WEST VIRGINIA CODE CHAPTER 57

WV Legislature

§57-1-1. Copies of legislative journals, acts and resolutions.

Copies of the journal of either house of the Legislature, and copies of the acts and resolutions of the Legislature, which have been or shall hereafter be published by authority thereof, shall be received as evidence for any purpose for which the original journal, acts or resolutions could be received and with as much effect.

WV Legislature

§57-1-2. Local or private acts and resolutions of Legislature; judicial notice thereof.

Local or private acts and resolutions of the Legislature may be given in evidence without being especially pleaded; and an appellate court shall take judicial notice of such as appear to have been relied on in the court below.

WV Legislature

§57-1-3. Copies of Virginia laws.

The printed copies of the acts and resolutions of the general assembly of Virginia and of the statutes and codes of that state, with the supplements to and continuations of the same, and the ordinances of the convention which assembled at Wheeling on June 11, eighteen hundred and sixty- one, shall continue to be received in evidence within this state, in like manner as they were receivable when it was part of the state of Virginia.

WV Legislature

§57-1-4. Judicial notice of foreign laws.

Whenever in any case it becomes material to ascertain what the law, statutory or other, of another state or country, or of the United States, is, or was at any time, the court, judge, or magistrate shall take judicial notice thereof, and may consult any printed book or other document, purporting to contain, state or explain the same, and consider any testimony, information or argument that is offered on the subject.

WV Legislature

§57-1-5. Notice by courts and officers of signatures of judges or Governor.

All courts and officers shall take notice of the signature of any of the judges, or of the Governor, of this state, to any judicial or official documents.

WV Legislature

§57-1-6. Copies of certain deeds.

Copies of deeds, acknowledged or proved and certified according to the act of the general assembly of Virginia, of the thirteenth of December, seventeen hundred and ninety-two, and placed upon record after the expiration of two years, the period prescribed by the act of the twenty-fifth of December, seventeen hundred and ninety-four, but before the passage of the act of the seventh of February, eighteen hundred and fourteen, shall be received in evidence, and have all the force and effect of copies of deeds recorded within two years, the period prescribed as aforesaid: Provided, That nothing in this section shall be construed to affect the rights of creditors and subsequent purchasers without notice.

WV Legislature

§57-1-7. Copies of records, bonds or papers in public offices; certificate of Auditor.

A copy of any record, bond or paper in the office of the clerk of either house of the Legislature or of any court, or in the office of the Secretary of State, treasurer or Auditor, or in the office of the surveyor of lands of any county, or in the office of any other public officer, attested by the appropriate officer, which shall include the secretary of a board or commission, in whose office the same is, may be admitted as evidence in lieu of the original. The certificate of the Auditor of the fact and time of the return of any real estate as delinquent, or of the sale thereof for taxes, shall be prima facie evidence of what is stated in such certificate. Any such copy or certificate purporting to be sealed, or signed and sealed, or signed alone, by any such officer, may be admitted as evidence without any proof of the seal or signature, or of the official character, of the person whose name is signed to it. The certificate of the Auditor of the payment or nonpayment at any time of taxes on forfeited or delinquent lands, or of their not having been entered on the land books of the county or counties wherein the same were chargeable with taxes shall, in any suit in relation to such lands, be prima facie evidence of what is stated in such certificate, provided it be filed with the papers of said suit and notice thereof be given to the opposite party or his attorney at least twenty days before the first day of the term at which it is to be offered as evidence. When the certificate purports to be signed by the said Auditor, it may be admitted as evidence without proof of his signature.

WV Legislature

§57-1-7a. Use of photographic copies in evidence; state records, papers or documents; destruction or transfer to archives of originals; destruction of canceled checks and paid and canceled bonds and coupons.

(a) Any public officer of the state may, with the approval of the state records administrator, cause any or all records, papers or documents kept by him to be reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks (commonly referred to as compact disks) or by other records-retention technology approved by the state records administrator. These reproductions by photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the originals thereof in all details.

