

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978

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ENROLLED

Committee Substitute for

HOUSE BILL No. 934

(By Mr. See + Mr. Tompkins)

— ● —

PASSED March 11, 1978

In Effect July 1, 1978 ~~██████████~~

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 934

(By MR. SEE and MR. TOMPKINS)

[Passed March 11, 1978; in effect July 1, 1978.]

AN ACT to amend and reenact section two, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, seven, eight, nine, ten, twelve and fourteen, article one; section one, article two; section four, article three; sections one, five, seven, eight, nine, ten and twelve, article four; sections two, three, four, five, six, eight, nine, eleven and twelve, article five; section one, article six; all of chapter fifty; and to further amend article one of said chapter by adding thereto a new section, designated section nine-a; to further amend article four of said chapter by adding thereto a new section, designated section thirteen; to further amend article five of said chapter by adding thereto a new section, designated section fourteen; and to further amend article six of said chapter by adding thereto a new section, designated section three, all relating to the judicial system and magistrate courts generally; the powers, duties and jurisdiction of magistrates; providing for increases in the salaries of certain magistrates; altering the population criteria for determining the number of magistrates; providing for increasing the salaries of certain magistrates; providing for additional duties for any chief magistrate and providing increased salary for circuit clerks performing

said duties; providing for the manner of appointment, duties, increased salaries and authority of magistrate court clerks; providing for magistrate court clerks and the clerk of the circuit court to enforce subpoenas and issue same in magistrate court; providing for increases in salaries of magistrate assistants, their duties and qualifications; providing for magistrate court deputy clerks, their salaries, duties, appointment, and number; requiring magistrate court deputy clerks to also take oath of office and post bond; proscribing certain conduct by magistrate court deputy clerks and providing a penalty therefor; proscribing certain conduct where an officer or employee of magistrate court is a party to an action in magistrate court; providing for civil process servers; applying substantive provisions for unlawful entry and detainer to magistrate court and providing for continuing jurisdiction procedurally as to post judgment process and appeal of same; providing for institution of civil action before magistrate court clerks, magistrate assistants, or deputy clerks; the contents of statements filed by commercial creditors in civil actions; providing for assignment of cases in magistrate court; reducing certain time periods in matters involving unlawful entry and detainer; prescribing time within which affidavit of prejudice must be filed; providing for increase in amount of costs retainable in special county fund; the removal of actions to circuit court upon concurrence of parties where amount in controversy is less than three hundred dollars; clarifying effect of failure to file counterclaim; permitting institution of civil action in county other than the county in which the matter is to be heard; expanding authority of magistrate court to continue proceedings; requiring appointment of guardian ad litem for incarcerated convict; permitting use of depositions at trial; specifying magistrate court officials or employees authorized to issue subpoenas; requiring supreme court of appeals to promulgate rules; permitting judgment of magistrate court in civil cases to be postponed until next judicial day following the conclusion of proceedings; allowing punishment for contempt of magistrate court for willful resistance of court's orders; permitting magistrate court to collect circuit court filing fees in appeal cases; permitting circuit court to dismiss magistrate court appeals after two terms; permitting entry of guilty plea and payment of fine for certain violations in county other than county in which offense committed; reducing period within

which a judgment may not be enforced; and allowing attachment in magistrate court.

Be it enacted by the Legislature of West Virginia:

That section two, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, three, seven, eight, nine, ten, twelve and fourteen, article one; section one, article two; section four, article three; sections one, five, seven, eight, nine, ten and twelve, article four; sections two, three, four, five, six, eight, nine, eleven and twelve, article five; section one, article six, all of chapter fifty, be amended and reenacted; that article one of said chapter be further amended by adding thereto a new section, designated section nine-a; that article four of said chapter be further amended by adding thereto a new section, designated section thirteen; that article five of said chapter be further amended by adding thereto a new section, designated section fourteen; and that article six of said chapter be further amended by adding thereto a new section, designated section three, all to read as follows:

CHAPTER 7. COUNTY COURTS AND OFFICERS.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-2. Definitions; population.

1 (a) For the purpose of this article:

2 (1) "Appointing officer" or "appointing sheriff" shall mean
3 the sheriff of the county in which the appointment of a deputy
4 sheriff shall be made pursuant to this article; and

5 (2) "Deputy sheriffs" or "deputies" shall mean persons
6 appointed by a sheriff as his deputies whose primary duties
7 as such deputies are within the scope of active, general law
8 enforcement and as such are authorized to carry deadly wea-
9 pons, patrol the highways, perform police functions, make
10 arrests or safeguard prisoners. This definition shall not be
11 construed to include any person or persons whose sole duties
12 shall be the service of civil process and subpoenas as provided
13 in section fourteen, article one, chapter fifty of this code,
14 but such exclusion shall not preclude the service of civil process
15 or subpoenas by deputy sheriffs covered by the provisions of
16 this article.

