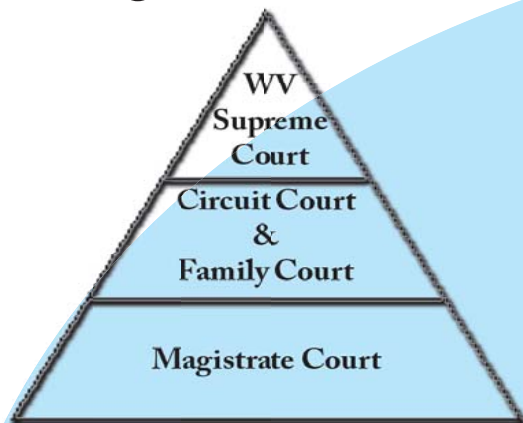


## West Virginia Courts



The court system is like a pyramid. At the bottom of the pyramid are the Magistrate Courts, which are like a small claims court. That is where most court cases take place. Next in the pyramid are the trial courts called Circuit Courts. There are also special courts to deal with certain kinds of cases like Family and Juvenile courts. The highest court in the state is the West Virginia Supreme Court of Appeals. If someone loses a case in the Circuit Court, that person can appeal to the West Virginia Supreme Court of Appeals.

### Basic Steps in a Lawsuit

1. File the complaint. The person starting the case is called the *Petitioner* or *Plaintiff*. He or she files a written statement telling the court what the case is about, called the *Complaint*. Then the plaintiff has the complaint delivered to the other side.
2. File the answer. The person being sued is called the *Respondent* or the *Defendant*. He or she files a written response telling his or her side of the story and sends it to the plaintiff. This is called an *Answer*.
3. Prepare the case. Both sides have time to gather evidence to prove their case. Evidence could include papers, photographs, or the testimony of witnesses.
4. The judge holds a hearing. Both sides appear before the judge to present evidence to prove their case.
5. The judge makes a decision.

### Seven Tips when Representing Yourself in Court

1. Make a good impression. If you dress nicely, it tells the judge that you respect the courtroom and care about your case.
2. Be respectful. Be respectful to everyone in court, including the other side—and don't argue with the judge. Stay calm.
3. Know what to ask. You can ask court officials for information about the process and what type of information to put on the forms. But remember, court employees can't tell you what to write on the forms or what to say in the hearing.
4. Arrive early. Judges like to start on time. But some cases take longer than expected, so be prepared to wait.
5. Tell your story. Tell the judge in a few brief sentences what your case is about and how you plan to prove the facts in the case. Lawyers call this an opening statement.
6. Come prepared. Bring at least three copies of any evidence you plan to use. Write out questions you plan to ask and go over them with your witnesses before the hearing.
7. Use a lawyer if you need help. You may start this case on your own but later realize that you need the help of a good attorney. While WVU Student Legal Services may not be able to help you, there are other attorneys who can. We can give you a referral list and contact numbers of other services available.

### STUDENT LEGAL SERVICES

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Phone: (304) 293-4897  
Fax: (304) 293-5601  
SLS@mail.wvu.edu

<http://studentlife.wvu.edu/sls/>

#### Disclaimer

This pamphlet does not constitute legal advice, nor is it intended as a substitute for legal advice.

# Going Solo: Representing Yourself in Magistrate Court

## STUDENT LEGAL SERVICES



Student Affairs · Office of Student Life

 West Virginia University

## **Introduction**

You have the right to represent yourself in West Virginia state courts. Many people do go to court without a lawyer. Some people can't afford to hire an attorney or some decide that they would rather handle their legal problem on their own. This pamphlet is a general guide on how to navigate the West Virginia Magistrate court system on your own.

## **Types of Cases**

There are two types of legal cases: criminal and civil. A criminal case is when the state charges a person with a crime. A civil case is when someone sues an individual or a business. There are many kinds of civil cases. Some examples of a civil problem that could end up in court are a divorce, a dispute with a landlord, a boundary disagreement with a neighbor, or a problem with a store that sold you a faulty product.

