# WEST VIRGINIA CODE CHAPTER 58 ARTICLE 4

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## §58-4-1. When appeal, writ of error or supersedeas to be awarded by circuit court or judge.

An appeal from, or writ of error or supersedeas to, any judgment, decree or order of any court of record of limited jurisdiction established under the provisions of section 19 of article VIII of the Constitution of this state may be awarded by the circuit court of the county, or the judge thereof in vacation, in any instance where, if such judgment, decree or order had been rendered in the circuit court, there might be obtained from the Supreme Court of Appeals, or a judge thereof in vacation, an appeal therefrom, or writ of error or supersedeas thereto, under the provisions of section one of article five of this chapter.

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## §58-4-2. Certification to appellate courts as to sufficiency of summons, return of service, pleading, motion for summary judgment, etc.

Any question arising in such court of limited jurisdiction upon the sufficiency of a summons or return of service, upon a challenge of the sufficiency of a pleading or the venue of such court of limited jurisdiction, upon the sufficiency of a motion for summary judgment where such motion is denied, or a motion for judgment on the pleadings, upon the jurisdiction of such court of limited jurisdiction of a person or subject matter, or upon failure to join an indispensable party, may, in the discretion of the court, and shall, on the joint application of the parties to the suit, in beneficial interest, be certified by it to the circuit court of the county for its decision, and further proceedings in the case stayed until such question shall have been decided and the decision thereof certified back: Provided, That no such question shall be so certified except in a case in which, if it were in the circuit court, it might be certified from the circuit court to the Supreme Court of Appeals under the provisions of section two of article five of this chapter. The manner and form of such certification, and the procedure thereupon, shall be governed by the provisions of said section two. After the question shall have been decided by the circuit court, and an order in pursuance thereof entered, it may, in the discretion of the circuit court, and shall, on the joint application of the parties to the suit, in beneficial interest, be certified by the circuit court to the Supreme Court of Appeals for its decision, in the manner and with the effect provided in section two of article five of this chapter.

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## §58-4-3. Petition for writ of error, appeal or supersedeas.

Any person who is a party to any controversy in such court of limited jurisdiction, wishing to obtain a writ of error, appeal or supersedeas, may present a petition therefor to the circuit court of that county, or the judge thereof in vacation, which petition shall assign errors.

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**§58-4-4. Time for appeal or writ of error; notice of intent to file petition in criminal cases to be filed with clerk stating grounds.**

No petition shall be presented to the circuit court or judge for an appeal from, or writ of error or supersedeas to, any judgment, decree or order rendered or made by such court of limited jurisdiction, whether the state be a party thereto or not, which shall have been rendered or made more than four months before such petition is presented: Provided, That the judge of such court of limited jurisdiction may, prior to the expiration of such period of four months, by order entered of record extend and reextend such period for such additional period or periods, not to exceed a total extension of four months, as in his opinion may be necessary for preparation of the transcript, if the request for such transcript was made by the party seeking such judicial review within sixty days after such judgment, decree or order was rendered or made. Such judge may also extend and reextend such period for such additional period or periods of time not to exceed a total extension of four months, upon petition made prior to the expiration of the initial four month period for good cause shown and if the request for such transcript was made by the party seeking such judicial review within sixty days after such judgment, decree or order was rendered or made.

In criminal cases no petition for appeal or writ of error shall be presented unless a notice of intent to file such petition shall have been filed with the clerk of the court in which the judgment was entered within sixty days after such judgment was entered. The notice shall fairly state the grounds for the petition without restricting the right to assign additional grounds in the petition.

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## §58-4-5. Stay of proceedings; bond.

At the instance of any person who desires to present such petition, the court of limited jurisdiction, in which the judgment, decree or order is, may, during the term at which it is rendered or made, or the judge of such court may, within twenty days after such term is ended, upon notice in writing to the opposite party (in either case the court or the judge exercising a discretion), make an order suspending the execution of such judgment, decree or order, for a reasonable time to be specified in such order, when such person shall give bond before the clerk of such court, in such penalty as the court or judge may require, with a condition reciting such judgment, decree or order, and the intention of such person to present such petition, and providing for the payment of all such damages as any person may sustain by reason of such suspension in case a supersedeas to such judgment, decree or order should not be allowed and be effectual within the time so specified.

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## §58-4-6. Filing of petition; transmission of petition and record; payment of expenses and fees; compensation of clerk; return of record.