17 (b) For the purpose of this article, population shall be
18 determined by reference to the last preceding census taken
19 under the authority of the United States or of the Legislature
20 of West Virginia.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

1 In each county which has less than thirty thousand in
2 population there shall be elected two magistrates. In each
3 county which has thirty thousand or more in population but
4 less than sixty thousand in population there shall be elected
5 three magistrates; except that in the county of McDowell
6 there shall be elected four magistrates. In each county
7 which has sixty thousand or more in population but less
8 than one hundred five thousand in population there shall
9 be elected four magistrates. In each county which has one
10 hundred five thousand or more in population but less than
11 two hundred thousand in population there shall be elected
12 seven magistrates. In each county which has two hundred
13 thousand or more in population there shall be elected ten
14 magistrates. For the purpose of this article, the population of
15 each county shall be considered to be the population as
16 determined by the last preceding census taken under the
17 authority of the United States government. No change in
18 the number of magistrates caused by the publication of more
19 recent such census figures shall be effective until the next
20 regular election for such office occurring after the year of
21 such publication.

§50-1-3. Salary of magistrates.

1 The salary of each magistrate shall be paid by the state.
2 Magistrates who serve less than ten thousand in population
3 shall be paid annual salaries of ten thousand dollars. Magis-
4 trates who serve ten thousand or more in population but less
5 than fifteen thousand in population shall be paid annual
6 salaries of fourteen thousand dollars. Magistrates who serve
7 fifteen thousand or more in population shall be paid annual
8 salaries of eighteen thousand dollars. For the purpose of

9 determining the population served by each magistrate, the
10 number of magistrates authorized for each county shall be
11 divided into the population of each county. Magistrates shall
12 be paid once a month.

§50-1-7. Chief magistrates; administrative responsibility; additional duties.

1 The judge of the circuit court, or the chief judge thereof if
2 there is more than one judge of the circuit court, may
3 appoint one of the magistrates, to serve at the will and pleasure
4 of such circuit court judge, as the chief magistrate of the
5 county. The chief magistrate, if there is one, shall be respon-
6 sible for all of the administrative functions required of the
7 magistrate court in each county by this code and as required
8 by rules and regulations of the supreme court of appeals. These
9 functions shall include, but not be limited to, supervising the
10 circuit clerk or magistrate court clerk in the establishment
11 and maintenance of a centralized docketing system, submitting
12 all reports required by law and promptly notifying such
13 circuit court judge that additional magistrates are required
14 to handle the cases then pending in the magistrate court of
15 said county. Chief magistrates shall have the additional duties
16 of acting as liaison between the magistrate court and the
17 judge of the circuit court, or the chief judge thereof if there
18 is more than one judge of the circuit court, and such other
19 additional duties as may be assigned by such judge.

§50-1-8. Magistrate court clerks; duties; duties of circuit clerk.

1 In each county having three or more magistrates the judge
2 of the circuit court, or the chief judge thereof if there is more
3 than one judge of the circuit court, shall appoint a magistrate
4 court clerk. In all other counties such judge may appoint
5 a magistrate court clerk or may by rule require the duties
6 of the magistrate court clerk to be performed by the clerk
7 of the circuit court, in which event said circuit court clerk shall
8 be entitled to additional compensation in the amount of two
9 thousand five hundred dollars per year. In any county a magis-
10 trate court clerk may be appointed prior to the first day of
11 January, one thousand nine hundred seventy-seven. The magis-

12 trate court clerk shall serve at the will and pleasure of such
13 circuit judge.

14 Magistrate court clerks shall be paid a monthly salary by the
15 state. Magistrate court clerks serving magistrates who serve five
16 thousand or less in population shall be paid up to five hundred
17 dollars per month. Magistrate court clerks serving magistrates
18 who serve more than five thousand in population but less than
19 ten thousand in population shall be paid up to seven hundred
20 dollars per month. Magistrate court clerks serving magistrates
21 who serve more than ten thousand in population but less than
22 fifteen thousand in population shall be paid up to nine hundred
23 dollars per month. Magistrate court clerks serving magistrates
24 who serve fifteen thousand or more in population shall be paid
25 up to one thousand one hundred dollars per month. For the
26 purpose of determining the population served by each magis-
27 trate, the number of magistrates authorized for each county
28 shall be divided into the population of each county. The salary
29 of the magistrate court clerk shall be established by the judge of
30 the circuit court, or the chief judge thereof if there is more than
31 one judge of the circuit court, within the limits set forth in this
32 section.

33 In addition to such other duties as may be imposed by the
34 provisions of this chapter or by the rules of the supreme court
35 of appeals or the judge of the circuit court, or the chief judge
36 thereof if there is more than one judge of the circuit court, it
37 shall be the duty of the magistrate court clerk to establish and
38 maintain appropriate dockets and records in a centralized
39 system for magistrate court, to assist in the preparation of
40 such reports as may be required of the court and to carry out
41 on behalf of the magistrates, or chief magistrate, if a chief
42 magistrate is appointed, the administrative duties of the court.

