

MAGISTRATE COURT PRACTICE

By Dan Fowler

RULES OF CIVIL PROCEDURE FOR MAGISTRATE COURTS

Pursuant to the authority granted it by WV Code 50-1-16, the Supreme Court of Appeals has adopted Rules of Civil Procedure for Magistrate Courts. The rules apply to all civil cases in magistrate court and supplement, and in designated instances, supersede the statutory procedures set forth in Chapter 50 of the WV Code. (Rule I RCPMC). When the magistrate rules are silent on a procedural matter, the Rules of Civil Procedure for Circuit Courts must be applied. When the rules conflict with a statute, the rules, rather than the statute control.

JURISDICTION AND VENUE

A. Territorial Jurisdiction

Article VIII, Section 10 of the West Virginia Constitution provides that “the jurisdiction of magistrate court shall extend throughout the county for which it is established. “This language necessarily limits a magistrate’s jurisdiction to the county of election. At times, however, an individual magistrate may be ordered to temporarily serve outside his/her home county. A circuit judge may order a magistrate to serve “in any other county within the judicial circuit”, WV Code 50-1-13, and the Chief Justice may order the magistrate to serve in any county, whether within or without; the Judicial circuit. When ordered to serve outside of the home county, a magistrate’s authority is “equal to the jurisdiction and authority of a magistrate elected in the county to which the magistrate is ordered to serve”. WV Code 50-1-13.

Under the provisions of WV Code 50-1-6a, the West Virginia Supreme Court of Appeals is authorized and empowered to create a panel of senior magistrates to consist of, and to utilize the talent and experience of retired magistrates. At the time of this writing, rules to implement this statute have not been promulgated.

B. Civil Jurisdiction

1. West Virginia Code 50-2-1 provides that except as limited in that particular section of the Code, and in addition to jurisdiction granted elsewhere, magistrate court jurisdiction in civil actions extend as follows:

- a. Where the value or amount in controversy or the value of the property sought, exclusive of interest and costs, is not more than \$10,000.00.
- b. Matters involving unlawful entry or detainer of real estate so long as the title to real estate is not in dispute and “regardless of the amount in controversy.” State ex rei. Strickland v. Daniels 318 S.E.2d 627 (1984).
- c. Actions on bonds given pursuant to the provisions of WV Code 50-1-1, et seq.
- d. Entertainment of actions in regard to the post judgment process issued from magistrate court.

2. Magistrate court jurisdiction is expressly prohibited in the following instances:

- a. Actions in equity.
- b. Matters in eminent domain.
- c. Matters in which title to real estate is in issue.
- d. Proceedings seeking satisfactions of liens through the sale of real estate.
- e. Actions for false imprisonment.
- f. Actions for malicious prosecution.
- g. Actions for libel or slander.
- h. Extraordinary remedies such as mandamus, habeas corpus and prohibition.
- i. Class actions.

3. Magistrates, as well as magistrate court clerks and magistrate assistants, are given specific authority to administer any oath or affirmation as well as to take any affidavit or deposition, unless otherwise expressly prohibited by law, and may also take, under such regulations prescribed by law, acknowledgment of deeds and other writings WV Code 50-2-1.

C. Venue

Article VIII, section 10 of the West Virginia Constitution provides that venue for magistrate court shall be “as prescribed by law.” Pursuant to that authority, the legislature specifically granted me magistrate court the same venue as applies to circuit courts. WV Code 56-1-1, et seq.

COMMENCEMENT OF ACTIONS

A civil action is commenced by filing, in person or by mail, a complaint with a magistrate or magistrate court clerk. The complaint should be on the form provided by the court for the particular type of action sought to be initiated. The filing fee is dependent upon the amount of damages sought to be recovered in the complaint. Fees are waived if the plaintiff files a “financial affidavit alleging that he or she is financially unable to pay the same. WV Code 50-3-1 and 59-2-1. Through WV Code 50-4-1 states that there is only “one form of civil action in magistrate court” in fact, the section creates two types complaints: That filed by a commercial creditor, and that filed by all other plaintiffs. The latter complaint need only be a “short and plain statement of the claim showing that the plaintiff is entitled to relief.” There must be “a demand for judgment for the relief that plaintiff seeks.” Rule 2, RCPMC.

