

STATE OF WEST VIRGINIA

IN THE SUPREME COURT OF APPEALS

IN VACATION

IN RE: PROPOSED AMENDMENTS TO RULES 7, 7A AND 12 OF THE ADMINISTRATIVE RULES FOR THE MAGISTRATE COURTS OF WEST VIRGINIA AND RULES 9 AND 28 OF THE RULES OF CRIMINAL PROCEDURE FOR MAGISTRATE COURTS OF WEST VIRGINIA

On the 2nd day of November 2006 came the Court pursuant to the recommendations of the Director of Magistrate Court Services and the recommendations of the Magistrate Court Record Retention Committee and proceeded to consider proposed amendments to Rules 7, 7A and 12 of the Administrative Rules and Rule 9 of the Rules of Criminal Procedure for the Magistrate Courts and adding a new Rule 28 to the Rules of Criminal Procedure for Magistrate Courts of West Virginia.

Thereafter, upon consideration whereof, the Court is of opinion to and does hereby approve a period of public comment on the proposed amendments and addition to said rules to conclude on March 30, 2007, with comments to be filed with the Clerk of this Court. Justice Starcher did not participate. Deletions are indicated by strikethroughs and insertions are indicated by underscoring, to read as follows:

Administrative Rules for the Magistrate Courts of West Virginia

“Rule 7. Manner of payment.

(a) Fees, costs, bonds, fines or other sums charged or assessed in magistrate court in civil or criminal matters may be paid to the court by means of

(1) United States currency;

(2) Personal check, upon presentment of proper identification such as driver’s license, payable to the magistrate court of the particular county, except in such instances where the drawer of the check has a known history of writing checks unsupported by sufficient funds or for the posting of bond, if, in the discretion of the magistrate such personal check does not constitute sufficient security for the purposes of the bond; in the

event, however, that a personal check is accepted for the posting of a bond, such amount, once deposited, shall not be refunded until the magistrate clerk verifies that the amount deposited has been cleared;

(3) Cashier's check, certified check, money order, or traveler's check; or

(4) Credit or debit cards in accordance with the terms and conditions established by the Administrative Director. Any associated fees charged for use of the credit or debit card by a banking institution shall be paid by the Administrative Office.

(b) Except as authorized by W.Va.Code § 50-3-2a, payment of fines and costs shall be made in full. Partial payments of fines and costs, made pursuant to W.Va.Code § 50-3-2a, shall be credited to amounts due in the following order:

Magistrate Court Fund
Regional Jail Fund
Worthless Check Fund
Per Diem Regional Jail Fee
Community Corrections Fund
Regional Jail Operational Fund
Crime Victims ~~Reparation~~ Compensation Fund
Law Enforcement Training Fund
Court Security Fund
Litter Control Fund
Sheriff arrest fee
Worthless Check Payee
Teen Court Fund
Other costs, if any
Fine
Restitution:
Fine.

Rule 7A. Credit cards and debit cards.

(a) The honoring of a credit or debit card pursuant to Rule 7(a)(4) constitutes payment of the amount owing to the Magistrate Court as of the date the credit or debit card transaction results in a corresponding deposit to the account designated by the Administrative Director.

(b) If any credit or debit card is not paid following due presentment or is charged back to the Magistrate Court for any reason, any record of payment made by the Magistrate Court honoring the credit or debit card shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder shall continue as an outstanding obligation as if no payment had been attempted or made. The Magistrate Court may collect a service charge equal to any fee assessed to the Magistrate Court by the credit card company or bank as a result of insufficient funds and/or charge back from the person who owes the fine, fee and/or costs.

(c) The Magistrate Court may refuse acceptance of credit or debit cards of an individual if:

- (1) the individual has previously tendered to the court a credit or debit card or credit or debit card information which did not ultimately result in payment by the credit or debit card issuer;
 - (2) the bank or credit card issuer does not authorize payment;
 - (3) the validity of the credit or debit card is not verifiable;
 - (4) the identity of the individual credit or debit card holder does not appear to be the same person identified on the credit or debit card; or
 - (5) the Magistrate, Magistrate Assistant, Clerk or Deputy Clerk find that other good cause exists for such refusal.
- (d) A credit or debit card may not be used to post or secure bond.

* * *

Rule 12. Retention of Records.

All records of magistrate courts shall be retained by the clerk for a period not to exceed 10 years pursuant to in accordance with the following schedule:

(a) Traffic and natural resources citations. – (Except DUI and driving while revoked for DUI)

(1) Dismissed. – ~~Retain all records for 5 years from dismissal, then~~ Destroy all records.

(2) Failure to appear, no warrant issued. – After one year from the issuance of citation, transfer to inactive status; after 5 years from issuance of citation, destroy all records.

(3) Failure to appear, warrant issued but unexecuted. – Treat as all other misdemeanors, below.

(4) Fine assessed but unpaid. – After one year from assessment of fine transfer to inactive status; after 5 years from last collection effort, destroy all records.

(5) Fine paid. – Retain all records for ~~5 years~~ 1 year after payment, then destroy.