43 The magistrate court clerk or, if there is no magistrate court
44 clerk in the county, the clerk of the circuit court shall have
45 the authority to issue all manner of civil process and to
46 require the enforcement of subpoenas and subpoenas duces
47 tecum in magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

1 In each county there shall be one magistrate assistant for

2 each magistrate serving magistrate court. Each magistrate
3 assistant shall be appointed by the magistrate under whose
4 authority and supervision and at whose will and pleasure he
5 shall serve. Such assistant shall not be a member of the im-
6 mediate family of any magistrate, shall not have been con-
7 victed of a felony or any misdemeanor involving moral
8 turpitude and shall reside in the county where appointed.
9 For the purpose of this section, immediate family shall mean
10 the relationships of mother, father, sister, brother, child or
11 spouse.

12 A magistrate assistant shall have such duties, clerical or
13 otherwise, as may be assigned by the magistrate and as may
14 be prescribed by the rules of the supreme court of appeals
15 or the judge of the circuit court, or the chief judge thereof if
16 there is more than one judge of the circuit court. In addition
17 to such duties, magistrate assistants shall perform and be
18 accountable to the magistrate court clerk with respect to the
19 following duties:

20 (1) The preparation of summons in civil actions;

21 (2) The assignment of civil actions to the various magis-
22 trates;

23 (3) The collection of all costs, fees, fines, forfeitures and
24 penalties which may be payable to the court;

25 (4) The submission of such moneys, along with an account-
26 ing thereof, to appropriate authorities as provided by law;

27 (5) The daily disposition of closed files which are to be
28 located in the magistrate clerk's office;

29 (6) All duties related to the gathering of information and
30 documents necessary for the preparation of administrative
31 reports and documents required by the rules of the supreme
32 court of appeals or the judge of the circuit court, or the
33 chief judge thereof if there is more than one judge of the
34 circuit court;

35 (7) All duties relating to the notification, certification and
36 payment of jurors serving pursuant to the terms of this
37 chapter;

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38 (8) All other duties or responsibilities whereby the magis-
39 trate assistant shall be accountable to the magistrate court
40 clerk as the magistrate shall determine.

41 Magistrate assistants shall be paid a monthly salary by the
42 State. Magistrate assistants serving magistrates who serve
43 five thousand or less in population shall be paid up to four
44 hundred dollars per month. Magistrate assistants serving
45 magistrates who serve more than five thousand in population
46 but less than ten thousand in population shall be paid up to
47 five hundred fifty dollars per month. Magistrate assistants
48 serving magistrates who serve more than ten thousand in
49 population but less than fifteen thousand in population shall
50 be paid up to six hundred fifty dollars per month. Magistrate
51 assistants serving magistrates who serve fifteen thousand or
52 more in population shall be paid up to seven hundred fifty
53 dollars per month. For the purpose of determining the popu-
54 lation served by each magistrate, the number of magistrates
55 authorized for each county shall be divided into the popula-
56 tion of each county. The salary of the magistrate assistant
57 shall be established by the magistrate within the limits set
58 forth in this section.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

1 Whenever required by work load and upon the recom-
2 mendation of the judge of the circuit court, or the chief judge
3 thereof if there is more than one judge of the circuit court,
4 the supreme court of appeals may by rule provide for the
5 appointment of magistrate court deputy clerks, not to exceed
6 forty-five in number. Such magistrate court deputy clerks shall
7 be appointed by the judge of the circuit court, or the chief
8 judge thereof if there is more than one judge of the circuit
9 court, with such appointee to serve at his will and pleasure
10 under the immediate supervision of the magistrate court clerk.
11 Such magistrate court deputy clerk shall have such duties,
12 clerical or otherwise, as may be assigned by the magistrate
13 court clerk and as may be prescribed by the rules of the
14 supreme court of appeals or the judge of the circuit court, or
15 the chief judge thereof if there is more than one judge of the
16 circuit court. Such magistrate court deputy clerks shall also
17 have authority to exercise the power and perform the duties

18 of the magistrate court clerk as may be delegated or assigned
19 by such magistrate court clerk.

20 Such magistrate court deputy clerk shall not be a member of
21 the immediate family of any magistrate, magistrate court
22 clerk, magistrate assistant or circuit court judge within the
23 same county, shall not have been convicted of a felony or any
24 misdemeanor involving moral turpitude and shall reside in the
25 county where appointed. For the purpose of this section, im-
26 mediate family shall mean the relationships of mother, father,
27 sister, brother, child or spouse.

28 Magistrate court deputy clerks shall be paid a monthly
29 salary by the state. Such salary shall be paid on the same
30 basis and in the same applicable amounts as for magistrate
31 assistants in each county as provided in section nine of this
32 article.

**§50-1-10. Clerks, deputy clerks, and magistrate assistants to take
oath and post bond.**

1 Each magistrate court clerk, magistrate court deputy clerk,
2 and magistrate assistant, shall take an oath of office and
3 shall post a bond in the penalty of twenty-five thousand dollars
4 with sufficient surety approved by the administrative director
5 of the supreme court of appeals or the judge of the circuit
6 court, or the chief judge thereof if there is more than one
7 judge of the circuit court, which bond shall be conditioned
8 upon the faithful performance of the duties of the office. The
9 state shall pay the cost of such bond and the administrative
10 director of the supreme court of appeals may obtain, in lieu
11 of individual bonds, a bond including more than one magis-
12 trate court clerk, magistrate court deputy clerk or magistrate
13 assistant.