A commercial creditor, on the other hand, must include in its complaint “the amount of the original obligations, the portion thereof which constitutes principle, the portion thereof which represents interest, and date and amount of payments thereon, the amount, if any, credited for the sale of repossessed collateral and the amount alleged to be due.” WV Code 50-4-1. Additionally, the Supreme Court of Appeals has held that it is improper for a commercial creditor to recover on several separate and distinct accounts by consolidating them into one claim. Each original obligation must be set forth in the detailed manner required by the statute. A complaint for a commercial debt that fails to set forth the information required by the statute as to each original debt may be found to have violated the defendant’s right to due process, rendering void all subsequent proceedings before the magistrate court. *State ex rel. Frieson v. Isner*, 285 S.E.2d 641 (W. Va, 1981). For purposes of the statute of limitations, an action is considered commenced when the complaint is filed and the fee paid or financial affidavit filed in lieu of such payment.

West Virginia Code 50-4-13 allows the institution of a civil action in “any county.” The magistrate court in which the action is filed, if not having jurisdiction or venue itself, simply forwards the papers and fees to the court of the “appropriate county.”

NOTE: A financial affidavit filed in lieu of payment of costs is subject to inquiry by the magistrate court clerk and/or magistrate; however, neither a magistrate nor any other court personnel may question the truth of such affidavit and the action shall be instituted irregardless.

SERVICE OF PROCESS

West Virginia Code 50-4-4 mandates that service of process in magistrate court civil matters be made in the same manner as provided for by Rule 4 RCP for trial courts of record. Service of process; may be made by the sheriff, his deputy, the sheriffs civil process servers or by any “credible person” over eighteen years of age who is not a party, except that “an attorney for a party shall not serve original process.”

NOTE: West Virginia Code 55-3A-1 permits service of process for wrongful occupation or residential rental property by certified mail, return receipt requested.

RETURN; TRIAL DATE; ANSWER; SERVICE OF ANSWER; BOND

West Virginia Code 50-4-5 requires that each summons issued notify the defendant that he must appear or otherwise notify the magistrate court of his desire to contest the action within 20 days from the date of service. (Rule 4, RCPMC). The answer period is extended to 30 days where service is made; upon an agent or attorney in fact. If the matter is contested, the magistrate, upon receipt of the answer sets a trial date.

The answer under Rule 4 RCPMC must deny the plaintiff’s complaint, or else admit the plaintiff’s claim but give a clear and simple statement as to why the plaintiff is not entitled to the relief requested in the complaint. The defendant may also assert such affirmative defenses as accord and satisfaction, arbitration and award, res judicata, etc. Failure of the defendant to state an affirmative defense in the answer does not preclude the defendant from raising an affirmative defense at trial. Rule 4(d) RCPMC.

Service of an answer, which is the responsibility of the defendant, may be done by sending the same by first class mail to the plaintiff or if the plaintiff is represented, to his attorney, or by delivering a copy to the party or attorney personally, leaving the copy at his office or leaving it at his usual place of abode with some member of his family above the age of 16 years. Rule 8 RCPMC. In those instances where the plaintiff is a nonresident and a bond is properly requested by the defendant, the magistrate is obligated to require a bond in a just and reasonable amount to cover the defendant’s court costs in the event that the plaintiff does not prevail. The magistrate may dismiss a case against the defendant if the plaintiff fails to post the required bond before trial, WV Code 50-3-5 and 50-4-12.

