WEST VIRGINIA CODE CHAPTER 56 ARTICLE 7

WV Legislature

§56-7-1. To what commissioner or person accounts to be referred; territorial jurisdiction; recommittal.

Accounts to be taken in any case shall be referred to a commissioner appointed under the provisions of sections one and two, article five, chapter fifty-one of this code, to be named in the decree or order unless the parties interested agree, or the court shall deem it proper, that they be referred to some other person especially appointed a commissioner. Every commissioner shall examine and report upon such accounts and matters as may be referred to him by the court and such report may be recommitted to such commissioner, or to some other commissioner, for other and final report.

The court in any decree or order of reference may authorize and empower the commissioner, to whom such cause or action is referred, to take proof and hear testimony touching the matters referred to him in any county within this state; and, for such purpose when so authorized, the jurisdiction and authority of such commissioner shall extend throughout the state.

Whenever the commissioner to whom any such cause or action was referred has made up and filed his report, and there appears therefrom or from the evidence filed therewith, or from the pleadings and evidence of the whole case, sufficient facts upon which the court can decree or enter judgment, the same shall not be recommitted for further report, but a decree or judgment shall be entered therein, according to the law and the very right of the case as disclosed from the whole record.

WV Legislature

§56-7-2. Order of reference before case on docket.

The judge of any court having jurisdiction to try or hear chancery causes may, in vacation or in term time, though the cause be not upon the court docket, make an order in any cause pending in his court at any time after process has been duly served on the defendants or such of them as may appear to be interested in the subject matter upon which the commissioner is to report, or at any time after such defendants have entered their appearance in such cause, referring the same to a commissioner for the purpose of stating any proper account or reporting upon any matter as to which it is proper there should be a commissioner's report in such cause. But no such order of reference shall be made in any cause until reasonable notice in writing has been served upon the opposite party, or his attorney, of the time and place of making application therefor.

WV Legislature

§56-7-3. Notice by commissioner.

The court ordering an account to be taken may direct that the time and place of taking the same be published as a Class II 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. The newspaper shall be designated by the party at whose instance such publication is made or his attorney, and if no newspaper be so designated, then the court shall designate the newspaper. Such publication shall be equivalent to personal service on the parties or any of them. In any case where all persons whose interest may be affected by the proceedings before a commissioner are known, it shall be sufficient that, in lieu of such publication of the notice as aforesaid, such persons, or their counsel (or one of their counsel, if there be more than one), be served with such notice in the manner provided by section one, article two of this chapter.

WV Legislature

§56-7-4. Instruction of commissioner by judge.

A commissioner who doubts as to any point which arises before him in taking an account to be returned to any court, may, in writing, submit the point to such court, or the judge thereof in vacation, who may instruct him thereon.

WV Legislature

§56-7-5. When account to be taken.

Every commissioner to whom a cause is referred shall, immediately after the adjournment of each term of the court, proceed to take all accounts referred to him by any order or decree of the court, and all adjournments and postponements of the taking of any account shall be for good cause to be shown by the affidavit of the party making the application, which shall be filed with the papers in the cause; and if the commissioner unreasonably delays his report, he shall receive no compensation for the same.

WV Legislature

§56-7-6. Proof of debt before commissioner by affidavit; counter affidavit.