§50-1-12. Conduct of office; penalty.

1 Magistrates shall be subject to and shall abide by the
2 code of judicial ethics as adopted and amended by the
3 supreme court of appeals. In addition to such conduct as
4 may be regulated by the rules of the supreme court of appeals,
5 no magistrate, magistrate court clerk or magistrate court
6 deputy clerk or magistrate assistant shall:

7 (a) Acquire or hold any interest in any matter which is
8 before the magistrate court;

9 (b) Purchase, either directly or indirectly, any property
10 being sold upon execution issued by the magistrate court;

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11 (c) Act as agent or attorney for any party in any pro-
12 ceeding in any magistrate court in the state; or

13 (d) Engage in, or assist in, any remunerative endeavor,
14 except the duties of his office, while on the premises of the
15 magistrate court office.

16 Any person who violates the provisions of this section shall
17 be guilty of official misconduct and shall be guilty of a misde-
18 meanor, and, upon conviction thereof, shall be fined not more
19 than five hundred dollars.

20 Nothing contained in this section shall preclude a magistrate,
21 magistrate court clerk, magistrate court deputy clerk, or
22 magistrate assistant from being a party to an action in the
23 magistrate court: *Provided*, That any action in which the
24 magistrate court clerk is a party shall not be assigned to the
25 chief magistrate nor shall any action in which a magistrate
26 court deputy clerk or magistrate assistant is a party be assigned
27 or heard by the magistrate for whom such magistrate assistant
28 is employed or to whose court such deputy clerk is assigned.

§50-1-14. Duties of sheriff; service of process; bailiff.

1 (a) It shall be the duty of each sheriff to execute all civil
2 and criminal process from any magistrate court which may be
3 directed to such sheriff. Process shall be served in the same
4 manner as provided by law for process from circuit courts.

5 Notwithstanding any provision contained therein to the con-
6 trary, the provisions of section thirty-one, article three, chapter
7 fifty-six of this code relating to service of process on non-
8 resident operators of motor vehicles shall apply to actions in
9 magistrate courts.

10 Subject to the supervision of the chief justice of the supreme
11 court of appeals or of the judge of the circuit court, or the

12 chief judge thereof if there is more than one judge of the
 13 circuit court, it shall be the duty of the sheriff, or his designated
 14 deputy, to serve as bailiff of a magistrate court upon the
 15 request of the magistrate. Such service shall also be subject
 16 to such administrative rules as may be promulgated by the
 17 supreme court of appeals. A writ of mandamus shall lie
 18 on behalf of a magistrate to enforce the provisions of this
 19 section.

20 (b) The sheriff of any county may employ, by and with the
 21 consent of the county commission, one or more persons whose
 22 sole duties shall be the service of civil process and the service
 23 of subpoenas and subpoenas duces tecum. Any such person
 24 shall not be considered a deputy or deputy sheriff within the
 25 meaning of subdivision (2), subsection (a), section two,
 26 article fourteen, chapter seven of this code, nor shall any such
 27 person be authorized to carry deadly weapons in the per-
 28 formance of his duties. 

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ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

1 Except as limited herein and in addition to jurisdiction
 2 granted elsewhere to magistrate courts or justices of the peace,
 3 magistrate courts shall have jurisdiction of all civil actions
 4 wherein the value or amount in controversy or the value of
 5 property sought, exclusive of interest and cost, is not more than
 6 one thousand five hundred dollars. Magistrate courts shall have
 7 jurisdiction of matters involving unlawful entry or detainer of
 8 real estate so long as the title to such real estate is not in dis-
 9 pute. Except as the same may be in conflict with the provisions
 10 of this chapter, the provisions of article three, chapter fifty-
 11 five, of this code, regarding unlawful entry and detainer, shall
 12 apply to such actions in magistrate court. Magistrate courts
 13 shall have jurisdiction of actions on bonds given pursuant to
 14 the provisions of this chapter. Magistrate courts shall have
 15 continuing jurisdiction to entertain motions in regard to post-
 16 judgment process issued from magistrate court and decisions
 17 thereon may be appealed in the same manner as judgments.

18 Magistrate courts shall not have jurisdiction of actions in

19 equity, of matters in eminent domain, of matters in which
20 the title to real estate is in issue, of proceedings seeking satis-
21 faction of liens through the sale of real estate, of actions for
22 false imprisonment, of actions for malicious prosecution or
23 of actions for slander or libel or of any of the extraordinary
24 remedies set forth in chapter fifty-three of this code.

25 Magistrates, magistrate court clerks, magistrate court deputy
26 clerks, and magistrate assistants shall have the authority to
27 administer any oath or affirmation, to take any affidavit or
28 deposition, unless otherwise expressly provided by law, and
29 to take, under such regulations as are prescribed by law, the
30 acknowledgement of deeds and other writings.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-4. Disposition of costs; magistrate court fund.

