WEST VIRGINIA CODE CHAPTER 57 ARTICLE 5

§57-5-1. Summons for witnesses.

A summons may be issued, directed as described in section five, article three, chapter fifty-six of this code, commanding the officer to summon any person to attend on the day and at the place that such attendance is desired, to give evidence before a court, grand jury, arbitrators, umpire, justice, surveyor, notary public, or any commissioner appointed by a court. The summons may be issued, if the attendance be desired at a court, by the clerk thereof; if before a grand jury, by the prosecuting attorney or the clerk of the court, at the instance of the prosecuting attorney; and in other cases, by any person before whom, or the clerk of the circuit court of a county in which, the attendance is desired; or, if attendance be desired before a justice, by such or any other justice. The summons shall express on whose behalf, and in what case, or about what matter, the witness is to attend. This section shall be deemed to authorize a summons to compel attendance before commissioners or other persons appointed by authority of another state, but only in case they be citizens of this state, and the summons requires the attendance of a witness at a place not out of his county.

§57-5-2. When witness may be compelled to give evidence against himself immunity of witness from prosecution.

In any criminal proceeding no person shall be excused from testifying or from producing documentary or other evidence upon the ground that such testimony or evidence may criminate or tend to criminate him if the court in which he is examined is of the opinion that the ends of justice may be promoted by compelling such testimony or evidence. And if, but for this section, the person would have been excused from so testifying or from producing such evidence, then if the person is so compelled to testify or produce other evidence and if such testimony or evidence is self-criminating, such self-criminating testimony or evidence shall not be used or receivable in evidence against him in any proceeding against him thereafter taking place other than a prosecution for perjury in the giving of such evidence, and the person so compelled to testify or furnish evidence shall not be prosecuted for the offense in regard to which he is so compelled to testify or furnish evidence, and he shall have complete legal immunity in regard thereto.

§57-5-3. Production of writings -- By party.

In any case at law, upon a party making affidavit that a particular book of accounts, or other writing or paper is important for him to have in the trial of his cause, he may procure from the clerk of the court in which the action is pending a subpoena duces tecum requiring any party to the action to appear before the court on a day named therein, and bring with him and produce before such court such book of accounts, or other writing or paper, as is specified in such process, in order that the same may be used as evidence on the trial of the action. And unless the person upon whom such process is served shall, at the time specified therein, produce what is so required, or show to the satisfaction of the court that he has not under his control such book, writing or paper, or unless, from an inspection or otherwise, the court is of opinion that the character of the book, writing or paper is such as should not be used as evidence on the trial of the action, the court may attach him and compel him to produce the same. It may also, if it see fit, set aside a plea of such person and give judgment against him by default, if he be a defendant, or, if he be a plaintiff, order his suit to be dismissed, with costs, or if he be claiming a debt before such court or commissioner, disallow such claim.

§57-5-4. Production of writings -- By person other than party.

When it appears by affidavit or otherwise that a writing or document in the possession of any person not a party to the matter in controversy is material and proper to be produced before the court, or any person appointed by it or acting under its process or authority, or any such person as is named in section one of this article, such court, family law master, judge or president thereof may order the clerk of the said court to issue a subpoena duces tecum to compel such production at a time and place to be specified in the order.

§57-5-4a. Hospital records; definitions.

As used in sections four-a to four-j in this article the following terms shall have the respective meanings ascribed thereto:

(a) "Records" means and includes without restriction, those medical histories, records, reports, summaries, diagnoses, and prognoses, records of treatment and medication ordered and given, notes, entries, X-rays, and other written or graphic data prepared, kept, made or maintained in hospitals that pertain to hospital confinements or hospital services rendered to patients admitted to hospitals or receiving emergency room or outpatient care. Such records shall not, however, include ordinary business records pertaining to patients' accounts or the administration of the institution.

(b) "Custodian" means and includes the medical record librarian and the administrator or other chief officer of a duly licensed hospital in this state and its proprietor, as well as their deputies and assistants and any other persons who are official custodians or depositories of records.

§57-5-4b. Hospital records; furnishing copies in compliance with subpoenas.

Except as hereinafter provided, when a subpoena duces tecum is served upon a custodian of records of any hospital duly licensed under the laws of this state in an action or proceeding in which the hospital is neither a party nor the place where any cause of action is alleged to have arisen and such subpoena requires the production of all or any part of the records of the hospital relating to the care or treatment of a patient in such hospital, it shall be sufficient compliance therewith if the custodian or other officer of the hospital shall, on or before the time specified in the subpoena duces tecum, file with court clerk or the officer, body or tribunal conducting the hearing, a true and correct copy (which may be a copy reproduced on film or other reproducing material by microfilming, photographing, photostating or other approximate process, or facsimile, exemplification or copy of such reproduction or copy) of all records described in such subpoena.

