WEST VIRGINIA CODE CHAPTER 56 ARTICLE 2

WV Legislature

§56-2-1. Service of notices; personal service; substituted service; return.

A notice, no particular mode of serving which is prescribed, may be served by delivering a copy thereof in writing to the party in person; or if he (or she) be not found, by delivering such copy at his (or her) usual place of abode, and giving information of its purport, to his wife (or her husband), or to any other person found there who is a member of his (or her) family and above the age of sixteen years; or if neither his wife (or her husband) nor any such other person be found there, and he (or she) be not found, by leaving such copy posted at the front door of such place of abode. Any sheriff or constable, thereto required, shall serve a notice within his county and make return of the manner and time of service; for a failure so to do he shall forfeit $20. Such return, or a similar return by any other person who verified it by affidavit, shall be evidence of the manner and time of service.

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§56-2-2. Service by publication.

Any such notice to a person not residing in this state may be served by the publication thereof as a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the suit or action is pending.

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§56-2-3. Notice to take depositions.

Notice to any party to take a deposition may be served on the counsel of such party, or on any one of such counsel, if there be more than one, and such service shall have like effect as if the notice were served on the party, provided the time between the service of notice and taking the deposition be sufficient for conveying, by ordinary course of mail, a letter from the place of service to the place of residence of the party, and a reply from that place back to the place of service, and then for the counsel to attend at the place of taking the deposition. In all cases when notice is served on counsel as aforesaid, the court, upon exception being taken, may determine whether, under all the circumstances, the notice has been served in reasonable time, and admit or reject the deposition accordingly.

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§56-2-4. Motion on certain bonds.

In the case of any bond taken by an officer, or given by a sheriff or constable, and returned to or filed in the office of the clerk of the county court of the county, or any bond or recognizance taken in a criminal case or proceeding, the circuit court of the county, or the court in which any such bond or recognizance is given, may, on motion of any person, or the state, as the case may be, give judgment for so much money as he or the state, is entitled, by virtue of such bond, to recover by action.

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§56-2-5. Notice of motion for judgment.

In any case wherein there may be judgment or decree for money on motion, such motion shall be after ten days' notice, unless some other time be specified in the section or statute authorizing such motion.

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§56-2-6. Motion for judgment on contracts; affidavit of claim; plea and counter affidavit; judgment; discontinuance; defense.

Any person entitled to recover money by action on any contract may, on motion before any court which would have jurisdiction in an action, obtain judgment for such money after not less than twenty days' notice, which notice shall be in writing, signed by the plaintiff or his attorney, and shall be returned to the clerk's office of such court at least five days before the return day of such notice, and when so returned shall be forthwith filed and the date of filing noted thereon, and shall be placed upon the docket for hearing. Such notice may be served, returned as aforesaid, filed and docketed at any time before or during the term of court at which the motion for judgment is to be made, and shall be heard at such term if the term continues for a period of twenty days after the service of such notice, unless good cause for a continuance thereof be shown. If the court be not in session on the return day as set out in the notice, and the term of court be not ended, motion shall be considered continued until the next court day of the term and if the term be ended, then the motion shall stand continued. The return day of a notice under this section shall not be more than ninety days from its date, unless the commencement of the next succeeding term of court be more than ninety days from such date, in which case the return day may be the first day of such term.

In any such motion, if the plaintiff shall file with his notice, and shall serve upon the defendant at the same time and in the same manner as the notice is served, an affidavit of himself or some other credible person, stating distinctly the several items of the plaintiff's claim, and that there is, as the affiant verily believes, due and unpaid from the defendant to the plaintiff upon the demand or demands stated in the notice, including principal and interest, after deducting all payments, credits and sets-off made by the defendant, or to which he is entitled, a sum certain to be named in the affidavit, no plea shall be filed in the case unless the defendant shall file with his plea the affidavit of himself or some other credible person, that there is not, as the affiant verily believes, any sum due by the defendant to the plaintiff upon the demand or demands stated in the plaintiff's notice, or stating a sum certain less than that stated in the affidavit filed by the plaintiff, which the affiant verily believes is all that is due from the defendant to the plaintiff upon the demand or demands stated in the plaintiff's notice. If such plea and affidavit be not filed, on motion of the plaintiff judgment shall, without further proof, be entered for the plaintiff by the court for the sum stated in his affidavit, with interest thereon from the date of the affidavit until paid: Provided, That before entering judgment on any negotiable instrument, the court shall require the plaintiff to file the same in such proceeding. If such plea and affidavit be filed by the defendant and it be admitted in such affidavit that any sum is due from the defendant to the plaintiff, judgment may be taken by the plaintiff for the sum so admitted to be due, with interest thereon from the date of the affidavit filed by the plaintiff until paid, and the case tried as to the residue.

A proceeding under this section shall not be discontinued by reason of the failure of the clerk to docket the same, or by reason of no order of continuance being entered in it from one day to another, or from term to term. Defense to any such motion may be made in the

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same manner and to the same extent as to an action at law.

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§56-2-7. Trial by jury.

On a motion, when an issue of fact is joined, and either party desires it, or when in the opinion of the court it is proper, a jury shall be impaneled for the trial of the issue.

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§56-2-8. Collection of forfeitures; prosecuting attorney's fees.

Unless otherwise expressly provided by law, any forfeiture payable to the state under any provision of law may be enforced in the circuit court or other court of record having jurisdiction thereof, upon notice of motion for judgment brought in the name of the state. If such judgment shall be for the state it shall include the costs of the proceeding, and a docket fee of $10 for the prosecuting attorney's services, payable into the county treasury, which docket fee shall be taxed as part of the costs.

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