1 All costs collected in magistrate courts in a civil or
2 criminal proceeding shall be submitted on or before the
3 tenth day of the month following the month of their collec-
4 tion to the magistrate court clerk or, if there is no magistrate
5 court clerk, to the clerk of the circuit court along with such
6 information as may be required by the rules of the supreme
7 court and by the rules of the chief inspector of public offices.
8 Such clerk shall pay such costs into the special county fund
9 hereafter created during each fiscal year until there shall have
10 been paid a sum equal to twelve thousand five hundred dollars
11 multiplied by the number of magistrates authorized for such
12 county. All costs collected in excess of such sum during a fiscal
13 year shall be paid to the State. Notwithstanding the pro-
14 visions of section two, article nineteen, chapter fifty of this
15 code to the contrary, all costs and fees collected by justices
16 of the peace on or after the first day of July, one thousand
17 nine hundred seventy-six, shall be paid into said special
18 county fund hereafter created.

19 There is hereby created in each county a special county
20 fund designated as the magistrate court fund. No moneys
21 shall be appropriated from the fund except for the purposes
22 provided for in this section. Any money remaining in the
23 magistrate court fund on the thirtieth day of June, one

24 thousand nine hundred seventy-nine, and on the thirtieth day
25 of June of each year thereafter, shall be paid to the state.

26 A county may appropriate and spend from such fund such
27 sums as shall be necessary to defray the expenses of providing
28 bailiff and service of process services by the sheriff, to defray
29 the cost of acquiring or renting magistrate court offices and
30 providing utilities and telephones therefor and to defray the
31 expenses of such other services which by the terms of this
32 chapter are to be provided to magistrate court by the county.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-1. Commencement of civil actions.

1 There shall be one form of civil action in magistrate court.
2 Civil actions shall be commenced by the payment of the fees
3 required by article three of this chapter and by providing any
4 magistrate, magistrate court clerk, magistrate court deputy
5 clerk, ^{or} ~~of~~ magistrate assistant with a concise statement, either
6 oral or written, of the nature of the cause of action. Such state-
7 ment must be sufficient to notify the defendant of the subject
8 matter of the action. Where such statement is filed by a
9 commercial creditor, the statement shall include, but not be
10 limited to, a setting forth of the amount of the original obliga-
11 tion, the portion thereof which constitutes principal, the por-
12 tion thereof which represents interest, the date and amount
13 of payments thereon, the amount, if any, credited as a rebate
14 for prepayment, the amount, if any, credited for the sale of
15 repossessed collateral, and the amount alleged to be due.
16 The magistrate court clerk, the magistrate court deputy clerk,
17 or magistrate assistant shall immediately prepare a summons in
18 such form and containing such information as may be required
19 by the rules of the supreme court of appeals. The summons
20 shall be dated the same day the request therefor is received and
21 the appropriate fees received, and the action shall be
22 deemed commenced as of that date. The magistrate assistant
23 shall thereupon forward the matter to the magistrate court
24 clerk together with any service of process fees which may
25 have been collected.

26 Upon receipt of the matter by the magistrate court clerk,

27 such clerk shall docket the same in a central docket. Such
28 clerk shall thereupon assign the action for trial in the manner
29 as shall be prescribed by the judge of the circuit court, or
30 the chief judge thereof if there is more than one judge of the
31 circuit court, to promote and secure the convenient and ex-
32 peditious transaction of the business of the court. After the
33 matter is assigned, the magistrate court clerk shall make note
34 of the assignment on the summons, sign the summons and
35 forward it, together with any service of process fees which
36 may have been collected, to the sheriff for service of process.

§50-4-5. Return date in civil action; setting for trial date; failure to appear; notify.

1 Except in matters involving unlawful entry and detainer,
2 each summons in a civil action shall notify the defendant that
3 he must appear within twenty days after service of the sum-
4 mons upon him or that he must otherwise notify the magis-
5 trate court by that time that he wishes to contest the matter.
6 In matters involving unlawful entry and detainer such ap-
7 pearance or notification shall be required within five days
8 after service of the summons.

9 If the magistrate court is notified by the defendant that he
10 wishes to contest the matter a trial date shall be set and all
11 parties notified thereof. Such trial date shall be at least
12 five days from notification thereof unless all parties consent
13 otherwise thereto.

14 If no appearance or other notification is made within twenty
15 days after the service of the summons on the defendant, or,
16 in matters involving unlawful entry and detainer within five
17 days after service of summons, judgment by default may be
18 entered in accordance with the provisions of section ten of this
19 article.

§50-4-7. Removal to another magistrate.

1 Any party to a civil or criminal proceeding before a magis-
2 trate in any county wherein there is more than one magistrate
3 may file an affidavit that the magistrate before whom the
4 matter is pending has a personal bias or prejudice either against
5 him or in favor of any opposite party or that such magistrate

6 has counseled with any opposite party with respect to the merits
7 of the proceeding. The affidavit shall state the facts and rea-
8 sons for belief in the truth thereof. Such affidavit must be filed
9 at least two days before the trial or hearing date unless the
10 grounds for such affidavit are not discovered until after
11 such time. The supreme court of appeals shall provide a
12 form affidavit which shall be made available to all parties
13 and which shall comply with the requirements of this section.