NOTE: In matters involving unlawful entry or detainer or wrongful occupation of residential rental property, an answer or appearance must be filed or made within five days after service. WV Code

50-4-5 and 55-3 A-1. The latter also requires that the tenant's defenses be submitted in writing to the party initiating the complaint.

OTHER CLAIMS AND PARTIES

West Virginia Code 50-4-9, as well as Rule 5 RCPMC, authorizes the defendant in a civil action, at any time within 20 days after service of process on him, to file a counterclaim, to be stated together with his answer without additional cost.

All counterclaims in magistrate court have been held to be permissive, so a defendant who fails to assert a counterclaim is not precluded from later instituting an action on such claim. WV Code 50-4-9 and Rule 5(b) RCPMC. See also *Lines v. Ball*, 391 S.E.2d 632 (WV 1990).

Though the statute is silent on the matter, Rule 5(c) RCPMC allows for the filing of cross claims in those instances where two or more defendants are named and one defendant alleges another defendant it is responsible for plaintiff's damages. A cross claim may be filed by and against either party defendant and stated together with defendant's answer without additional cost.

Rule 6, RCPMC provides for what is known under the circuit court rules of civil procedure as "third-party" practice. The requirement is simply that if the defendant alleges that another person who is not named as a defendant in the case is wholly or partially responsible to him for plaintiff's damages, the defendant may file a complaint against that person. The third-party claim is initiated as if an original complaint; however, no filing fee is required.

NOTE: Counterclaims filed in response to a wrongful occupation complaint must be asserted within ten days after service of the complaint. *Strickland. supra.*

TRANSFER TO ANOTHER MAGISTRATE

West Virginia Code 50-4-7 and Rule 12(a)(2) RCPMC provide for the transfer of a case from, one magistrate to another when the magistrate before whom the case is pending has interest, prejudice or bias against a party, or in favor of any opposing party or the magistrate has counseled with the opposing party regarding the merits of the proceeding. Although 50-4-7 provides for the filing of an affidavit, Rule 12(a)(2) RCPMC allows such transfer to be requested by pretrial motion and an affidavit at least 10 days prior to the first date scheduled for trial.

The magistrate disqualified or removed by motion must transfer all matters relating to the case to the magistrate court clerk for assignment to another magistrate in the county on a rotating basis. The newly assigned magistrate must set a trial date and notify all parties thereof. If the party who previously filed the affidavit or motion believes that the new magistrate is also biased or prejudiced, he may move for the second magistrate to recuse himself/herself and demand a hearing to show good cause in support of such motion. If the magistrate refuses to recuse, the party may proceed with a hearing on the merits and appeal the judgment, if adverse, to the circuit court or, in the alternative, may bring a writ of prohibition against the magistrate. In the latter course of action, the party must show actual prejudice on the part of the magistrate. See *Pritchard v. Grouser*. 332 S.E.2d 611 (WV1985).

REMOVAL TO CIRCUIT COURT

West Virginia code 50-4-8 allows a civil action initiated in magistrate court to be removed to circuit court. If the action involves less than \$300.00, it may be removed only upon the concurrence of all parties. If \$300.00 or more is involved, any party may remove the action. In both instances, the removal must be done “before trial” is commenced and may be accomplished by motion pursuant to Rule 12 RCPMC and upon payment of the circuit court filing fee, unless the moving party has filed a financial affidavit. In determining whether a case involves \$300.00 or more, the courts should “look to the concrete monetary value of the matters at stake,” including the present value of future benefits. *Strickland* and *supra*. In *Strickland*, the court considered in its calculation of the amount involved the defendant’s interest in the continued rental of her apartment and the obvious expenses incurred in moving if she was evicted.

SERVICE OF PLEADINGS OTHER THAN SUMMONS AND COMPLAINT

Although WV Code 50-4-4 authorizes service of process in the same manner as in trial courts, Rule 9 RCPMC specifically provides that every pleading subsequent to the original complaint submitted by a party must be served by a certificate of service in accordance with Rule 8 RCPMC. This rule essentially provides that whenever service is required to be made upon a party represented by an attorney, service shall be made upon the attorney, and in any event, service upon the attorney or upon the party himself may be made by delivering a copy to him in person or by mailing a copy via first class mail to a last known address. The Rule also allows for a copy to be delivered to the person’s office or at his usual place of abode. Additionally, service by mail is complete upon mailing.