The reproductions by photographic, photostatic, microphotographic or by similar miniature photographic process or nonerasable optical image disks shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original. Whenever reproductions by photographic, photostatic, microphotographic or by similar miniature photographic process or nonerasable optical image disks have been made and put in conveniently accessible fireproof files, and provision has been made for preserving, examining and using the same, the respective heads of the departments, divisions, institutions and agencies of the state may, with the approval of the state records administrator, cause the records and papers so reproduced by photographic, photostatic, microphotographic or by similar miniature photographic process or nonerasable optical image disks, or any part thereof, to be destroyed; but before any records, papers or documents are authorized to be destroyed, the state records administrator shall obtain the advice and counsel of the state historian and archivist, or his designated representative, as to the desirability of placing the records, papers and documents in the archives of that department. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research or historical value, the administrator may destroy or otherwise dispose of the record, paper or document if otherwise permitted to do so after complying with the provisions of section seventeen, article eight, chapter five-a of this code.

(b) Notwithstanding any other provisions of this code to the contrary, the State Treasurer may at his discretion destroy any canceled checks of the state after three years have elapsed since the date of the check, whether or not such checks have been reproduced by photographic, photostatic, microphotographic or by similar miniature photographic process or nonerasable optical image disks: Provided, That any canceled bonds or interest coupons of any bond issues of this state in the custody of the treasurer, or for which the treasurer acts as fiscal agent or paying agent, may at his discretion be destroyed by one of the two methods below:

Method I - The treasurer shall maintain a permanent record for the purpose of recording the

WV Legislature

destruction of bonds and coupons, showing the following: (1) With respect to bonds, the purpose of issuance, the date of issue, denomination, maturity date and total principal amount; and (2) with respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons, and, as to each maturity date, the denomination, quantity and total amount of coupons.

After recording the specified information, the treasurer shall have the canceled bonds and coupons destroyed either by burning or shredding, in the presence of an employee of the treasurer and an employee of the Legislative Auditor, each of whom shall certify that he saw the canceled bonds and coupons destroyed. The certificates shall be made a part of the permanent record. Canceled bonds or coupons shall not be destroyed until after one year from the date of payment.

Method II - The treasurer may contract with any bank or trust company acting as paying agent or copaying agent for a bond issue of the state for the destruction of bonds and interest coupons which have been canceled by the paying agent. The contract shall require that the paying agent give the treasurer a certificate containing the same information required by Method I. The certificate shall be made a part of the treasurer's permanent records.

Each contract shall also require that the paying agent be responsible for proper payment and disposition of all bonds and coupons, and for any duplicate payments to unauthorized persons and nonpayment to authorized persons occurring as a result of destruction of bonds or coupons under this section. In addition, the treasurer may require the paying agent to submit an indemnity bond, in an amount to be determined by the treasurer, to assure performance of the duties specified in this section. Canceled bonds or coupons may not be destroyed until one year from the date of payment.

For purposes of this section, the term "bonds" shall include interim certificates.

WV Legislature

§57-1-7b. Use of photographic copies in evidence -- Business and public records; destruction of originals.

If any business, institution, member of a profession or calling, or any officer of a local governmental agency, including county officers, county boards of education and municipalities, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law: Provided, however, That destruction of records of local governmental agencies shall also be contingent upon the approval by those agencies of such disposition. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not, and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement of facsimile, does not preclude admission of the original.

WV Legislature

§57-1-7c. Use of microfilm or microcards to reproduce and preserve records; destruction or transfer of originals to archivist.

The clerk of any court of record of the state may, with the approval of the court for which he or she is clerk, cause any or all records, papers, plats, or other documents kept by him or her to be reproduced on photographic microfilm or microcards and may, with the approval of the court for which he or she is clerk, record, keep and preserve any and all records, papers, plats, or other documents required by the laws of this state to be recorded or kept by said clerk or court exclusively upon photographic microfilm or microcards instead of in well-bound books or instead of by any other method heretofore prescribed by law.