14 Upon the timely filing of such affidavit, the magistrate
15 shall transfer all matters relating to the case to the magistrate
16 court clerk, who shall thereupon assign and transfer the matter
17 to be heard by some other magistrate within the county
18 upon an assignment basis to be established by the judge of the
19 circuit court, or to transfer all matters relating to the case
20 to the magistrate court clerk, who shall thereupon assign and
21 transfer the matter to be heard by some other magistrate
22 within the county upon a rotation basis to be established by
23 the judge of the circuit court, or the chief judge thereof
24 if there is more than one judge of the circuit court. Such re-
25 moval and assignment shall be permitted, however, only if
26 there is some other magistrate in the county before whom
27 the matter had not been previously pending. No party shall be
28 entitled to cause such a removal more than once.

29 The magistrate to whom the matter is assigned shall set
30 a new return date not more than five days from his receipt
31 of the matter, shall notify all parties thereof, and shall
32 proceed with the matter as if it had been originally assigned
33 to him.

§50-4-8. Removal to circuit court.

1 At any time before trial in a civil action involving less than
2 three hundred dollars the action may be removed to circuit
3 court upon the concurrence of all parties and upon the pay-
4 ment of the circuit court filing fee. At any time before trial
5 in a civil action involving three hundred dollars or more, any
6 party may, upon payment of the circuit court filing fee, cause
7 such action to be removed to the circuit court. All appropriate
8 documents shall then be forwarded along with such fee to the

9 clerk of the circuit court. The matter shall then be heard
10 by the circuit court.

§50-4-9. Counterclaim.

1 A defendant in a civil action may at any time within twenty
2 days after the service of process on him commence a separate
3 action as a counterclaim and if such counterclaim arises from
4 the same transaction or occurrence that is the subject matter
5 of the initial claim they shall be tried together. The require-
6 ments of law relating to the payment of fees and service of
7 process shall apply to counterclaims. The failure to institute
8 a counterclaim permitted by this section shall not preclude the
9 institution of an action on such claim at a later date. The
10 adjudication of the original claim shall not constitute res
11 judicata as to any such permitted counterclaim nor shall it
12 act as an estoppel as to such permitted counterclaim.

§50-4-10. Judgment before trial.

1 If a defendant in a civil action fails to appear or otherwise
2 notify the magistrate court within twenty days after the
3 service of the summons upon him, or within five days in
4 matters involving unlawful entry and detainer, that he wishes
5 to contest the action, the magistrate may enter judgment as
6 justice may require as follows:

7 (a) The magistrate shall enter judgment by default only
8 upon affidavit or sworn testimony reflecting the nature of
9 the claim, whether or not it is for a sum certain or for a
10 sum which can by computation be made certain, the de-
11 fendant's failure to appear or otherwise notify the court
12 within twenty days after service of the summons upon him
13 that he wishes to contest the action and supporting the
14 relief sought. In the event the plaintiff's claim is not
15 for a sum certain or for a sum which can by computation be
16 made certain, the court shall require such further proof by
17 affidavit or sworn testimony as is necessary to determine the
18 priority of the relief sought.

19 (b) No judgment by default shall be rendered against a
20 person who is an infant, incompetent person or incarcerated
21 convict unless such person is represented in the action by

22 a guardian ad litem, guardian, committee, curator or other
23 like fiduciary.

24 Upon motion made by the defendant within twenty days
25 after the entry of such judgment, the magistrate may, for
26 good cause shown, set aside the judgment and set the matter
27 for trial.

28 If a defendant offers to confess judgment at any time,
29 the magistrate shall take the same in writing and enter
30 judgment for the amount confessed plus costs. In the event
31 the amount claimed by the plaintiff exceeds the amount con-
32 fessed by the defendant the plaintiff may request that the
33 matter be set for trial. If the plaintiff's recovery therein does
34 not exceed the amount confessed, costs shall be assessed
35 against the plaintiff.

§50-4-12. Dismissal of actions for failure to appear, testify, etc.

1 A magistrate may render judgment against the plaintiff
2 dismissing his action with prejudice to a new action and
3 awarding costs to the defendant when (a) the plaintiff fails
4 to appear and prosecute his action at the proper time for
5 appearance; (b) the plaintiff fails or refuses to testify when
6 properly required to do so; or (c) the plaintiff fails to give
7 security for costs when properly required to do so. In cases
8 (a) and (b) if the plaintiff shows cause why his action should
9 not have been dismissed, the magistrate may set aside such
10 judgment and continue the matter before him or may dismiss
11 the action without prejudice.

12 A magistrate shall dismiss a claim without prejudice if
13 the summons is defective or erroneous and cannot properly be
14 amended.