§57-5-4c. Hospital records; sealing, identification and direction of copies.

The copy of the records shall be separately enclosed in an inner-envelope or wrapper, sealed, with the style and number of the action, name of witness and date of subpoena clearly inscribed thereon. The sealed envelope or wrapper shall then be enclosed in an outer-envelope or wrapper, sealed, and directed as follows:

If the subpoena directs attendance in court, to the clerk of such court or to the judge thereof; if the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at his place of business; in other cases, to the officer, body or tribunal conducting the hearing, at a like address.

§57-5-4d. Hospital records; opening of sealed envelopes.

Unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, court, officer, body or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition or hearing. Before directing that such inner-envelope or wrapper be opened, the judge, court, officer, body or tribunal shall first ascertain that either (1) the records have been subpoenaed at the insistance of the patient involved or his counsel of record, or (2) the patient involved or someone authorized in his behalf to do so for him has consented thereto and waived any privilege of confidence involved. Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received.

The provisions of this section shall not apply in a workers' compensation proceeding if the pertinent record is the record of the claimant therein or a claimant's decedent: Provided, That nothing in this section, or the preceding section, shall limit in any manner the availability of and access to documents as provided in the rules of civil procedure or elsewhere in this code by the parties to any civil action and their counsel.

§57-5-4e. Hospital records; custodian's affidavit; charges.

The records shall be accompanied by an affidavit of a custodian stating in substance: (a) That the affiant is a duly authorized custodian of the records and has authority to certify said records, (b) that the copy is a true copy of all the records described in the subpoena, (c) that the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business at or near the time of the act, condition or event reported therein, and (d) certifying the amount of the reasonable charges of the hospital for furnishing such copies of the record. If the hospital has none of the records described, or only part thereof, the custodian shall so state in the affidavit and file the affidavit and such records as are available in the manner described in sections four-b and four-c. The filing of such affidavit with respect to reasonable charges shall be sufficient proof of such expense, which shall be taxed as costs of court.

§57-5-4f. Hospital records; admissibility of copies and affidavits.

The copy of the record shall be admissible in evidence to the same extent as though the original thereof were offered and the custodian has been present and testified to the matters stated in the affidavit.

The affidavit shall be admissible in evidence and the matters stated therein shall be presumed true in the absence of preponderance of evidence to the contrary. When more than one person has knowledge of the facts, more than one affidavit may be made.

§57-5-4g. Hospital records; obtaining personal attendance of custodian.

The personal attendance of the custodian shall be required if the subpoena duces tecum contains a clause which reads:

"The procedure authorized pursuant to section four-b of this article will not be deemed sufficient compliance with this subpoena."

§57-5-4h. Hospital records; obtaining personal attendance of custodian and production of original record.

The personal attendance of the custodian and the production of the original record shall be required if the subpoena duces tecum contains a clause which reads:

"Original records are required, and the procedure authorized pursuant to section four-b, article five, chapter fifty-seven of this code, will not be deemed sufficient compliance with this subpoena."

§57-5-4i. Hospital records; substitution of copies after introduction of originals.

In view of the property right of the hospital in its records, original records may be withdrawn after introduction into evidence and copies substituted, unless otherwise directed for good cause by the court, judge, officer, body or tribunal conducting the hearing. The custodian may prepare copies of original records in advance of testifying for the purpose of making substitution of the original record, and the reasonable charges for making such copies shall be taxed as costs of court. If copies are not prepared in advance, they can be made and substituted at any time after introduction of the original record, and the reasonable charges for making such copies shall be taxed as costs of court.

§57-5-4j. Hospital records; evidence of reasonableness of medical expenses.

Proof that medical, hospital and doctor bills were paid or incurred because of any illness, disease or injury shall be prima facie evidence that such bills so paid or incurred were necessary and reasonable.

§57-5-5. Failure of witness to attend or produce writing.

