WEST VIRGINIA CODE CHAPTER 59 ARTICLE 2

WV Legislature

§59-2-1. Suits by persons financially unable to pay.

(a) A natural person who is financially unable to pay the fees or costs attendant to the commencement, prosecution or defense of any civil action or proceeding, or an appeal therein, is permitted to proceed without prepayment in any court of this state, after filing with the court an affidavit that he or she is financially unable to pay the fees or costs or give security therefor.

(1) The clerk of the court and all other officers of the court shall issue and serve all process and perform all duties in such cases.

(2) Judgment may be rendered for costs at the conclusion of the action, where otherwise authorized by law, and be taxable against a losing party who has not been determined to be financially unable to pay.

(3) Upon the filing of an affidavit in accordance with this subsection, seeking an appeal in a civil case from a circuit court to the Supreme Court of Appeals, the Supreme Court of Appeals may direct payment by the administrative office of the Supreme Court of Appeals of the expenses of duplicating the record on appeal after it is transmitted by the clerk of the circuit court. The transcript of proceedings before the circuit court, if the petition for appeal is to be filed with the transcript, shall be provided by the court reporter without cost: Provided, That actual expenses of the court reporter for supplies used in preparing the transcript may be paid when authorized by the director of the administrative office of the Supreme Court of Appeals.

(b) The Supreme Court of Appeals or the chief justice thereof shall establish and periodically review and update financial guidelines for determining the eligibility of civil litigants to proceed in forma pauperis.

(c) The Supreme Court of Appeals shall adopt a financial affidavit form for use by persons seeking a waiver of fees, costs or security pursuant to the provisions of this section. Copies of the form shall be available to the public in the offices of the clerk of any court of this state. The affidavit shall state the nature of the action, defense or appeal and the affiant's belief that he or she is entitled to redress. The form shall elicit information from the affiant which will enable the court in which it is filed to consider the following factors in determining whether the affiant is financially unable to pay fees, costs or security:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid assets, assets which may provide collateral to obtain funds and other assets which may be liquidated to provide funds to pay fees, costs or security;

(3) Fixed debts and obligations, including federal, state and local taxes and medical expenses;

(4) Child care, transportation and other expenses necessary for employment;

WV Legislature

(5) Age or physical infirmity of resident family members;

(6) Whether the person has paid or will pay counsel fees, or whether counsel will be provided by a private attorney on a contingent fee basis, an attorney pro bono, a legal services attorney, or some other attorney at no cost or a reduced cost to the affiant; and

(7) The consequences for the individual if a waiver of fees, costs or security is denied.

(d) When the information set forth in the affidavit or the evidence submitted in the action reveals that the person filing the affidavit is financially able to pay the fees and costs, the court or the family law master shall order the person to pay the fees and costs in the action.

(e) No other party in any proceeding may initiate an inquiry by motion or other pleading or participate in any proceeding relevant to the issues raised pursuant to this section.

(f) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this section. A person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.

WV Legislature

§59-2-2.

Repealed.

Acts, 2006 Reg. Sess., Ch. 36.

WV Legislature

§59-2-3. New bond.

On motion of an obligor in such bond, after reasonable notice to the plaintiff, his attorney or agent, the court may order a new bond to be given, with sufficient security, conforming to all the requirements of the preceding section, in a penalty equal to the penalty of the former bond. If the bond required under this section be not given within such time as the court may prescribe, it may order the suit to be dismissed. If such new bond be given, the surety in the former one shall be relieved from any liability he might have incurred because of having executed or acknowledged the same. After the notice has been given to the plaintiff, his attorney or agent, no further proceedings shall be had in such cause, until such new bond is given with sufficient security, or a sufficient excuse is given for not executing the same.

WV Legislature

§59-2-4. Costs on motions and interlocutory proceedings.

Upon any motion (other than for a judgment for money), or upon any interlocutory order or proceeding, the court may give or refuse costs, at its discretion, unless it be otherwise provided. It may, when a demurrer is sustained to a plea in abatement, give judgment for the plaintiff for his full costs to the time of sustaining it; and when any other part of the proceedings is adjudged insufficient, it may order all costs occasioned by such insufficiency to be paid by him who committed the fault.

WV Legislature

§59-2-5. Payment of costs on granting of new trial or continuance.

New trials may be granted upon the payment of costs, or with the costs to abide the event of the suit, as to the court may seem right. If the party who is to pay the costs of the former trial fail to pay the same at or before the next term after the new trial is granted, the court may, on the motion of the opposite party, set aside the order granting it and proceed to judgment on the verdict, or award execution for such costs, as may seem to it best. Where a case is continued at the costs of a party against the consent of the opposite party, the court may, in its discretion, award an execution for the costs of such continuance.

WV Legislature

§59-2-6. Where recovery of damages less than fifty dollars in action ex delicto.

In any personal action not on contract, which might be brought and prosecuted to judgment in a justice's court, if a verdict be found for the plaintiff, on an issue or otherwise, for less damages than $50, he shall not recover, in respect to such verdict, any costs, unless the court enter of record that the object of the action was to try a right besides the mere right to recover damages for the trespass or grievance in respect of which the action was brought, or that the said trespass or grievance was wilful or malicious.

WV Legislature

§59-2-7. Judgment where recovery is fifty dollars or less in action ex contractu.