Such photographic microfilm and microcards shall be of durable material and possess good, archival qualities. The device used to reproduce such records on such film and cards shall be one which accurately reproduces the original thereof in all details.

Such photographic microfilm and microcards shall be deemed to be an original record for all purposes, including introduction into evidence in all courts or administrative agencies. A transcript, exemplification, or photographic reproduction thereof shall, when properly authenticated by the clerk of such court, be deemed for all purposes to be a transcript, exemplification, or certified copy of the original.

Such photographic microfilm and microcards shall be put in convenient, accessible fireproof files and adequate provision shall be made for preserving, examining and using the same.

Any such records, papers, plats, or other documents not held for others by said clerk or court or required by law to be delivered to some other person, court, corporation or agency, may with the approval of the court keeping such records, papers, plats, or other documents be destroyed; but before any such records, papers, plats or other documents are authorized to be destroyed the court keeping them or the clerk thereof shall obtain the advice and counsel of the state historian or archivist, or his designated representatives, as to the desirability of placing the said records, papers, plats, or other documents in the department of archives and history. However, prior to destroying or otherwise disposing of the same, the court or clerk thereof shall give written notice of the intention to do so to the director of the section of archives and history of the Division of Culture and History. Upon the written request of the director, given to the court or clerk thereof within ten days of receipt of said notice, the court or clerk thereof shall retain the original record for a period of thirty days. In the event the director fails to retrieve the original document from the court or clerk thereof within the thirty-day period, the court or clerk thereof may destroy or otherwise dispose of the original without further notice to the director.

WV Legislature

§57-1-7d. Records provided on computer or optical disc.

Notwithstanding any other provision of this code to the contrary, where any provision of this code requires that a copy of any record of any branch of the government of this state be provided or delivered, the custodian of said record is authorized to comply with the requirement by providing or delivering a true copy in the form of a computer or optical disc which is not subject to alteration, is formatted to write once read many, and is attested by the custodian thereof to be a true, accurate and complete copy of the record required to be provided or delivered.

WV Legislature

§57-1-8. Copy of writing filed in one suit may be filed in another suit on same writing.

Such a copy of any writing filed in a suit may be filed in another suit on the same writing, and the defendant shall plead thereto as if the original were filed.

WV Legislature

§57-1-9. Application of §§57-1-7 and 57-1-8 to records or papers in public offices in Virginia.

The provisions in the two preceding sections contained shall apply to a copy of any record or paper in the clerk's office of any court in the state of Virginia, or in the office of the secretary of the commonwealth, treasurer, register of the land office, or either Auditor, or any surveyor of lands of that state, attested as aforesaid; and to any certificate of the Auditor of public accounts of that state as to the return of any real estate as delinquent, or sale thereof for taxes, or payment or nonpayment of taxes on forfeited or delinquent lands, or nonentry of lands on the books of the commissioner of the revenue: Provided, That such certificate of the Auditor as to the payment or nonpayment of taxes on forfeited or delinquent lands, or nonentry of such lands on the books of the commissioner of the revenue, be filed with the papers in any suit in relation to such lands, and notice thereof be given to the opposite party or his attorney, at least forty days before the first day of the term at which it is offered as evidence.

WV Legislature

§57-1-10. Certificate of clerk of county court as to certain tax records.

The certificate of the clerk of any county court of the entry or nonentry of any tract of land for taxation on the land books of any county wherein the land ought to have been charged or of the delinquency of any such land for the nonpayment of taxes charged thereon, and the amount of the taxes charged as delinquent, or such clerk's certificate of the sale of such land for the nonpayment of taxes, shall, in any suit in relation to such lands, be prima facie evidence of what is stated in such certificate: Provided, That it be filed with the papers of said suit and notice thereof given to the opposite party or his attorney at least twenty days before the first day of the term at which it is to be offered as evidence. When a certificate purports to be signed by any such clerk, it may be admitted as evidence without proof of his signature.