If any person, after being served with such summons, fail to attend to give evidence or to produce such writing or document according to the summons, the court whose clerk issued the summons, or if it was not issued by the clerk of a court, the circuit court of the county in which the attendance is desired, or a judge of such court in vacation, on a special report by the person or persons before whom there was a failure to attend, on proof that there was paid to him (if it was required) a reasonable time before he was required to attend, the allowance for one day's attendance, and his mileage and tolls, shall, after service of a notice to, or rule upon him to show cause against it (if no sufficient cause be shown against it) fine him not exceeding $20, to the use of the party for whom he was summoned, and may proceed by attachment to compel him to attend and give his evidence or produce such writing or document at such time and place as such court or judge may deem fit. The witness shall, moreover, be liable to any party injured for damages.

§57-5-6. Commitment to jail of person attending but refusing to testify or produce writing.

If a person, after being served with such summons, shall attend and yet refuse to be sworn, or to give evidence, or to produce any writing or document required, he may by order of the court whose clerk issued said summons, or of the person before whom he was summoned to attend, be committed to jail, there to remain until he shall, in custody of the jailer, give such evidence or produce such writing or document.

§57-5-7. Interpreters required.

(a) In any court proceeding wherein a party or witness or juror cannot readily understand or verbally communicate the English language because the witness or juror is deaf or because of any other hearing difficulties, such person shall have the right to have a qualified interpreter to assist the witness or juror at every stage of the proceeding. Such right shall also pertain in any proceeding before administrative boards, commissions or agencies of this state or any political subdivision or municipality thereof, and in coroners" inquests and grand jury proceedings.

(b) The director of the administrative office of the Supreme Court of Appeals shall establish a program to facilitate the use of interpreters in courts of this state and in extra-judicial criminal proceedings as provided for in this section.

(1) The director shall prescribe, determine and certify the qualifications of persons who may serve as certified interpreters in courts of this state in proceedings involving the deaf and hard of hearing. Persons certified by the director shall be interpreters certified by the national registry of interpreters for the deaf, or the West Virginia registry of interpreters for the deaf or approved by the chief of services for the deaf and hard of hearing of West Virginia of the West Virginia Division of Vocational Rehabilitation, or shall be such other persons deemed by the director to be qualified by education, training and experience. The director shall maintain a current master list of all interpreters certified by the director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters.

(2) Each circuit court shall maintain on file in the office of the clerk of the court a list of all persons who have been certified as oral or manual interpreters for the deaf and hard of hearing by the director of the administrative office of the Supreme Court of Appeals in accordance with the certification program established pursuant to this section.

(3) In any criminal or juvenile proceeding, or other proceeding described in §51-11-5 of this code, the judge of the circuit court in which such proceeding is pending, or, if such proceeding is in a magistrate court, then the judge of the circuit court to which such proceeding may be appealed or presented for judicial review, shall, with the assistance of the director of the administrative office of the Supreme Court of Appeals, utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the judge, the services of an otherwise competent interpreter, if the judge determines on his or her own motion or on the motion of a party that such party or a witness who may present testimony in the proceeding suffers from hearing difficulties so as to inhibit such party’s comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness" comprehension of questions and the presentation of such testimony. The utilization of an interpreter shall be appropriate at any stage of the proceeding, judicial or extra-judicial, at which a person would be entitled to representation by an attorney and a waiver of the right to counsel shall not constitute a waiver of the right to an interpreter as provided for by this section.

(c) Whenever a qualified interpreter is appointed pursuant to the provisions of subsection (b) of this section, or to accommodate a juror, the court shall, at the conclusion of the proceedings or interrogation, by order, fix the compensation of such interpreter. The compensation shall include reimbursement for all reasonable and necessary expenses actually incurred in the performance of such duties, but expenses shall not be incurred in excess of the prevailing rate for state employees. In all such appointments arising from subdivision (3), subsection (b) of this section, the compensation shall be paid by the State Auditor from the fund administered by the Supreme Court of Appeals for other court costs. In other proceedings before any circuit or magistrate court, Supreme Court of Appeals or before any administrative boards, commissions and agencies, the compensation shall be fixed by such court, board, commission or agency and paid, within the limit of available funds, by such court, board, commission or agency.

(d) In any proceeding described in subdivision (3), subsection (b) of this section, if the circuit judge does not appoint an interpreter, an individual requiring the services of an interpreter may seek the assistance of the clerk of the circuit court or the director of the administrative office of the Supreme Court of Appeals in obtaining the assistance of a certified interpreter.

(e) Whenever an interpreter is necessary in any court proceeding because a witness or party speaks only a foreign language or for any other reason, an interpreter shall be sworn truly to interpret.

§57-5-8. Who may administer oath to witness.

Any person before whom a witness is to be examined may administer an oath to such witness.

§57-5-9. Administration of oaths or taking of affidavits; authentication of affidavit made in another state or country; oaths and affidavits of persons in military service.