15 A magistrate shall dismiss a claim without prejudice if the
16 plaintiff requests such dismissal before trial.

17 The dismissal of a claim shall not affect the right of any
18 party to proceed to trial upon a counterclaim.

§50-4-13. Inter-county institution of civil actions.

1 A civil action may be instituted before a magistrate court
2 clerk, magistrate court deputy clerk, or magistrate assistant in

3 any county when the matter should be heard in another
4 county. The clerk, deputy clerk, or magistrate assistant before
5 whom such matter is instituted shall, in such event, forward all
6 fees collected together with an appropriate statement of the
7 matter to the magistrate court of the appropriate county. The
8 clerk, deputy clerk, or magistrate assistant receiving such
9 information and fees shall proceed with the matter as if it
10 were actually instituted before him.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-2. Continuances.

1 A magistrate shall continue the holding of a trial or hearing
2 upon the motion of any party for a period of time not less
3 than five nor more than ten days, and such mandatory
4 continuance shall be available to each party once. A magis-
5 trate may continue the holding of a trial or hearing at any
6 time upon his own motion or, if good cause is shown, upon
7 the motion of any party. In criminal proceedings when
8 the defendant is in custody, the state shall not have the
9 right to a continuance but may be granted a continuance for
10 no more than five days if good cause is shown. In criminal
11 proceedings when the defendant is in custody, the magistrate
12 may continue the matter no more than once on his own motion
13 over the objection of the defendant and such continuance
14 over the objection of the defendant shall not be for more
15 than two days.

§50-5-3. Appointment of guardian ad litem.

1 No infant, incompetent person or incarcerated convict shall
2 proceed or be proceeded against in a civil action in magistrate
3 court unless the provisions of this section are complied with.

4 Whenever an infant, incompetent person or incarcerated
5 convict has a duly qualified representative, such as a guardian,
6 curator, committee or other like fiduciary, such representative
7 may sue or defend on behalf of the infant, incompetent person
8 or convict. If a person under any disability does not have a
9 duly qualified representative he may sue by his next friend.
10 The magistrate shall appoint some suitable person who shall
11 not be required to be an attorney-at-law as guardian ad litem

12 for an infant, incompetent person or incarcerated convict not
13 otherwise represented in an action.

§50-5-4. Subpoenas.

1 A magistrate, magistrate court clerk, magistrate court deputy
2 clerk or magistrate assistant shall, upon the request of any
3 party, issue a subpoena compelling the attendance and testi-
4 mony of a witness or a subpoena duces tecum compelling the
5 production of some writing or other object. The court shall
6 require the sheriff to enforce such subpoena or subpoena duces
7 tecum and may punish the willful disregard thereof by finding
8 such person in contempt in accordance with the provisions of
9 section eleven of this article. Witness fees and mileage shall
10 be calculated and paid as in the circuit court.

§50-5-5. Privileged communications; persons incompetent to testify.

1 No person shall be compelled to testify at any proceeding
2 in magistrate court as to any communication privileged by
3 law. No person shall be compelled to testify as to any matter
4 as to which he is incompetent by law to testify.

§50-5-6. Evidentiary depositions.

1 In a civil action the evidentiary deposition of any witness
2 residing out of the county or unable to attend court may be
3 taken for use at the trial by any party upon reasonable notice
4 to all other parties.

§50-5-8. Trial by jury.

1 Any party to a civil action is entitled to a trial by jury
2 when the amount in controversy exceeds twenty dollars
3 or involves possession to real estate. Any defendant in any
4 criminal action shall be entitled to a trial by jury, and any
5 such verdict must be unanimous. A defendant in a criminal
6 proceeding may waive a jury trial if he is advised of his
7 right to a jury trial and such waiver is made in writing. A
8 magistrate court jury shall consist of six persons, to be selected
9 from a panel of ten persons. The selection and summoning
10 of jurors shall be conducted in accordance with rules and
11 regulations to be promulgated by the supreme court of ap-
12 peals no later than the first day of July, one thousand nine

13 hundred seventy-eight. Jurors shall be paid by the state in
14 accordance with such rules.

§50-5-9. Entry of judgment.

1 In every criminal case in which the defendant is in custody,
2 a magistrate shall enter judgment immediately upon the con-
3 clusion of the trial or hearing. In all other proceedings, a
4 magistrate shall enter judgment no later than the next suc-
5 ceeding day after the conclusion of the trial or hearing, ex-
6 cluding Saturdays, Sundays and legal holidays.

§50-5-11. Contempt.

1 A magistrate may punish for contempt of court a person
2 guilty of any of the following acts, and in no other case:

3 (a) Contemptuous or insolent behavior toward such magis-
4 trate while engaged in the trial of a case or in any other
5 judicial proceeding;

6 (b) Any breach of the peace, willful disturbance, or in-
7 decent conduct in the presence of such magistrate while so
8 engaged, or so near as to obstruct or interrupt the proceedings;

9 (c) Violence or threats of violence to such magistrate,
10 or any officer, juror, witness, or party going to, attending,
11 or returning from, any judicial proceeding before the court
12 with respect to anything done or to be done in the course
13 of such proceeding;

14 (d) Flagrant misbehavior of any officer of the county acting
15 in his official capacity with respect to any action or judicial
16 proceeding had or pending before the court, or any process,
17 judgment, order or notice therein; or

18 (e) Willful resistance by an officer of the court, juror,
19 witness, party or other person to any lawful process or order
20 of the court.