WV Legislature

§57-1-11. Withdrawal of original paper filed in cause; retention of copy.

The court in the clerk's office whereof there is an original paper filed in a cause (although decided) may, for good cause, order it to be delivered to any person, retaining in its stead a certified copy thereof, and make any order to prevent the improper use of the original.

WV Legislature

§57-1-12. Authentication of records and proceedings of courts of United States or other states; full faith and credit.

The records and judicial proceedings of any court of the United States, or of any state or territory, or of any country subject to the jurisdiction of the United States, shall be proved or admitted in any court in this state, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within this state as they have by law or usage in the courts of the state or jurisdiction from which they are taken. Full faith and credit for child support orders shall be accorded by this state in conformity with federal law.

WV Legislature

§57-1-13. Authentication of public records not pertaining to courts; full faith and credit.

All records and exemplifications of books, which may be kept in any public office of the United States, or of any state, or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in this state by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish or district in which such office may be kept, or of the Governor, or Secretary of State, the chancellor or keeper of the great seal, of the state or territory or country, that the said attestation is in due form, and by the proper officer. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the state, territory, or country, aforesaid, in which it is made: Provided, however, That printed copies of schedules and classifications and tariffs of rates, fares and charges, and supplements thereto, filed with the interstate commerce commission, which show respectively an interstate commerce commission number, which may be stated in abbreviated form, as I.C.C. No....., and an effective date, may be received in evidence without certification, and shall be presumed to be correct copies of the original schedules, classifications, tariffs and supplements on file with the interstate commerce commission. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within this state as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.

WV Legislature

§57-1-14. Authentication of foreign deeds, powers of attorney, policies of insurance, etc.

Every deed or power of attorney executed out of this state, the acknowledgment or proof of which is certified so that it might be admitted to record under article one, chapter thirty-nine of this code, and every policy of insurance, charter party, copy from a record in any foreign court or from a register of births and marriages in any place out of the United States, if it be attested by a notary public, under his seal of office, that such policy, charter party, record or register was made, entered or kept in due form according to the law of the place in which it was made, entered or kept, and that such copy is true, and the official character of such notary be certified to by any court of record, or the mayor or other chief magistrate of any county, city, town or borough, or under the great seal of the state, kingdom, province, an island or colony in which such notary may reside, shall be evidence in any court in this state.

WV Legislature

§57-2-1. Handwriting analysis.

In any civil or criminal action or proceeding, any writing proved to the satisfaction of the judge of a court of record in an in-camera hearing to be in the handwriting of the person who is alleged to have written it, whether or not made in the ordinary course of business, may, if the court further finds that its probative value outweighs its prejudicial effect, be admitted into evidence for the purpose of making a comparison with a disputed writing on the issue of whether or not the disputed writing is genuine. The authenticity of each writing shall be finally determined by the trier of fact.

WV Legislature

§57-2-2. When attesting witness need not be called.

It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission, or otherwise, as if there had been no attesting witness thereto.

WV Legislature

§57-2-3. Statement by accused upon legal examination.

In a criminal prosecution other than for perjury or false swearing, evidence shall not be given against the accused of any statement made by him as a witness upon a legal examination.

WV Legislature

§57-2-4. Justification and mitigation of damages in action for defamation.

In any action for defamation, the defendant may justify by alleging and proving that the words spoken or written were true, and after notice in writing of his intention to do so (given to the plaintiff at the time of, or for, pleading to such action) may give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case action shall have been commenced before there was an opportunity of making or offering such apology.

WV Legislature

§57-3-1. Party or interested person competent as witness; exception as to transaction or communication with deceased or insane person; right of person sued to give evidence in action for death by wrongful act.

