

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 20<sup>th</sup> day of September, 2017, the following order was made and entered:

**RE: Request for Public Comment on Proposed Amendment to Rule 5 of the Rules of Criminal Procedure for the Magistrate Courts of West Virginia**

On a former day, June 14, 2017, the Court published for comment proposed amendments to Rule 5 of the Rules of Criminal Procedure for the Magistrate Courts of West Virginia. Comments were received and the Court expresses its gratitude for the comments.

On this day came the Court, on its own motion, and proceeded to consider the proposed amendments, together with the comments. Upon consideration and review, the Court is of the opinion to and does hereby adopt the following rule amendment, as modified since publication for comment, effective January 1, 2018. The amendments to the rule are indicated by underscoring to read as follows:

**RULES OF CRIMINAL PROCEDURE FOR THE  
MAGISTRATE COURTS OF WEST VIRGINIA**

**Rule 5. Initial appearance before the magistrate; bail.**

\* \* \*

(f) Bail. –

(1) The magistrate who originally sets bail retains jurisdiction with respect to bail only until the case is assigned. The assigned magistrate shall then have jurisdiction until the preliminary examination is held or waived, until the trial is held, or until the case is otherwise disposed of, subject to the provision of Rule 2(a) of the Administrative Rules for the Magistrate Courts.

(2) A third party may secure pretrial release in the absence of a defendant who is in custody when the record contains a written acknowledgment of the terms and conditions of pretrial release signed by a magistrate and the defendant. Any magistrate may accept bail in the absence of the defendant provided that the third party reviews and agrees to the same terms and conditions of pretrial release by executing a separate written acknowledgment before the magistrate. No change may be made in the terms and conditions of pretrial release between the

acknowledgment executed by the defendant and magistrate and the acknowledgment executed by the third party.

(3) Except as provided by Rule 5.2(c) of these rules, a magistrate may grant or deny a motion for change of bail or bond only after due notice to both the defendant and the attorney for the state and upon a hearing, which shall be held within 5 days of the date the motion is filed.

(4) When setting the conditions of bail or bond in any case involving allegations of domestic violence, including, but not limited to, those cases in which West Virginia Code § 62-1C-17c applies, the magistrate setting the bail or bond shall include a condition that the defendant appear with counsel periodically for a hearing to determine whether the defendant has been fully compliant with the conditions of bond. Such hearings shall be scheduled at the time the defendant is released on bail or bond and shall occur no less frequently than every sixty days, although the magistrate may schedule such hearings as frequently as the nature of the case may warrant.

Chief Justice Loughry and Justice Ketchum would not amend the rule.



A True Copy

Attest: //s// Rory L. Perry II  
Clerk of Court