

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 14th day of June, 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 this day came the Court, on its own motion, and proceeded to consider amendments to Rule 5 of the Rules of Criminal Procedure for the Magistrate Courts of West Virginia. Upon consideration whereof, the Court is of the opinion that the proposed amendments should be published for a thirty-day period of public comment. Comments must be filed in writing with the Clerk of the Court on or before **July 31, 2017**.

The proposed additions 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 thirty days, although the magistrate may schedule such hearings as frequently as the nature of the case may warrant.

A True Copy

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