In any personal action on contract instituted in a court of record, wherein it is ascertained that not more is due the plaintiff than $50, exclusive of interest, judgment shall be given for the defendant, unless the court enter of record that the matter in controversy was of greater value than fifty dollars, exclusive of interest; in which case it may give judgment for the plaintiff for what is ascertained to be due him with or without costs, as to it may seem right.

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§59-2-8. Costs on final judgment; judgment for, or discontinuance as to, some of defendants.

Except where it is otherwise provided, the party for whom final judgment is given in any action, or in a motion for judgment for money, whether he be plaintiff or defendant, shall recover his costs against the opposite party; and when the action is against two or more, and there is judgment for or discontinuance as to some but not all of the defendants, those for whom there is judgment, or as to whom there is such discontinuance, shall recover their costs.

WV Legislature

§59-2-9. Costs when original papers or record replaced.

For replacing the original papers in any cause, or the record in an appellate court, or supplying papers lost in cases decided, the costs and expenses shall be ascertained under the direction of the court, and adjudged against any party or parties in the cause, or divided among them as the court may, in its discretion, determine to be equitable; and so, also, when new pleadings are ordered.

WV Legislature

§59-2-10. Suit by one person for benefit of another.

When a suit is in the name of one person for the benefit of any other, if there be a judgment for the defendant's costs, it shall be against such other.

WV Legislature

§59-2-11. Laws as to costs not deemed penal; discretion of court of equity as to costs; costs in appellate courts.

The laws of costs shall not be interpreted as penal laws; nor shall anything in this article take away or abridge the discretion of a court of equity over the subject of costs, except that in every case in an appellate court costs shall be recovered in such court by the party substantially prevailing.

WV Legislature

§59-2-12. Costs when case dismissed for want of jurisdiction.

In any instance where a case, an appeal, writ of error or supersedeas shall be dismissed for want of jurisdiction, the court shall render judgment against the party who improperly invoked the jurisdiction of the court for all costs, whether accruing in the trial court or in any appellate court, which result from such wrongful invoking of the jurisdiction, provided they be otherwise properly chargeable against him

WV Legislature

§59-2-13. Who is to tax costs.

The clerk of a court wherein a party recovers costs shall tax the same.

WV Legislature

§59-2-14. Taxation of statute fees.

He shall include in the costs to the prevailing party:

(a) In any civil action, $10;

(b) In civil actions in any court of limited jurisdiction, the same fees as are allowed in a circuit court for like actions.

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§59-2-15. General taxation of costs.

The clerk shall tax in the costs all fees of officers, or other persons properly acting in lieu of officers, which the said party appears to be chargeable with, in the case wherein the recovery is, except that where, in any court on the same side, more than one copy of anything is obtained or taken out, in which may be included a copy of any pleading in a pending case, there shall be taxed only the fee for one copy of the same thing. He shall also tax 50¢ for each legal notice from such party therein, served in this state, and not otherwise taxed; the costs of executing any order of publication made in the case for such party and of any advertisement from him in the case, made in pursuance of law; and the allowances to his witnesses, and every further sum which the court may deem reasonable and direct to be taxed for depositions, taken in or out of the state, or for any other matter.

WV Legislature

§59-2-16. Taxation of costs for witnesses; entry after execution or adjournment; assignment or transfer of costs.

The court may restrict the taxation in the costs for witnesses to so many as may be deemed just. No entry for a witness shall be made against a party recovering costs after execution has issued for such party; and in no case shall there be an entry of a witness for attendance at a term of court after the adjournment of such term. No assignment or transfer of any costs, expenses or fees payable out of the State Treasury shall be valid unless the same be in writing, indorsed on or annexed to the voucher issued therefor, signed by the person entitled thereto and duly acknowledged before an officer authorized by law to take acknowledgments of deeds or other writings, or attested by two witnesses who shall state their respective names and post- office addresses.

WV Legislature

§59-2-17. Fees of prosecuting attorney.

The clerk shall include in the costs, for fees of the prosecuting attorney, the following:

(a) In cases of misdemeanor, or an action upon a bond for a violation of the license laws, $15, of which $5 of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code;

(b) In a case of bastardy, $10;

(c) In a suit or proceeding upon a forfeited recognizance upon behalf of the state, five percent upon the amount recovered and paid into the treasury;

(d) In cases of felony, $35, of which $5 of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code;

(e) In any other case of the state, if a different fee is not prescribed, $10.

Such fees shall be collected and accounted for as provided in article one of this chapter, but shall not in any case be paid out of the county or State Treasury.

WV Legislature

§59-2-18. Judgment or decree on behalf of state for costs.

In a case wherein there is judgment or decree on behalf of the state for costs, there shall be taxed in the costs the charge actually incurred to give any notice, although it be more than 50¢ and mileage, and the fees of attorneys and other officers for services, and allowances for attendance, as if such fees and allowances were payable out of the treasury. What is so taxed for fees of, or allowance to, any person shall be collected, paid over and accounted for according to law.

WV Legislature

§59-2-19. Premiums on surety company bonds.

The clerk or justice shall include in the costs of all actions, suits or proceedings, and the party entitled to recover costs may recover as part thereof, such sum as may have been paid by such party to a company, authorized under the laws of this state so to do, for executing or guaranteeing any bond, undertaking, or obligation therein, not exceeding, however, one third of one percent per annum on the amount of such bond or obligation.

WV Legislature