The magistrate court is required to send a copy of every notice of hearing or trial and every ruling or court order to each party or attorney, as the case may be. Service of process for papers is not required

when the defendant does not answer the complaint within 20 days; when the defendant does not notify the court of his intent to contest the case within the time set within an order of publication; and when the defendant fails to appear in court when required to do so. See: Rule 8(c) RCPMC.

Rule 9(b) RCPMC requires that all papers subsequent to the complaint carry an endorsement or appendage by the attorney or by the party certifying that the paper was served as prescribed by Rule 8 RCPMC or the serving party may file a certificate of acceptance of service signed by the attorney or party upon whom the paper was served. In both events, the certificate must show the date and method of service or the date of acceptance of service.

AMENDED OR SUPPLEMENTAL PLEADINGS

Similar to procedures under Rule 15 of the West Virginia Rules of Civil Procedure for circuit courts, Rule 7 RCPMC allows amended and supplemental pleadings, with leave to be freely granted by the court. Not only is the filing of an amended pleading or amendment of the pleading by interlineation freely permitted, it is permitted at any stage of the proceeding. Similar considerations apply to supplemental pleadings. Additionally, Rule 7 RCPMC provides for continuances, to meet new matters asserted by way of amended or supplemental pleading in order to avoid surprise or prejudice.

JUDGMENT BEFORE TRIAL

A. Default Judgment

West Virginia Code 50-4-10 and Rule 10 RCPMC authorize a default judgment procedure if a defendant in a civil action fails to answer the complaint or otherwise notify the court within 20 days of service of process of his intention to contest the action, or within five days of service in matters involving unlawful entry and detainer or wrongful occupation. Before the magistrate may enter a default judgment, the plaintiff must submit either an affidavit or sworn testimony stating that the defendant failed to answer, appear or contest the claim; the facts of the case and the nature of the claim; and what relief the plaintiff requests, including whether it is for a sum certain or for a sum which by computation can be made certain.

In those instances where the claim is not for a sum certain or for a sum which by computation can be made certain, the statute and Rule 10(b) RCPMC mandate that the magistrate require such further proof, by affidavit or sworn testimony, as is necessary to determine the propriety of the relief sought.

The provisions of Rule 10 RCPMC apply whether the party entitled to the default judgment is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross claim or counterclaim. Rule 10(c) RCPMC. As in the Rules of Civil Procedure for trial courts, a default judgment may not be entered where the defendant is an infant, an incompetent, or an incarcerated convict, unless a guardian or committee is appointed. Rule 10(d) RCPMC.

Relief from entry of default judgment is available if the party against whom it has been imposed makes a motion to do so within 20 days after entry of judgment and shows good cause. Such a motion may not be granted ex parte. Upon the filing of the motion, the magistrate is required to set a date for hearing and to so notify all parties. Rule 17 RCPMC. A default judgment may be set aside at any time if the court did not have proper jurisdiction. WV Code 50-4-11.

B. Confession of Judgment

West Virginia Code 50-4-10 provides for a procedure whereby the defendant may admit to the truth of the plaintiff's claim and agree to pay all or part thereof. The magistrate is required at this point to take a written statement from the defendant. This is referred to as a confession of judgment and there upon the magistrate enters judgment for plaintiff plus costs. In the event that the defendant offers to pay less than the amount sought by the plaintiff, the plaintiff may refuse to accept the offer and request a trial. If, at trial, the amount of the plaintiff's award is less than the defendant agreed to pay, Court costs shall be assessed against the plaintiff.