21 A magistrate may, if necessary, issue a warrant of arrest
22 for such person, who shall be given an opportunity to be
23 heard. In the event such person is adjudged guilty of
24 contempt, the person may be fined not more than fifty dollars
25 for the first offense. For a second offense pertaining to the

26 same matter the person may be fined not more than one
27 hundred dollars. For the third or any subsequent offense
28 pertaining to the same matter the person may be fined not
29 more than one hundred dollars, or imprisoned in the county
30 jail not more than ten days, or both fined and imprisoned.

31 An appeal to the circuit court of such conviction shall lie
32 as in criminal cases.

§50-5-12. Appeals in civil cases.

1 Any person may appeal the judgment of a magistrate court
2 to the circuit court as a matter of right by requesting such
3 appeal not later than twenty days after such judgment is
4 rendered or not later than twenty days after a decision is
5 rendered upon a motion to set aside such judgment. Such
6 person shall be required to post a bond with good security
7 in a reasonable amount not less than the reasonable court
8 costs of the appeal nor more than the sum of the judgment
9 and the reasonable court costs of the appeal, upon the con-
10 dition that such person will satisfy the judgment and any court
11 costs which may be rendered against him on any such appeal.
12 The circuit court filing fee shall be collected by the magistrate
13 court clerk or deputy clerk at the time the appeal is re-
14 quested, which said fee shall be forwarded to the clerk of the
15 circuit court along with other appropriate documents regarding
16 the appeal. No bond shall be required of any governmental
17 agency or authority or of a person who has filed an affidavit
18 pursuant to section one, article two, chapter fifty-nine of this
19 code. If no appeal is perfected within such twenty-day period,
20 the circuit court of the county may, not later than ninety
21 days after the date of judgment, grant an appeal upon a
22 showing of good cause why such appeal was not perfected
23 within such twenty-day period. The filing or granting of an
24 appeal shall automatically stay further proceedings to enforce
25 the judgment. Trial in circuit court shall be de novo. If,
26 after the appeal is regularly placed upon the docket of the
27 circuit court, neither party brings the matter on to hearing
28 before the end of the second term thereafter at which it is
29 called for trial, unless good cause for a continuance is shown,
30 the appeal shall be considered as abandoned and shall be
31 dismissed at the cost of the appellant unless sufficient cause

32 is shown for a further continuance and the judgment of the
33 magistrate court shall stand. No appeal which shall have been
34 so dismissed by the circuit court shall be reinstated after the
35 close of the next regular term after such dismissal.

§50-5-14. Pleas in certain cases.

1 Except for violations of sections one or two, article five,
2 chapter seventeen-c of this code, and except for violations of
3 any of the provisions of chapter twenty of this code which
4 may subject the person charged therewith to confinement,
5 any person charged with a violation of said chapter seven-
6 teen-c or said chapter twenty may plead guilty or nolo con- *ok*
7 tendere thereto by appearing before a magistrate, magistrate
8 court clerk, magistrate court deputy clerk, or magistrate
9 assistant in a county other than the county in which he is
10 charged and pay an appropriate fine and costs as advised by
11 such magistrate clerk or deputy clerk. The clerk, deputy clerk
12 or magistrate assistant shall immediately forward the same
13 to the appropriate magistrate court. The magistrate court
14 may either accept or reject the same. In the event the same
15 is rejected the plea shall be considered withdrawn and all
16 moneys paid shall be returned and the matter shall proceed
17 as if no such offer of plea had been made.

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

1 The provisions of articles three, four, five, five-a, five-b
2 and six, chapter thirty-eight of this code, except as the same
3 are in conflict with the provisions of this chapter or are
4 clearly applicable only to courts of record, shall apply to
5 the enforcement of judgments rendered in magistrate court
6 and process therefor shall issue from magistrate court. Process
7 issued in violation of such provisions shall be void. The form
8 of such process shall be in accord with the rules of the supreme
9 court of appeals. No such process shall issue until after ten
10 days after the judgment is rendered, or, if a motion to set
11 aside such judgment is then pending, until after ten days
12 after the determination of such motion.

§50-6-3. Attachment.

1 Except as the same may be in conflict with the provisions
2 of this chapter, the provisions of article seven, chapter thirty-
3 eight, of this code, regarding attachment shall apply to actions
4 in magistrate court.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Lawrence C. Christian Jr.
Chairman House Committee

Originated in the House.

Takes effect July 1, 1978.

J. C. Deilan, Jr.
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. J. Bratherton Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within *is approved* this the *30*
day of *March*, 1978.

John N. Dyer
Governor

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MAR 23 4 01 PM '78
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date Mar. 30, 1978

Time 9:45 A.M.

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78 MAR 30 P 9: 24

OFFICE
SECY. OF STATE