No person offered as a witness in any civil action, suit or proceeding shall be excluded by reason of his interest in the event of the action, suit or proceeding, or because he is a party thereto, except as follows: No party to any action, suit or proceeding, nor any person interested in the event thereof, nor any person from, through or under whom any such party or interested person derives any interest or title by assignment or otherwise, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the time of such examination, deceased, insane or lunatic, against the executor, administrator, heir at law, next of kin, assignee, legatee, devisee or survivor of such person, or the assignee or committee of such insane person or lunatic. But this prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor or committee shall be examined on his own behalf, nor as to which the testimony of such deceased person or lunatic shall be given in evidence: Provided, however, That where an action is brought for causing the death of any person by any wrongful act, neglect or default under article seven, chapter fifty-five of this code, the person sued, or the servant, agent or employee of any firm or corporation sued, shall have the right to give evidence in any case in which he or it is sued, but he may not give evidence of any conversation with the deceased.

WV Legislature

§57-3-2. Competency of husband and wife to testify.

Husband and wife shall be competent witnesses to testify for or against each other in all cases, civil and criminal, except as otherwise provided.

WV Legislature

§57-3-3. Testimony of husband and wife in criminal cases.

In criminal cases husband and wife shall be allowed, and, subject to the rules of evidence governing other witnesses, may be compelled to testify in behalf of each other, but neither shall be compelled, nor, without the consent of the other, allowed to be called as a witness against the other except in the case of a prosecution for an offense committed by one against the other, or against the child, grandchild, father, mother, sister or brother of either of them, or minor, as defined in §2-2-10 of this code, or any person deemed incompetent by mental disease, defect, or other disability. The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by anyone.

WV Legislature

§57-3-4. Confidential communications between husband and wife.

Neither husband nor wife shall, without the consent of the other, be examined in any case as to any confidential communication made by one to the other while married, nor shall either be permitted, without such consent, to reveal in testimony after the marriage relation ceases any such communication made while the marriage existed.

WV Legislature

§57-3-5. Competency of convicts as witnesses.

Conviction of felony or perjury shall not render the convict incompetent to testify, but the fact of conviction may be shown in evidence to affect his credibility.

WV Legislature

§57-3-6. Competency of accused as witness.

In any trial or examination in or before any court or officer for a felony or misdemeanor, the accused shall, with his consent (but not otherwise) be a competent witness on such trial or examination; and if he so voluntarily becomes a witness he shall, as to all matters relevant to the issue, be deemed to have waived his privilege of not giving evidence against himself and shall be subject to cross-examination as any other witness; but his failure to testify shall create no presumption against him nor be the subject of any comment before the court or jury by anyone.

WV Legislature

§57-3-7. No person incompetent as witness by reason of race or color.

No person shall be incompetent as a witness on account of race or color.

WV Legislature

§57-3-8. Competency of chiropractors as witnesses.

Practitioners of chiropractic shall be permitted to qualify as competent witnesses, insofar as chiropractic testimony or chiropractic facts may be concerned in any civil action in any court in this state.

WV Legislature

§57-3-9. Communications to priests, nuns, clergy, rabbis, Christian Science practitioners or other religious counselors not subject to being compelled as testimony.

No priest, nun, rabbi, duly accredited Christian Science practitioner or member of the clergy authorized to celebrate the rites of marriage in this state pursuant to the provisions of article two, chapter forty-eight of this code shall be compelled to testify in any criminal or grand jury proceedings or in any domestic relations action in any court of this state:

(1) With respect to any confession or communication, made to such person, in his or her professional capacity in the course of discipline enjoined by the church or other religious body to which he or she belongs, without the consent of the person making such confession or communication; or

(2) With respect to any communication made to such person, in his or her professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication. This subsection is in addition to the protection and privilege afforded pursuant to section three hundred one, article one, chapter forty-eight of this code.

