WEST VIRGINIA CODE: §61-3-39G

§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

After receipt of a complaint for warrant for a violation of section thirty-nine or thirty-nine-a of this article the magistrate court shall proceed with the issuance of the warrant as is provided by law: Provided, That no warrant may issue for an offense under section thirty-nine or thirty-nine-a of this article which, upon conviction, would be punishable as a misdemeanor, unless the payee or holder of the check, draft or order which has been dishonored has sent notice thereof to the drawer of the check, draft or order in accordance with the provisions of section thirty-nine-e of this article, or unless notice has been sent by the magistrate as hereinafter provided. Proof that the notice was sent by the payee or holder may be evidenced by presentation of a return receipt indicating that the notice was mailed to the drawer by certified mail, or, in the event the mailed notice was not received or was refused by the drawer, by presentation of the mailed notice itself. The magistrate court shall receive and hold the check, draft or order.

Upon receipt of a complaint for a misdemeanor warrant unaccompanied by proof that notice was sent by the payee or holder, the magistrate court shall immediately prepare and mail to the drawer of the check, draft or order a notice in form substantially as follows. The magistrate court shall impose any service charge reflected in the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order and additional court costs in the amount of $25. This notice shall be mailed to the drawer by United States mail, first class and postpaid, at the address provided at the time of presenting the check, draft or order. Service of this notice is complete upon mailing. The notice shall be in form substantially as follows:

“You are hereby notified that a complaint for a warrant for your arrest has been filed with this office to the following effect and purpose by ..... who upon oath complains that on the ..... day of ....., 20...., you did unlawfully issue and deliver unto him a certain check, draft or order in the amount of ..... drawn on ..... (name of bank or financial institution) ..... where you did not have funds on deposit in or credit with the bank or financial institution with which to pay the check, draft or order upon presentation and pray that a warrant issue and that you be apprehended wherever you may be found by an officer authorized to make an arrest and dealt with in accordance with the laws of the State of West Virginia.

?A warrant for arrest will be issued on or after the ..... day of ....., 20.....

?You can nullify the effect of this complaint and avoid arrest by paying to the magistrate court clerk at ..... the amount due on the check, draft or order; service charges imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order in the amount of .....; and the costs of this

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proceeding in the amount of $25 on or before the ..... day of ....., 20....., at which time you will be given a receipt with which you can obtain the check, draft or order from the magistrate court. The complainant is forbidden by law to accept payment after the complaint is filed.

Magistrate Court of ..... County

.....

Date: .....”

This notice shall give the drawer of any such check, draft or order ten days within which to make payment to magistrate court. In the event the drawer pays the total amount set forth in the notice to the magistrate court within the ten-day period, no warrant may issue. The payment may be made to the magistrate court in person or by mail by cash, certified check, bank draft or money order and, in the event the payment is made by mail, the magistrate court clerk shall immediately mail to the maker of the check, draft or order the receipt required by this section. In the event the total amount is not so paid the court shall proceed with the issuance of the warrant as is provided by law.

Upon receipt of payment of the total amount the magistrate court clerk shall issue to the drawer a receipt sufficiently describing the check, draft or order with which receipt the drawer is entitled to receive the dishonored check, draft or order from the magistrate court holding it. The magistrate court clerk shall forward the amount of the check, draft or order, together with any service charge reflected on the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order, to the payee or holder thereof, along with a description of the check, draft or order sufficient to enable the person filing the complaint to identify it and the transaction involved. Costs collected shall be dealt with as is provided by law for other criminal proceedings.

The drawer of a check, draft or order against whom a warrant has been issued may at any time prior to trial pay to the court the amount of the check, draft or order; any service charge reflected in the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order; and the court costs which would be assessed if the person were found guilty of the offense charged. These costs shall be imposed in accordance with the provisions of section two, article three, chapter fifty of this code.

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