(b) DUI and driving while revoked for DUI. – Retain all records for 10 years permanently.

(c) All other misdemeanors.– Retain for 10 years. – (1) Dismissed. – Retain all records for 10 years from dismissal, then destroy all records including except case history sheet.

(2) Warrant issued but unexecuted. – After one year from issuance of warrant, transfer case to inactive status; after 10 years from issuance of warrant, destroy all records including except case history sheet.

(3) Fine assessed but unpaid. – After one year from last collection effort, transfer case to inactive status; after 10 years from last collection effort, destroy all records including except case history sheet.

(4) Fine paid and sentence served. – After 10 years ~~from date of last activity~~, destroy all records including except case history sheet.

(5) Appeal. – Forward all records to circuit court clerk; ~~retain photocopy of case history sheet~~.

(d) Felonies.– (1) Preliminary hearing, probable cause found. Forward all records to circuit court clerk; ~~retain photocopy of case history sheet~~.

(2) Preliminary hearing, no probable cause found. – After 1 year, destroy all records. ~~After 10 years from preliminary hearing, destroy all records except case history sheet.~~

(3) Complaint dismissed prior to preliminary hearing. – After 1 year, destroy all records. ~~Retain all records for 10 years from dismissal, then destroy all records except case history sheet.~~

(4) Preliminary hearing waived. – Forward all records to circuit clerk. ~~Retain photocopy of case history sheet.~~

(5) ~~Felony dismissed in exchange for plea to misdemeanor.~~ – Plea to Misdemeanor. Follow retention schedule for misdemeanor, above.

(e) Civil. (1) Judgment dismissing complaint. – After 1 year, destroy all records. ~~After 10 years from dismissal, destroy all records except case history sheet.~~

(2) Judgment awarding relief. – After 10 years from last activity, destroy all records including ~~except~~ case history sheet.

(3) Judgment appealed. – Forward all records to circuit clerk; ~~retain photocopy of case history sheet.~~

(f) Fiscal. – ~~One Two~~ years after receipt of the audit report and resolution of audit exceptions, destroy all records.

(g) Administrative. – ~~One Two~~ years after receipt of the audit report and resolution of audit exceptions, destroy all records including ~~except~~ case indexes and registers.

(h) Miscellaneous records. – Ten years after the receipt of any other record and the resolution of any matter raised therein, destroy all records including ~~except~~ case history sheets, case indexes, and registers.

(i) Records relating to unresolved audit exceptions. All records relating to unresolved audit exceptions shall be retained until either ~~one two~~ years after the resolution of such exceptions or in accordance with the above schedules, whichever date is later.”

Rules of Criminal Procedure for Magistrate Courts

“Rule 9. Plea proceeding.

Except as otherwise provided by Rule 7(b), the plea proceeding shall be conducted in open court or by video conferencing and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The reading of the complaint may be waived by the defendant in open court or by video. The defendant shall be given a copy of the complaint before being called upon to plead.

* * *

Rule 28 Revocation or modification of probation or alternative sentence.

(a) Preliminary Hearing. – Whenever a person is held in custody on the ground that he or she has violated a condition of probation or an alternative sentence, the person shall be afforded a prompt hearing before a magistrate who has ben authorized by law to conduct preliminary hearings, in order to determine whether there is probable cause to hold the person for a revocation hearing. The person may waive the preliminary hearing. The person shall be given:

- (1) Notice of the preliminary hearing and its purpose and of the alleged violation;
- (2) An opportunity to appear at the hearing and present evidence in his or her own behalf;
- (3) Upon request, the opportunity to question adverse witnesses unless, for good cause, the magistrate decides that justice does not require the appearance of the witness; and

(4) Notice of his or her right to be represented by counsel.

(b) Post Conviction Bond. – If probable cause is found to exist, the person shall be held for a revocation hearing. The person may be released pursuant to Chapter 62-1C-1 et. seq., pending the revocation hearing. If probable cause is not found to exist, the proceedings shall be dismissed.

(c) Revocation Hearing. – The revocation hearing, unless waived by the person, shall be held within a reasonable time, and pursuant to the procedure prescribed in Chapter 62, Article 12, Section 10, of the West Virginia Code of 1931, as amended. The person shall be given:

- (1) Written notice of the alleged violation;
- (2) Disclosure of the evidence against him or her;
- (3) An opportunity to appear and to present evidence in his or her own behalf;
- (4) The opportunity to question adverse witnesses; and
- (5) Notice of his or her right to be represented by counsel, and, in the event he or she is indigent, of his or her right to appointed counsel.”

DONE IN VACATION of the Supreme Court of Appeals, this 18th day of December 2006.

Honorable Robin Jean Davis, Chief Justice

Honorable Larry V. Starcher

Honorable Elliott E. Maynard

Honorable Joseph P. Albright

Honorable Brent D. Benjamin

Received the foregoing order this 18th day of December 2006, and entered the same
in Order Book No. 158.

A True Copy

Attest: _____
Clerk, Supreme Court of Appeals