WV Legislature

§57-3-10. Reporters' Privilege.

(a) "Reporter" means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns matters of public interest for dissemination to the public for a substantial portion of the person's livelihood, or a supervisor, or employer of that person in that capacity: Provided, That a student reporter at an accredited educational institution who meets all of the requirements of this definition, except that his or her reporting may not provide a portion of his or her livelihood, meets the definition of reporter for purposes of this section.

(b) No reporter may be compelled to:

(1) Testify in any civil, criminal, administrative or grand jury proceeding in any court in this state concerning the confidential source of any published or unpublished information obtained by the reporter in the course of the above described activities without the consent of the confidential source, unless such testimony is necessary to prevent imminent death, serious bodily injury or unjust incarceration; or

(2) Produce any information or testimony that would identify a confidential source, without the consent of the confidential source, unless such testimony or information is necessary to prevent imminent death, serious bodily injury or unjust incarceration.

(c) Nothing in this section shall be read to limit any existing Constitutional protections afforded any person under the United States or West Virginia Constitutions.

WV Legislature

§57-3-11. Privileged peer support communications.

(a) A peer support team member, as defined in §21-18-1 of this code may not be compelled to testify concerning the following:

(1) A communication received from an individual who receives peer support services from the peer support team member; or

(2) The peer support team member's advice to the individual.

(b) The testimonial privilege does not apply if any of the following are apply:

(1) The communication or advice indicates clear and present danger to the individual who receives peer support services or to other persons;

(2) The individual who received peer support services expressly consents to the testimony.

(3) If the individual who received peer support services is deceased, the surviving spouse or the executor or administrator of the estate of the deceased individual expressly consents.

(4) The individual who received peer support services voluntarily testifies, in which case the peer support team member may be compelled to testify on the same subject.

(5) The court in camera determines that the information communicated by the individual who received peer support services is not germane to the relationship between the individual and the peer support team member.

(6) The communication or advice pertains or is related to any criminal act.

(c) For purposes of subsection (b)(1) of this section, indications of past or present abuse or neglect of a child constitute a clear and present danger.

(d) For the testimonial privilege established under subsection (b) of this section to apply to a communication made at the scene of and immediately after an incident that involves a substantial risk of serious physical harm to persons, serious physical harm to persons, or the loss of human life, the peer support team member must have provided the peer support services at the request of the recipient and at the direction of the appointing entity.

WV Legislature

§57-4-1. Taking and certification of depositions -- Generally.

In any pending case the deposition of a witness, whether a party to the suit or not, may, without commission, be taken in or out of this state by a justice, or notary public, or by a commissioner in chancery, or before any officer authorized to take depositions in the county or state where they may be taken. However, a deposition may not be taken by any person who is a relative or employee or attorney of any of the parties, or is a relative or employee of the attorney, or a relative or employee or attorney of one who has a financial interest in the outcome of the case, or who is otherwise financially interested in the action. Any deposition taken by an interested party, as described above, shall be considered void. For purposes of this article, an employee includes a person who has a contractual relationship with a party litigant to provide reporting or other court services and also includes a person employed part or full time under contract or otherwise by a person who has a contractual relationship with a party litigant to provide reporting or other court services. A party litigant does not include federal, state or local governments and the subdivisions thereof. Depositions may be taken in shorthand, or stenographic characters or notes, and shall be written out in full and transcribed into the English language by the stenographer taking the same, and certified by the officer before whom the depositions are taken; and if certified by such officer under his hand and if further certified by him that such stenographic characters and notes were correctly taken and accurately transcribed by him or under his direction and supervision, and that the witnesses were duly sworn, such depositions may be received and read in evidence without proof of the signature to such certificate and without the signature of the witness to such depositions. And in case the stenographer taking such depositions is not the officer before whom the same are being taken, then such stenographer, before proceeding to take any of said depositions, shall be sworn to take correctly and accurately transcribe the same, and the certificate of the officer before whom the depositions are taken shall state that the stenographer was so sworn.