Apart from the statutory provision to confess judgment, the defendant may upon filing an answer, admit to the complaint and thereby confess judgment by marking the appropriate response on the answer form. A magistrate does not have the authority to enter a confession in part against the defendant without notice to and the consent of the plaintiff.

CONTESTED CASES; DISCOVERY; WITNESSES

A. Contested Cases

In those cases where the plaintiff's claim is contested, and the contest is raised in the defendant's answer by the setting forth of such defenses as lack of jurisdiction, improper venue, insufficiency of service of process, failure to state a claim upon which relief can be granted, etc., (See Rule 12 RCPMC)

the magistrate must set a date for hearing on the procedural, issues “to determine whether the case should be dismissed, or the service quashed. Rule 12 RCPMC.

A trial on the merits of the case shall be set and notice given by first class mail to all parties not less than 21 days before such trial date. Rule 11 RCPMC.

B. Discovery

Discovery in magistrate court is limited by the provisions of Rule 13 RCPMC. For example, any party, as a matter of right, may obtain from a magistrate an order directing another party to submit to a physical examination by a physician. Though styled a “matter of right” the order must be obtained via a pretrial motion for same and a showing of good cause. The moving party must show:

(1) if the plaintiff, that the defendant has placed his physical condition at issue by way of defense or otherwise; or

(2) if the defendant, that the plaintiff is claiming relief for physical injury caused by me defendant’s actions.

The party examined is entitled to a copy of the examining physician’s written report, and after delivering the same, the party causing the examination is entitled to receive from the opposing party any like reports, previously or thereafter made, of the same physical condition.

Rule 13 further provides upon motion of any party showing good cause, and with proper notice, the court may order another party to produce documents and things for inspection and reproduction by the other party. The items sought must contain relevant evidence which is not privileged and which is in the possession, custody or control of the party against whom production is sought. Additionally, the court may also allow entry upon the land of another party for the purpose of inspecting, measuring, surveying or photographing property that is relevant to the pending action. In these instances, the court may, by order, prescribe the circumstances of such discovery.

If a party fails to comply with a discovery order, the magistrate may order that the matters regarding the character or description of the property or contents of the paper for the physical condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; refuse to allow the disobedient party to support or oppose designated claims or defenses or prohibit such party from introducing in evidence testimony, or

from introducing evidence of physical conditions or, may stay further proceedings until the discovery order is obeyed.

When documents are in the custody and control of a nonparty, a subpoena duces tecum is authorized to accomplish the discovery, Rule 14(b) RCPMC.

C. Witnesses

Rule 14 RCPMC provides for the issuance by the magistrate or his/her assistant, upon request of the parties, a subpoena (or a subpoena duces tecum) commanding the person to whom it is directed to attend and give testimony and to produce books, papers, documents or tangible things designated in the subpoena. Service of the subpoena is made in the same manner as provided for in Rule 4 R.C.P. for trial courts of record.

DISMISSAL OF ACTIONS

West Virginia Code 50-4-1 provides for dismissal of civil actions for lack of jurisdiction if at any time the magistrate determines the action involves a matter outside of or an amount in excess of the jurisdiction of the magistrate court. Such dismissals are without prejudice but the plaintiff must bear the costs. However, the plaintiff may at any time, in writing, forgive the amount which may be in excess of the monetary limitations of the court's jurisdiction and thereby confer, jurisdiction upon the court.

West Virginia Code 50-4-12 provides for dismissal of an action against the plaintiff with prejudice, with costs awarded to the defendants. Cited reasons for such dismissal include when the plaintiff fails to appear and prosecute the action; the plaintiff fails or refuses to testify when properly required to do so; and the plaintiff fails to give security for costs when properly required to do so. If, within 20 days after dismissal a party shows good cause for the judgment to be set aside, the magistrate, upon the filing of a proper motion and the holding of a hearing on the same, may set aside the judgment and continue the matter or amend the dismissal order to be without prejudice.