Such petition, together with a copy thereof, shall be first filed in the office of the clerk of the court of limited jurisdiction wherein the judgment, decree or order complained of was entered, and such clerk, retaining in his office the copy of such petition, shall, as soon as may be, transmit to the clerk of the circuit court the original, together with the record of so much of the case wherein the judgment, decree or order is as will enable the court or judge to whom the petition is to be presented properly to decide on such petition, and enable the court, if the petition be granted, properly to decide the questions that may arise before it. The clerk of the court of limited jurisdiction, before transmitting the record as aforesaid, shall arrange the papers, as nearly as may be, in the order of the filing and entry thereof, numbering the pages, make and certify copies of all orders entered in the case, copies of which are not in the files, and prepare and annex to the record a table of contents or index. Before such petition and record are transmitted as aforesaid, the petitioner shall pay to the clerk of the court of limited jurisdiction all the expenses of preparation and indexing of the record and all fees for filing the petition and making and certifying necessary copies of orders, and the clerk shall indorse on the petition that such expenses and fees have been paid. Insofar as provision therefor is not made by existing law, the compensation of the clerk of the court of limited jurisdiction for services rendered hereunder shall be fixed by the judge of such court. If the prayer of the petition be not granted, and the petition and record be not presented to the Supreme Court of Appeals or a judge thereof as provided in the following section, the petition and record shall be returned to the office of the clerk of the court of limited jurisdiction.

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**§58-4-7. Order showing action of circuit court on petition; second petition; application to Supreme Court of Appeals or judge thereof.**

The circuit court or the judge thereof, upon consideration of the petition, shall enter an order granting or refusing it. If the circuit court or judge deems the judgment, decree or order of such court of limited jurisdiction to be plainly right, and rejects it on that ground, and the order or rejection so states, no further petition shall afterwards be presented to the circuit court or judge for the same purpose; but in any case where the circuit court or judge rejects the petition, the petition and order of rejection, together with the record of the cause, may, within four months from the date of the order of rejection, be presented to the Supreme Court of Appeals, or any judge thereof in vacation, for an appeal from, or writ of error or supersedeas to, such order of rejection, and, if allowed, the same proceedings may be had thereon as if the same were a petition originally from the circuit court of such county to the Supreme Court of Appeals: Provided, That the judge of the circuit court which rejected the petition may, prior to the expiration of such period of four months by order entered of record extend and reextend such period for such additional period or periods, not to exceed a total extension of one month, as in his opinion may be necessary for preparation of the transcript of the proceeding in the circuit court, if the request for such transcript was made by the party seeking judicial review in the Supreme Court of Appeals within thirty days after the entry of such order of rejection. Such judge may also extend and reextend such period for such additional period or periods of time not to exceed a total extension of four months, upon petition made prior to the expiration of the initial four month period for good cause shown and if the request for such transcript was made by the party seeking judicial review in the Supreme Court of Appeals within thirty days after the entry of such order of rejection. After the petition has been rejected by the circuit court or judge, the clerk of the circuit court shall, as soon as may be, upon request of the petitioner, transmit to the clerk of the Supreme Court of Appeals, or such judge of said court as the petitioner shall designate, if said court be not then in session, by United States registered mail or valued express, the petition, the record of the cause as presented to the circuit court or judge, and the order of rejection. Before such petition, record and order are transmitted as aforesaid, the petitioner shall deposit with the clerk of the circuit court a sufficient sum of money to defray the costs of transmission and return of the record, and the making of a transcript of the record, or file with the clerk a bond conditioned to pay the same, in a penalty and with sureties to be fixed and approved by such clerk, who shall endorse on the petition that such deposit has been made or such bond filed. If the appeal or writ of error prayed for be granted, the clerk of the Supreme Court of Appeals shall, immediately after the issuance of the appellate process, return the record to the clerk of the circuit court, by mail or express, as aforesaid; and such circuit clerk shall forthwith make a transcript, as provided in section seven of article five of this chapter, of so much of the record as is required for the purposes of the appeal or writ of error and transmit the same to the clerk of the Supreme Court of Appeals. Insofar as provision therefor is not made by existing law, the compensation of the clerk of the circuit court for services rendered hereunder shall be fixed by the judge of the circuit court. If the prayer of the petition be not granted by the Supreme Court of Appeals or judge thereof, the petition and record shall be returned as aforesaid, and the clerk of the circuit court shall

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repay to the petitioner, or his attorney, the money deposited with him if any, less his fees and expenses, and the petition and record shall be returned to the office of the clerk of the court of limited jurisdiction. The rejection of such petition by a judge of the Supreme Court of Appeals in vacation shall not prevent the presentation of such petition to such court when in session.

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### §58-4-8. Certiorari for omitted portion of record.

