

INFORMATION REGARDING THE APPEAL PROCESS FROM MAGISTRATE COURT TO CIRCUIT COURT

GENERAL INFORMATION:

The purpose of this information sheet is to outline the *appeal* process from Magistrate Court to Circuit Court. This information sheet provides basic information regarding the appeal process and is not intended to be a complete reference guide. Any specific procedural questions should be referred to Magistrate Court staff or an attorney. Magistrates, Magistrate Assistants and Magistrate Clerks are prohibited by law from giving legal advice.

You may appeal a decision of a Magistrate to Circuit Court as a matter of right in both a *civil* and/or *criminal* case. *West Virginia Code §50-5-12 and §50-5-13*. However, there is no appeal from a plea of guilty in a criminal case where the defendant was represented by counsel at the time the plea was entered. A demand for appeal of a civil and/or criminal case is a demand for review by a Circuit Judge. This review will be based on the *record* if a jury trial is conducted by the Magistrate Court or *de novo* if a bench trial is conducted by the Magistrate Court. As a general rule, notice of appeal must be filed within **20 days** after the judgment is entered. If an appeal is not filed within the 20 day period, the Circuit Court may grant an appeal not later than 90 days after the date of judgment upon a showing of good cause why such appeal was not perfected within the 20 day period.

An alternative to a demand for appeal is a motion for new trial. (*Rule 20 of Rules of Criminal Procedure for Magistrate Court and Rule 17 of Rules of Civil Procedure for Magistrate Court*.) A motion for new trial is a request to set aside the judgment and hold a new trial. This motion is filed with the Magistrate who entered judgment and will only be granted based on a good cause showing that a new trial is required in the interest of justice. This motion must be filed within **20 days** after the judgment is entered. The motion may be filed using form SCA-M1020, which is available in your local Magistrate Court.

A demand for appeal should proceed as follows:

CIVIL APPEALS:

The civil appeal process is governed by Rule 18 of the Rules of Civil Procedure for Magistrate Courts and West Virginia Code §50-5-12. The filing of an appeal shall automatically stay further proceedings to enforce the judgment. A “notice of appeal” must be filed in the Magistrate Court where the judgment was obtained within 20 days after judgment is entered or denial of a motion for new trial is made. The “notice of appeal” may be filed using form SCA-M490, which is available in your local Magistrate Court. Upon filing the notice of appeal, a Magistrate will require you to post an *appeal bond* and pay a Circuit Court filing fee. After the file has been transferred to the Circuit Clerk from the Magistrate Clerk, you will be required to file a “petition” for appeal with the Circuit Clerk’s office.

If the appeal is based on a jury verdict, the petition should contain the grounds relied upon for filing an appeal and designating the portions of the testimony or other matters reflected on the record that you rely on in prosecuting the appeal. The petition for appeal of a jury verdict may be filed using form SCA-M..., which is available in your local Magistrate Court and/or Circuit Clerk’s office. After you have filed your petition for appeal of jury verdict and designated the record, the responding party may designate additional parts of the record for inclusion in the appeal. After the record is submitted, the Circuit Judge will set the matter for hearing or require the parties to file written arguments.

In a bench trial proceeding, the “petition” of appeal may be filed using form SCA-M, which is available in your local Magistrate Court and/or Circuit Clerk’s office. After you have filed your petition for appeal, a request for hearing will need to be made with the Circuit Clerk’s office.

CRIMINAL APPEALS:

The criminal appeal process is governed by Rule 20.1 of the Rules of Criminal Procedure for Magistrate Courts and West Virginia Code §50-5-13. The filing of an appeal automatically stays the sentence of the Magistrate. A “notice of appeal” must be filed in the Magistrate Court where you were convicted within 20 days after sentencing or denial of a motion for new trial. The “notice of appeal” may be filed using form SCA-M109, which is available in your local Magistrate Court. Upon filing the notice of appeal, a Magistrate will require you to post an **appeal bond**. After the file has been transferred to the Circuit Clerk from the Magistrate Clerk, you will be required to file a “petition” for an appeal with the Circuit Clerk’s office.

If the appeal is based on a jury verdict, the petition should contain the grounds relied upon for filing an appeal and designating the portions of the testimony or other matters reflected on the record that you rely on in prosecuting the appeal. The petition for appeal of a jury verdict may be filed using form SCA-M?, which is available in your local Magistrate Court and/or Circuit Clerk’s office. After you have filed your petition for appeal of jury verdict and designated the record, the prosecutor may designate additional parts of the record for inclusion in the appeal. After the record is submitted, the Circuit Judge will set the matter for hearing or require the parties to file written arguments.

In a bench trial proceeding, the “petition” of appeal may be filed using form SCA-M, which is available in your local Magistrate Court and/or Circuit Clerk’s office. After you have filed your petition for appeal, a hearing will be scheduled before the Circuit Judge.

DEFINITIONS:

Appeal	Resort to a higher court (Circuit Court) to review the decision of a lower court (Magistrate Court).
Appeal Bond	In a criminal case, an appeal bond is required to assure further proceedings in the case. In a civil case, an appeal bond is required to assure payment of the judgment amount and costs.
Civil	Action brought to enforce, redress, or protect private rights.
Criminal	Proceeding by which person charged with a crime is tried for infraction of a criminal law.
De Novo	A new trial.

Record The official collection of all the trial pleadings, exhibits, orders and word-for-word testimony that took place during the trial.

FREQUENTLY ASKED QUESTIONS:

Should I file an appeal?

You should consult with an attorney regarding whether you should file an appeal. Magistrate Court staff may provide you with procedural information but they may not provide you with legal advice.

Where do I file my appeal?

You can file your notice of appeal, using Form SCA-M190 in criminal cases and Form SCA-M409 in civil cases, with the Magistrate Assistant of the Magistrate that rendered judgment in your case. You will need to file a petition for appeal, using Form SCA-..., after the file has been transferred to the Circuit Clerk.

Can I still file an appeal if 20 days have passed since judgment was rendered in my case?

Yes. You may file a motion with the Circuit Clerk's office within 90 days of your judgment in Magistrate Court requesting that a Circuit Judge find good cause for your failure to file an appeal within the requested 20 day period.

What if I cannot afford to file an appeal?

If you meet certain financial standards, you will not be required to pay the Circuit Court filing fee and/or post a bond in a civil case. In a criminal case, the bond may not exceed the maximum amount of any fine which could be imposed for the offense and your financial situation will be considered by the Magistrate in setting the bond amount. The cost of preparing the transcript in a jury appeal will also be waived if you meet the necessary financial standards. For further information, please contact the Magistrate Clerk to complete the necessary forms to determine your eligibility.

How do I designate the record for appeal?

You will only need to designate the record for appeal when your case was decided by a jury. If your case was decided by a Magistrate without a jury, the case will be tried as a new case before the Circuit Judge. In an appeal based on a jury verdict, the Circuit Judge will be rendering judgment based on the record. The purpose of designating the record for appeal is to provide the Circuit Judge with all the necessary information that is relevant to the issues raised in the appeal. When designating the record you should include all pleadings, exhibits, and testimony that will be needed by the Circuit Judge to understand your arguments.