## **Filing a Complaint**

Go to the Magistrate Court and tell the Magistrate Clerk what your case is about; they will give you forms to fill out to commence your lawsuit. There are fees associated with filing your lawsuit, which can be waived if you meet low-income guidelines. If you think you might qualify, ask the clerk for an Affidavit of Indigency form to see if you are eligible. Take your time in filing out the forms at the Magistrate Court. Ask for help if you need it. The courthouse staff cannot give you legal advice about your specific case, but they will answer your questions about how the court system works. Should your case be too difficult to handle on your own, contact a lawyer.

## **Service of Process**

Once you have filed your complaint, you have to arrange to have your complaint delivered to the other side and provide the court with proof of how, when, and where the papers were received. The most common methods of Service of Process are as follows:

- *Personal Service.* The papers are hand delivered to the defendant or respondent. This is often done by the sheriff's office. Give the sheriff's office the papers; they will send a deputy to the person's home or place of work. Personal service can also be done by a credible person over the age of 18 who is not involved in the case. A Certificate of Delivery form proving the person received the papers must be filled out and filed at the clerk's office.

- *Restricted Delivery.* The clerk sends the Complaint by certified mail. Only the person being sued can sign the papers.

- *Acceptance of Service.* If the other side is willing to accept the papers, give them a copy, have them sign a form saying that he received them, and file the form with the clerk.

- *Service by Publication.* This method is used only if the person you're suing lives out of state or you don't know how to locate them. Putting an ad in the newspaper usually does it, but it can be a little tricky. *The instructions for how to serve someone by publication are in the divorce packet or you can ask the clerk to explain it to you. This method of service cannot be used in all divorce cases and could affect your ability to collect alimony and child support.*

## **Filing an Answer**

If you have been served with a complaint, you file an answer, a response telling your side of the story, with the clerk and then you serve your answer on the other side. You can serve an answer by mailing it to the person who sued you. You still need to file a certificate of service with the court showing where you sent the papers.

## **Preparing for the Hearing**

Gather evidence to help you prove your case to the judge. The evidence could be papers, like receipts or bills that you bring to court with you. You could also use witnesses to tell the court what they know about your case.

It is possible to find out what evidence the other side is going to present through a process called discovery. In civil cases, you have the right to get information about witnesses and copies of documents before the hearing. There are complicated rules about what you can get through discovery and strict time limits apply. If you need to use discovery, you may want to talk to a lawyer.

You can try to settle your case before the hearing. Many cases settle out of court without a hearing. Also, you could try settlement through mediation, which gives people a chance to sit down with a mediator in an informal setting to try and work out their conflicts. The mediator is a trained problem-solver who will help parties come to an agreement. Mediators usually charge for their services, but mediation could save you time and money in the long run. A court might also refer you to mediation before they will hear your case. Monongalia County has a free

mediation service to see if the parties can resolve the dispute before a hearing.

## **The Hearing**

You need to ask the clerk of the court where your case was filed, whether you need to request a hearing or if the court will schedule one on its own. In most Magistrate Court cases, the court will send both sides a notice of hearing telling them when and where the hearing will take place. Each court is a little different. Some courts use formal rooms like the ones you see on television. But some hearings may be held in a small room or the judge's office. In general, this is what you can expect to see at a Magistrate Court Hearing:

- Magistrate sits up front
- May be less formal than other courtrooms
- Public and witnesses sit behind the parties

In Magistrate Court, the judge will probably begin by asking you to tell the court what your case is about. It will also be up to you to question your witnesses and present your evidence. The judge will probably ask questions and each side has the right to question the other's witnesses. The judge may make a decision at the hearing. But often judges will take additional time to consider the evidence and the law before deciding.

## **Places Where You can Get Help**

- Legal Aid of WV (Westover): **304-296-0001**
- West Virginia Attorney General's Office Consumer Hotline: **800-368-8808**
- West Virginia Supreme Court of Appeals Helpline (prerecorded information; you can also leave a message for additional assistance): **304-558-9828**
- West Virginia Supreme Court of Appeals Website (forms, information about procedures, definition of legal terms): <http://www.state.wv.us/wvsca>
- WVU Law School Clinic: **304-293-7249**

## **Fee Waiver**

As a student, you will most likely qualify for a waiver of your court fees. You will have to fill out an application for this waiver, which is located on the West Virginia Supreme Court's website under 'magistrate court forms': <http://www.wvcourt.net.org/public.asp>