The circuit court may, in any case, award a writ of certiorari to the clerk of the court of limited jurisdiction, and have brought before it, when part of a record is omitted, the whole or any part of such record.

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## §58-4-9. Allowance of appeal or writ of error or supersedeas; stay of proceedings.

The court or judge to whom a petition is duly presented, if of opinion that the decision complained of ought to be reviewed, may allow an appeal, writ of error or supersedeas, and may stay proceedings either in whole or in part.

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## §58-4-10. Docketing case.

If upon a petition as aforesaid the appeal, writ of error or supersedeas to a judgment, order or decree be allowed by the circuit court or judge, the appeal, writ of error or supersedeas shall be docketed in such court.

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## §58-4-11. Issuance of summons and supersedeas; order of publication; service and return of certified copy of order.

The clerk of the circuit court shall thereupon issue a summons against the parties interested, other than the petitioners, that they may be heard, and also issue any supersedeas which may be awarded, which summons or supersedeas may be made returnable to any day of the next term of the circuit court and may be served upon the party in person or his attorneys in the court of limited jurisdiction from which the appeal or writ of error is taken, or, in a proper case, by the execution of an order of publication as provided in sections twenty-seven and twenty-eight, article three, chapter fifty-six of this code relating to causes pending in the Supreme Court of Appeals, and all the provisions of section twenty-nine of said article three shall apply in the case of an appeal, writ of error or supersedeas prosecuted under the provisions of this article. In lieu of the summons and supersedeas aforesaid, a certified copy of the order allowing the appeal or writ of error and supersedeas, if a supersedeas is granted, may be served and returned in the same manner, and with the same effect, as such summons, or such summons and supersedeas, as the case may be, is to be served and returned. The clerk of the circuit court shall indorse on such certified copy the date when it is returnable.

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## §58-4-12. Indorsements on writs as to bond.

The clerk of the circuit court shall indorse on the summons or supersedeas, or on the certified copy of the court order in lieu thereof, that it is not to be effectual until the bond required by the following section, with good personal security, be given before the clerk of the court of limited jurisdiction, who shall take such bond and indorse on the process, or on the certified copy of the court order in lieu thereof, that it has been given, and the names of the sureties therein, and forward to the clerk of the circuit court a certified copy of such bond.

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## §58-4-13. Appeal bond.

Except when an appeal, writ of error or supersedeas is proper to protect the estate of a decedent, convict or insane person, the same shall not take effect until bond is given by the appellants or petitioners, or one of them, or some other person, in a penalty to be fixed by the court or judge by or in which the appeal, writ of error or supersedeas is allowed or entered, with condition as provided in section fourteen, article five of this chapter; and all the provisions of section fifteen of said article, relating to indemnifying bonds and additional bonds, shall apply in the case of an appeal, writ of error or supersedeas under the provisions of this article.

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## §58-4-14. Time for presenting and giving bond.

No process shall issue upon any appeal, writ of error or supersedeas allowed by a circuit court, or in the case of an order of rejection the Supreme Court of Appeals, or judge of either of such courts to or from a judgment, decree or order, if, when the record is delivered to the clerk of the appropriate court, four months (or the extended period or periods, if any, allowed by order pursuant to either section four or section seven of this article, as the case may be) shall have elapsed since the date of such judgment, decree or order; but the appeal, writ of error or supersedeas shall be dismissed whenever it appears that four months or the extended period, if any, as the case may be, has elapsed since such date before the record is delivered to such clerk, or that two months have elapsed since the date when the appeal, writ of error or supersedeas was granted before such bond is given as is required to be given before the appeal, writ of error or supersedeas takes effect.

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## §58-4-15. Time and manner of hearing.

The order of priority of hearing causes pending in circuit courts upon an appeal, writ of error or supersedeas from courts of limited jurisdiction shall be such as the Supreme Court of Appeals shall prescribe under the provisions of section nineteen, article five of this chapter for causes pending in the Supreme Court of Appeals. Any cause so pending in a circuit court, unless for good cause shown a continuance of the hearing to a future term of the court be granted, may be heard at the next term of court after the appeal, writ of error or supersedeas is granted: Provided, That no cause shall be heard until all proper process has been served as provided in section eleven of this article, and all proper bonds have been taken as provided in section thirteen of this article. The manner of hearing shall be such as the circuit court shall prescribe.

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## §58-4-16. Petition to be heard and case decided upon original record.

For the purpose of hearing and determining the petition and deciding the appeal or writ of error in the circuit court, no transcript of the record shall be made, but the petition shall be heard and determined and the appeal or writ of error decided upon the original papers and certified copies of orders constituting the record of the case, as described in section six of this article, which accompanied the petition on the application for the appeal, writ of error or supersedeas.