Rule 15 RCPMC requires that a magistrate dismiss an action without prejudice and without the necessity of a motion from either party where:

- (1) service of the summons and complaint has not been successfully made upon the defendant within six months of the initial filing of the complaint or

(2) the defendant fails to file an answer and/or the plaintiff fails to move for default judgment within six months of service of the summons and complaint upon the defendant; or

(3) an action is pending for more than six months and there has been no order or proceeding to continue it.

If the plaintiff requests to dismiss the case prior to trial, the magistrate shall dismiss;

(1) without prejudice if it be the plaintiff's first request to dismiss, or

(2) with prejudice if the plaintiff has previously had the same case dismissed in the magistrate court or in any other court.

Whenever a case is dismissed pursuant to Rule 15 RCPMC, costs are charged to the plaintiff and the dismissal has no effect on the right of the opposing party to proceed to trial upon the counterclaim.

MOTIONS

Rule 12 RCPMC provides for pretrial motions and motion practice. Motions must be in writing and be filed pursuant to the requirements of Rule 12. Notice of hearing on the motion must be served not later than 10 days before the hearing unless good cause is shown as to why said Motion was not filed within the prescribed time period, or there is excusable neglect.

The Rules provide for several specific issues upon which motions can be made, including transfer, removal, and for continuance or extension of time, or any other motion which, if granted would require rescheduling of the hearing or trial, or other pretrial motions may be made at any time in writing prior to trial, or may be made orally or in writing at the time of trial. The magistrate may, sua sponte, continue the case for a reasonable period of time.

EVIDENCE

Evidentiary matters will be governed by the Rules of Evidence as applied in trial courts of record. WV Code § 50-5-1. The Magistrate Court Rules provide for the order of presentation of evidence, which is consistent with the order of presentation in trial courts, and a party may call as a witness any other party to the action and may examine such party by asking leading questions.

JURY TRIAL

Rule 6A, RCPMC provides that a party to a civil action in magistrate court has the right to elect that the matter be tried by a jury when the amount in controversy exceeds twenty dollars or involves possession to real estate. All parties to such cases shall be notified in writing of their right to election.

The election must be made in writing by the party asserting the right any time after the commencement of the action but not later than;

(1) 20 days after the service of any first timely filed answer to the complaint, or

(2) 5 days after service of the summons and complaint in cases involving expedited proceedings such as actions for unlawful entry and detainer and wrongful occupation.

When the right to a jury trial is asserted in a case involving an expedited proceeding, the trial shall be scheduled as soon as a jury panel can be assembled.

Failure to elect within the relevant time limit constitutes a waiver of the right to trial by jury. The composition of the jury is six persons who are selected from a panel of ten persons. Rule 16 RCPMC. The jury trial shall be conducted in the same manner as jury trials in the circuit court and in accordance with Rule 16, and shall be electronically recorded by the magistrate.

TRIAL WITHOUT A JURY

If the amount in controversy does not exceed twenty dollars, or neither side elects a trial by jury, a magistrate may hear the evidence and determine the facts without a jury. Additionally, the magistrate, at any time after the filing of the complaint and with or without motion by the parties, may conduct such pretrial proceedings as are necessary to aid the disposition of the case. Rule 11 (b)RCPMC.

JURY VERDICT AND JUDGMENT

A jury verdict is required to be unanimous. However, the parties may stipulate that a verdict of a certain majority of the jurors shall be taken as a verdict of the jury. Rule 16. Upon receipt of the jury verdict, the magistrate is required to enter judgment within twenty-four hours.

MOTION FOR A NEW TRIAL

West Virginia Code 50-5-10 and Rule 17 RCPMC provide that within 20 days after judgment is entered, any dissatisfied party may make a motion requesting that the judgment be set aside and a new trial held. All parties must be notified of the date and time set for the hearing on the motion. The magistrate may grant the motion if good cause is shown, ie., there is newly discovered evidence that could have a substantial effect on the outcome of the case or, important evidence was hidden from the court by the opposing party in whose favor judgment was rendered; or, the verdict is clearly excessive, and cannot be supported by the evidence; or, there was a material mistake in the application of the law.

