee on Government and Finance the number of appeals from final orders of the family court filed in the various circuit courts and in the Supreme Court of Appeals, the number of pro se appeals filed, the subject matter of the appeals, the time periods in which appeals are concluded, the number of cases remanded upon appeal, recommendations and supporting data on the feasibility, need and effect of creating an intermediate appellate court or other system of appellate procedure for family court matters and such other detailed information so as to enable the Legislature to study the appellate procedures for family court matters and to consider the possible necessity and feasibility of creating an intermediate appellate court or other system of appellate procedure.

(d) The amendments to this section in the second extraordinary session of the Legislature in 2010 shall apply retroactively so that the provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article shall be construed as if they did not expire after June 30, 2010.

§51-2A-17. Disciplinary proceedings for family court judges.

A family court judge may be censured, temporarily suspended or retired as provided for in section eight, article VIII of the West Virginia Constitution. A family court judge may be removed from office only by impeachment in accordance with the provisions of section nine, article IV of the West Virginia Constitution.

WV Legislature

§51-2A-18. Vacancy in the office of family court judge.

If a vacancy occurs in the office of family court judge, the Governor shall fill the vacancy by appointment as provided in section three, article ten, chapter three of this code.

WV Legislature

§51-2A-19. Temporary assignment of family court judges.

(a) Upon the occurrence of a vacancy in the office of family court judge, the disqualification of a family court judge or the inability of a family court judge to attend to his or her duties because of illness, temporary absence or any other reason, the chief justice of the Supreme Court of Appeals may assign the family court judge of any other family court circuit, or any senior status circuit judge or circuit judge of any judicial circuit, to hear and determine any and all matters then or thereafter pending in the family court to which the family court judge is assigned. While so assigned, the family court judge, senior status circuit judge or circuit judge has all of the powers of the regularly elected family court judge of the family court circuit.

(b) When, in the discretion of the chief justice of the Supreme Court of Appeals, the urgency or volume of cases in a family court circuit so requires, the chief justice may assign a senior status circuit judge, a circuit judge of any judicial circuit or a family court judge of any family court division to serve temporarily in a family court circuit. When a senior status circuit judge or other circuit judge is so assigned, he or she has all of the powers of a regularly elected family court judge.

(c) The chief justice of the Supreme Court of Appeals may appoint a person who has previously served as a family law master or family court judge to serve as a temporary family court judge as disqualification, recusal, vacation, illness or the ends of justice may dictate.

(d) The Supreme Court of Appeals shall promulgate a supervisory rule setting forth educational requirements for persons assigned to serve temporarily as family court judges pursuant to the provision of this section.

§51-2A-20. County commissions required to furnish offices for the family court judges.

Each county commission of this state has a duty to provide premises for the family court which are adequate for the conduct of the duties required of the court under the provisions of this article and of chapter forty-eight of this code and which conform to standards established by rules promulgated by the Supreme Court of Appeals. The administrative office of the Supreme Court of Appeals shall pay to the county commission a reasonable amount as rent for the premises furnished by the county commission to the family court and his or her staff pursuant to the provisions of this section.

§51-2A-21. Budget of the family court.

The budget for the payment of the salaries and benefits of the family court judges and clerical and secretarial assistants shall be included in the appropriation for the Supreme Court of Appeals. The family court administration fund, heretofore created as the family law master administration fund, is continued as a special account in the state Treasury. The fund shall operate as a special fund administered by the State Auditor which shall be appropriated by line item by the Legislature for payment of administrative expenses of family courts. All agencies or entities receiving federal matching funds for the services of family court judges and their staff, including, but not limited to, the commissioner of the Bureau for Child Support enforcement and the Secretary of the Department of Human Services, shall enter into an agreement with the administrative office of the Supreme Court of Appeals whereby all federal matching funds paid to and received by said agencies or entities for the activities by family court judges and the program staff shall be paid into the family court administration fund. Said agreement shall provide for advance payments into the fund by such agencies, from available federal funds pursuant to Title IV-D of the Social Security Act and in accordance with federal regulations.

§51-2A-22. Family court fund.

The office and the clerks of the circuit courts shall, on or before the tenth day of each month, transmit all amounts directed to be paid to the family court fund under any provision of this code to the state Treasurer for deposit in the state Treasury to the credit of a special revenue fund known as the "family court fund" and created by prior enactment of former section twenty-three, article four, chapter forty-eight-a of this code. All moneys paid into the state Treasury and credited to the "family court fund" shall be used by the administrative office of the Supreme Court of Appeals solely for paying the costs associated with the duties imposed upon the family courts under the provisions of this article or under chapter forty-eight of this code which require activities by the family court judges or members of their staff which are not subject to being matched with federal funds or subject to reimbursement by the federal government. Such moneys shall not be treated by the Auditor and treasurer as part of the general revenue of the state. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending June 30, 2002, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

§51-2A-23. Operative dates; terminology.

(a) Except as provided in subsection (b) of this section, the provisions of Enrolled Senate Bill No. 5007, passed during the fifth extraordinary session of the 2001 Legislature, become operable on January 1, 2002. It is intended that the family law master system in existence on July 1, 2001, will continue to function under the prior enactment of this article, notwithstanding the passage of Enrolled Senate Bill No. 5007, until January 1, 2002, when the existing family law master system is replaced with the system of family court judges provided for in this article.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of section five of this article providing for the initial appointment of family judges by the Governor become operable on October 1, 2001.

(c) After the effective date of this article, whenever the terms "master", "law master" or "family law master" appear in this code, the terms shall have the same meaning as "family court judge."

§51-2A-24. Review by Intermediate Court of Appeals; transfer of jurisdiction from circuit court.

(a) Notwithstanding any provision of this code to the contrary, an appeal of a final order or decision entered by a family court after June 30, 2022, must be made to the Intermediate Court of Appeals, as provided in §51-11-1 *et seq.* of this code: *Provided*, That any appeal of a judgement or final order entered by a family court in a domestic violence proceeding pursuant to §48-27-101 *et seq.* shall first be made to a circuit court.

(b) Notwithstanding any provision of this code to the contrary, a circuit court has no jurisdiction to review a final order or decision entered by a family court after June 30, 2022, if review of the final order or decision is within the jurisdiction of the Intermediate Court of Appeals, as provided in §51-11-5 of this code: *Provided*, That a circuit court retains jurisdiction to review a judgement or final order issued by a family court in a domestic violence proceeding pursuant to §48-27-101 *et seq.* of this code.