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## §58-4-17. Judgment of circuit court; appeal or writ of error to Supreme Court of Appeals.

The circuit court, where an appeal, writ of error or supersedeas has been allowed by such court or the judge thereof in vacation, shall, upon the hearing thereof, affirm such judgment, decree or order if there be no error therein prejudicial to the appellant, or reverse the same in whole or in part if erroneous; and, if reversed, the circuit court may enter such judgment, decree or order as the court of limited jurisdiction should have entered, or may retain the case for new trial or hearing on further proceedings, or may remand it to the court of limited jurisdiction to be further proceeded in and finally determined. From any action of the circuit court in affirming or reversing any judgment, decree or order of such court of limited jurisdiction, an appeal or writ of error shall lie to the Supreme Court of Appeals.

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## §58-4-18. Procedure after circuit court's decision of the appeal or writ of error.

When, after reversal, the case is retained in the circuit court for a new trial or hearing on further proceedings, it shall be docketed and proceeded in to final judgment or decree in the same manner and with the same effect as if it had originally been instituted in the circuit court; the papers shall be retained in the office of the clerk of the circuit court; execution or other final process may issue therefrom; and the clerk of the circuit court shall certify to the clerk of the court of limited jurisdiction the fact that the case is so retained, which certification shall be entered of record in the court of limited jurisdiction. When the judgment, decree or order is affirmed in the circuit court, or when it is reversed, in whole or in part, and the circuit court, without a new trial or hearing on further proceedings, enters such judgment, order or decree as the court of limited jurisdiction should have entered, the clerk of the circuit court shall, as soon as practicable, certify the decision of the circuit court and transmit all the papers of the cause to the clerk of the court of limited jurisdiction, and the court of limited jurisdiction shall enter the decision of the circuit court as its own, and execution or other final process may issue accordingly. If such decision be received by the clerk of the court of limited jurisdiction in vacation, he shall enter it of record in his order book, and thereupon such execution or other final process may issue and such proceedings be had in the case as would have been proper if the decision had been entered in court. When the case is reversed by the circuit court and remanded to the court of limited jurisdiction for further proceedings, the clerk of the circuit court shall, as soon as practicable, certify the decision of the circuit court and transmit all the papers of the cause to the clerk of the court of limited jurisdiction, and the decision of the circuit court shall be entered of record in the court of limited jurisdiction.

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## §58-4-18a. Writ of error to judgment quashing indictment.

Notwithstanding anything hereinbefore contained in this article, whenever in any criminal case an indictment is held bad or insufficient by the judgment or order of any court of record of limited jurisdiction, the state, on the application of the Attorney General or the prosecuting attorney, may obtain a writ of error to secure a review of such judgment or order by the circuit court of the county in which such court of record of limited jurisdiction sits. No such writ of error shall be allowed unless the state presents its petition therefor to the circuit court, or a judge thereof, within thirty days after the entry of such judgment or order. No such judgment or order shall finally discharge, or have the effect of finally discharging, the accused from further proceedings on the indictment unless the state fails, within such period of thirty days, to apply for such writ of error, or fails to obtain such writ of error upon an application made within such period; but after the entry of such judgment or order the accused shall not be kept in custody or required to give bail pending the hearing and determination of the case by the circuit court, or by the Supreme Court of Appeals if a writ of error is thereafter sought with respect to the decision of the circuit court. If, upon the allowance of any such writ of error, process from the circuit court (or the Supreme Court of Appeals in the event of further judicial review as aforesaid) cannot for any reason be served personally upon the accused, service may be had by filing a copy thereof in the clerk's office of the court of record of limited jurisdiction which entered such judgment or order (or the circuit court if further judicial review is had as aforesaid). Every such writ of error shall be heard and determined as speedily as possible. If the judgment is reversed and the indictment is held to be good and sufficient for a trial of the accused thereon, the case shall be remanded to the court of record of limited jurisdiction in which the indictment was found, in order that such trial may be had.

Except as herein otherwise provided, all of the provisions of the other sections of this article shall, so far as appropriate, be applicable to a petition for a writ of error under this section, and to all subsequent proceedings thereon in case such writ of error is allowed or granted.

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## §58-4-19. When law and rules governing appeals to Supreme Court of Appeals to apply.

In any instance where this article fails to provide a specific method of procedure on appeals from courts of limited jurisdiction to circuit courts, the law and rules applying in the matter of appeals from circuit courts to the Supreme Court of Appeals, so far as applicable, shall govern the procedure in the circuit courts on appeals from, or writs of errors or supersedeas to, courts of limited jurisdiction.

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