APPEALS TO CIRCUIT COURT

West Virginia Code 50-5-12 and Rule 18 RCPMC authorize any party to a final judgment as a matter of right, to appeal to circuit court. Notice of appeal shall be filed in magistrate court,

(1) within 20 days after judgment is entered in magistrate court; or

(2) within 20 days after the magistrate has denied a motion for a new trial.

The moving party on appeal is required to post a bond with good security in a reasonable amount, not less than the reasonable court costs for a new trial in circuit court but not more than the sum of the magistrate court's judgment plus court costs for a new trial in circuit court. However, it is not required for governmental agencies or for a person who files a financial affidavit.

Additionally, if no motion is filed within the 20 day period, the circuit court, within 90 days after the date of judgment, may grant an appeal upon a showing of good cause why the motion was not perfected within the 20 day period.

In the case of an appeal of a civil action tried in magistrate court before a jury, the hearing on the appeal before the circuit court shall be a hearing on the record. In the case of an appeal of a civil action tried before the magistrate without a jury, the hearing on the appeal before the circuit court shall be a trial de novo, triable to the circuit court without a jury. WV Code 50-5-12 (b).

In the case of an appeal of a civil action tried in magistrate court before a jury, the circuit judge shall consider whether the judgment or order of the magistrate is:

- a) arbitrary, capricious or an abuse of discretion
- b) contrary to constitutional right, power, privilege or immunity
- c) in excess of statutory jurisdiction
- d) without observance of procedure of required by law
- e) unsupported by substantial evidence, or
- f) unwarranted by the facts.

The circuit judge can dismiss the appeal; reverse, affirm, modify or remand it; enter judgment; or retain the case or retry any portion thereof. The review by the court and a decision shall be completed within 90 days after the appeal is placed upon the docket of the court.

If, after the appeal is regularly placed upon the docket of the circuit court, neither party brings the matter on to hearing before the end of the second term thereafter at which it is called for trial, unless good cause for a continuance is shown, the appeal shall be considered as abandoned and shall be dismissed at the cost of the appellant unless sufficient cause is shown for a further continuance, and the judgment of the magistrate court shall stand. No appeal which shall have been so dismissed by the circuit court shall be reinstated after the close of the next regular term after such dismissal, WV Code 50-5-12.

ENFORCEMENT OF JUDGMENTS

Unless overturned on appeal, a judgment from magistrate court is binding and may be enforced. Means of enforcement include those procedures set forth in Articles 3, 4, 5, 5-A, 5-B and 6 of Chapter 38 of the WV Code_ except as the same are in conflict with the provisions of the Rules or Chapter 50 of the Code, or are clearly applicable only to courts of record. A writ for enforcement of a judgment may not be issued:

- (1) until after 20 days after the judgment is entered, WV Code 50-6-1 or
- (2) if a motion for a new trial in the magistrate court is then pending, until after 20 days after the determination of such motion.

COMPUTATION OF TIME

The Rules also provide for computation of time. Rule 20 RCPMC, as follows:

- (1) The day of the act, event or default from which the designated period of time begins to run should not be included.
- (2) The last day of the time period shall be included, unless it is a Saturday, Sunday, or legal holiday.
- (3) When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

Extensions of time may be granted by the magistrate if all parties to the case agree in writing to the extension; or if the existing period has not expired, upon a showing of good cause; or if the time period has expired, upon a showing of unavoidable cause.

Extensions of time for motions to set aside judgment and time periods for appeal shall not be extended unless judgment was by default and either service of process or notice of trial was insufficient.

When a party has received a notice or some other paper by mail and in response must take some action within a specified period from the date of mailing, 3 days shall be added to such period.

PRACTICE IN SPECIAL AREAS