Every creditor in any chancery cause pending in any court before a commissioner in chancery under a decree of reference in such cause may establish his debt or demand against the debtor, if it be for the recovery of money due on contract, by filing before the commissioner with such debt or demand, completely itemized where it is upon an account, the affidavit or affidavits of any person or persons competent and not disqualified by law (which competency the affidavit or affidavits shall affirmatively show in every case where the creditor is seeking to prove a debt or demand against a deceased debtor or his estate) to testify as a witness or as witnesses before the commissioner about or concerning the debt or demand in question, such affidavit or affidavits stating every essential element necessary to constitute proof of such debt or demand, the same as though affiant or affiants had testified before the commissioner as a witness or as witnesses in person, unless the debtor, his personal representative, or any party, or creditor, or other person interested shall file before the commissioner a counter affidavit denying the correctness of the debt or demand, as a whole or in part, or the validity of any lien by which it is secured, in which case the creditor presenting such debt or demand shall be required to produce his witness or witnesses before the commissioner, reasonable notice of which shall be given in writing to the creditor or his attorney, and the taking of the testimony relative to such debt or demand, or the validity of such lien, as the case may be, shall be proceeded with before the commissioner in like manner as if no affidavit or affidavits had been filed. In every case, however, where such debt or demand is evidenced by a contract in writing, or by a judgment or decree, or is secured by a lien, such affidavit or affidavits alone shall not be sufficient to establish such debt or demand; but such creditor shall also produce before such commissioner as additional proof the written evidence of such debt and shall file the same or a copy thereof certified by the commissioner, or a certified copy of such judgment or decree, and, if such judgment or decree be recorded in the judgment lien docket, a certified transcript of such recordation; and, if the debt or demand be secured by any other lien than that of a judgment or decree, he shall file the original or a certified copy of the writing by which such lien is evidenced.

Any transcript of a judgment or decree of a court or justice of this state, introduced in evidence in any court or before such commissioner, shall prima facie be presumed unpaid unless such judgment or decree appear to have been rendered more than ten years prior to the time of such proof.

WV Legislature

§56-7-7. Adjournment of hearing; notice of completion of report; exceptions.

A commissioner in chancery may adjourn his proceedings from time to time after the day to which notice was given, without any new notice, until his report is completed; and when it is completed, he shall give notice of the fact to all attorneys who appear of record in the cause; and thereafter, unless otherwise ordered by the court or agreed by the parties, he shall retain the report and the evidence ten days for the examination of parties interested. Such notice may be given either verbally or in writing, and may be given by depositing the same in due course of mail, properly addressed; and the commissioner shall certify in his report the time and manner of giving such notice. Any party may inspect the report and evidence and file exceptions thereto before such commissioner, or at the term of the court to which it is returned, or, by leave of the court, after such term. In an exception it shall be sufficient to state the item or part of the report to which objection is made, but the court may, if good cause therefor appear, require the exception to be made more specific, or the grounds therefor to be stated therein, and may overrule such exception if the requirement be not complied with.

WV Legislature

§56-7-8. Contents of commissioner's report.

The commissioner, or any other person executing an order of reference, in all cases, shall return with his report all the evidence taken upon the execution of the reference, and the exceptions, if any, taken to his report, and shall submit such remarks upon exceptions as he may deem pertinent; and he shall also return with his report the decrees, orders and notices under which he acted. He shall not copy in his account or report any papers; and, if there has been a previous account or report, he shall not copy it into his report except so far as may be necessary to make such report a complete account and report in accordance with the decree of reference entered in the cause. Everything improperly copied into a commissioner's account shall be expunged at his cost on the application of either party; and if on account of his negligence or misconduct a report be recommitted, he shall bear the cost occasioned thereby.

WV Legislature

§56-7-9. When cause may be heard on report.

A cause may be heard upon a commissioner's report at any time after it is returned, and the court may, for good cause shown by any party interested, hear a cause on a commissioner's report returned after the commencement of the term of court at which such hearing is desired to be had, but the court in this latter case may require the party desiring the hearing to give reasonable notice to the opposite party or to his attorney.

WV Legislature

§56-7-10. Taking accounts in actions at law.

At law, in any case in which it may be deemed necessary, the court may direct any such commissioner or other competent person, either before or at the time of trial, to take and state an account between the parties, which account, when thus stated, shall be deemed prima facie correct, and may be given in evidence to the court or jury trying the case; and the commissioner or other person shall be allowed for such services the same fees that would be allowed a commissioner for similar services in the execution of an order of reference in chancery, to be taxed in the bills of costs.

WV Legislature