Any judge of this state may administer any oath that is or may be lawful for any person to take, including oaths of office, and also may swear any person to an affidavit, and administer an oath to any person in any proceeding.

Any oath or affidavit required by law, which is not of such a nature that it must be made otherwise or elsewhere may, unless otherwise provided, be administered by, or made before, a county commissioner, notary public, or by the clerk of any court, or, in case of a survey directed by a court in a case therein pending, by or before the surveyor directed to execute said order of survey.

An affidavit may also be made before any officer of another state or country authorized by its laws to administer an oath, and shall be deemed duly authenticated if it be subscribed by the officer, with his or her official seal annexed, and if he or she have none, the genuineness of his or her signature, and his or her authority to administer an oath, shall be authenticated by some officer of the same state or country under his or her official seal.

Any oath or affidavit required of a person in the military service of the United States (including the Women's Army Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women's Reserve or similar women's auxiliary unit officially connected with the military service of the United States), may be administered by or made before any commissioned officer of any branch of the military service of the United States, or any auxiliary unit officially connected with the military service. Such oath may be taken or affidavit made at any place either within or outside the United States of America, or any territory, possession or dependency thereof. The jurat to the oath and certificate to the affidavit need not state the place where the same is taken and shall require no seal to be affixed thereto. The certificate of the officer before whom the oath is taken or affidavit is made must state his or her rank, branch of military service, and identification number, and the certificate may be substantially in form and effect as follows:

IN THE MILITARY SERVICE OF THE UNITED STATES:

I, ..., being duly sworn on oath (affirmation), do swear (affirm) that I am a member of the military service of the United States (or of ....., an auxiliary to the military forces of the United States); that ***, etc.

.....

Taken, subscribed and sworn to before me, ..., a commissioned officer in the ..... service of the United States, by ....., a member of the military service of the United States (or of ....., an auxiliary to the military forces of the United States), this the ..... day of ....., 20.....

.....

(Signature of officer)

.....

(Rank) (Identification Number)

Any oath or affidavit heretofore taken or made by any person in the military service in substantial compliance with this section shall be valid.

§57-5-10. Affidavit of nonresidence; affidavit of publication in newspaper.

In any suit an affidavit that the witness or party resides out of this state, or is out of it, shall be prima facie evidence of the fact although such affidavit be made without previous notice. Where anything is required by any statute to be published in a newspaper, the certificate of the editor or publisher or affidavit of any other person shall be admitted as evidence of what is stated therein as to the publication.

§57-5-11. Disposal of exhibits or articles offered in evidence; disposal of property in hands of law-enforcement officials.

Any circuit court in this state, or the judge thereof in vacation, may in its discretion by order entered of record dispose of by return to the owner thereof, or by destruction, sale, or otherwise, any exhibit or article introduced or offered in evidence at the hearing, or upon the trial, of any matter or case before such court or judge, and remaining in the custody or control of such court for a period of thirty days after the expiration of the time within which an appeal may be taken from any final order or judgment in such matter or case, if no appeal is taken therefrom, or thirty days, after any final order or judgment of an appellate court, if such appeal is taken therein: Provided, That if the ownership of such exhibit or article be known, the owner shall be notified and such exhibit or article shall be returned to him if he so desires.

Any sale directed hereunder shall be made upon such notice and terms and by such officer or other person as the court or judge shall direct. The proceeds of any such sale shall be applied to the reasonable costs and expenses of such sale as the court or judge shall allow, and the remainder thereof shall be paid into the State Treasury.

The provisions of this section shall not apply or extend to the county commission of any county; nor shall any property or article be disposed of hereunder contrary to any other statute which expressly provides a different disposition.

§57-5-12. Certain documents deemed duplicates.

A reproduction of a document acquired from the employment of a system of microphotography, optical discs or computerized techniques which system does not permit additions, deletions or changes to the record of the original document contained within the system shall be deemed to be a duplicate for purposes of admission into evidence in the courts of this state.

A reproduction deemed a duplicate pursuant to the provisions of this section shall be authenticated by competent testimony or by an attestation which shall recite the type of recording system employed, that such system does not permit additions, deletions or changes to the record and that the attestant has actual knowledge of the aforementioned facts.

The provisions of this section shall be construed to provide an additional method of qualifying original writings or recordings and duplicates thereof as admissible in evidence, and shall not replace or derogate any other methods set forth elsewhere in this code or provided for in the West Virginia rules of evidence as adopted by the Supreme Court of Appeals.