WV Legislature

§57-4-2. Taking and certification of depositions -- Out-of state and in foreign countries.

On affidavit that a witness resides out of this state, or is out of it in the service thereof, or of the United States, or is out of this state and for justifiable reasons will probably be out of this state until after the trial of the case in which his or her testimony is needed, his or her deposition may be taken by or before any justice, notary public or other officer authorized to take depositions in the state wherein the witness may be, or, if the deposition is to be taken in a foreign country, by or before such commissioner or commissioners as may be agreed upon by the parties or appointed by the court, or, if there be none such, by or before any American minister, plenipotentiary, charge d'affaires, consul general, consul, vice consul, consular agent, vice deputy consular agent, commercial agent or vice commercial agent, appointed by the government of the United States, or by or before the mayor or other chief magistrate of any city, town or corporation in the country or any notary public therein. Any person or persons taking the deposition may administer an oath to the witness and take and certify the deposition with his or her official seal annexed, and if he or she have none, the genuineness of his or her signature shall be authenticated by some officer of the same state or country, under his or her official seal.

WV Legislature

§57-4-3. Notice of taking of depositions; when deposition may be read in equity.

Reasonable notice shall be given to the adverse party of the time and place of taking every deposition. And in a suit in equity a deposition may be read if returned before the hearing of the cause, although after an interlocutory decree, if it be as to a matter not thereby adjudged, and be returned before a final decree.

WV Legislature

§57-4-4. Circumstances under which deposition may be read in case at law; attendance of deponent out of county may be required.

A deposition in a case at law, taken on such notice under the three preceding sections, may be read in such case, if when it is offered, the deponent be dead, or out of this state, or one of its judges, or in any public office or service the duties of which prevent his attending the court, or be unable to attend it from sickness or other infirmity, or be out of the county in which the case is pending, or, because of lapse of time or mental infirmity, be unable to remember any material part of what he had deposed to. But when the only ground of reading a deposition is that the deponent is out of the county, on motion to the court, before the commencement of the trial, the court may, for good cause shown, require such deponent to attend in person.

WV Legislature

§57-4-5. When deposition may be read by adverse party.

When a deposition has been filed, if not read on the trial by the party taking it, it may be read by the other party.

WV Legislature

§57-4-6. Taking deposition after judgment, decree or order; reading thereof in future trial.

In any case wherein there has been a judgment, decree or order from or to which an appeal, writ of error or supersedeas has been or might be allowed, a deposition may be taken for any party to such case, or for or against his or her husband or wife, personal representatives, heirs or devisees in like manner and by such persons as it is before prescribed for pending cases; and it may be read in any future trial that may be directed, if the same could properly be read, had there been no such judgment, decree or order.

WV Legislature

§57-4-7. How testimony perpetuated.

A person desirous of perpetuating the testimony of witnesses as to a a matter, whether a suit be pending in relation thereto or not, may file with a commissioner in chancery of a court wherein, if there were a bill to perpetuate the testimony, such bill might be filed, a petition stating such matter, and what persons may be affected by the testimony. Whereupon the commissioner shall appoint for proceeding on the petition a time and place, whereof reasonable notice shall be given to the persons who may be so affected. If any of them be an infant or insane person, the commissioner shall appoint a guardian ad litem who shall attend on his behalf and who shall be a practicing attorney in this state. At such time and place the commissioner shall take in writing the evidence of any witness adduced in respect to said matter by the petitioner or by the person so affected. He may adjourn from time to time, and shall return a report of his proceedings, with the testimony taken by him to the clerk's office of the court by which he was appointed, and such testimony shall have the same effect as if it had been taken on a bill to perpetuate testimony. Such court may make such order as to the costs as may seem to it right.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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."

WV Legislature

§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."

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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.....

WV Legislature

.....

(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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature