

## **STATE OF WEST VIRGINIA**

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on April 7, 2022, the following order was made and entered:

### **RE: REQUEST FOR PUBLIC COMMENT ON PROPOSED AMENDMENTS TO RULES 4 AND 9 OF THE RULES OF CRIMINAL PROCEDURE, No. 22-RULES-02**

On April 7, 2022, the Court considered proposed amendments to Rules 4 and 9 of the Rules of Criminal Procedure. The Court has jurisdiction pursuant to Article VIII, §§ 1 and 3 of the West Virginia Constitution.

Upon review, the Court is of the opinion that the proposed amendments should be published for public comment for a period of thirty days. Comments must be filed in writing with the Clerk of the Court on or before May 9, 2022.

The proposed amendments are set forth below. The proposed additions are indicated by underscoring; proposed deletions are indicated by strike-through.

#### **Rules of Criminal Procedure**

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#### **Rule 4. Arrest warrant or summons upon complaint.**

(a) Issuance. — If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. The magistrate may restrict the execution of the warrant to times during which a magistrate is available to conduct the initial appearance. Within the discretion of the magistrate a summons instead of a warrant may issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Probable Cause. — The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form.

(1) Warrant. — The warrant shall be signed by the magistrate and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint or attach the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate of the county in which the warrant is executed.

(2) Summons. — The summons shall describe the offense charged in the complaint or attach the complaint, and the summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.

(d) Execution or Service; and Return.

(1) By Whom. — The warrant shall be executed by any officer authorized by law to arrest persons charged with offenses against the state. The summons may be served by any person authorized to serve a summons in a civil action.

(2) Territorial Limits. — The warrant may be executed or the summons may be served at any place within the state.

(3) Manner. — The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant at the time of the arrest, but upon request the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode

with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address.

(4) Return. — The officer executing a warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the state any unexecuted warrant shall be returned to and canceled by the magistrate by whom it was issued. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable. At the request of the attorney for the state, made at any time while the complaint is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to an authorized person for execution or service.

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**Rule 9. Warrant or summons upon indictment or information.**

(a) Issuance. — Upon the request of the attorney for the state the court shall issue a warrant for each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a), or in an indictment. Upon the request of the attorney for the state a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the sheriff or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Form.

(1) Warrant. — ~~The form of the warrant shall be as provided in Rule 4(e)(1). It~~ The warrant shall describe the offense charged in the indictment or information, or shall be attached to the

indictment or information, and it shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. — The summons shall describe the offense charged in the indictment or information, or shall be attached to the indictment or information, and be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(c) Execution or service; and return.

(1) Execution or service. — The warrant shall be executed or the summons served as provided in Rule 4(d)(1), (2) and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the county or at its principal place of business elsewhere in the state. The officer executing the warrant shall bring the arrested person promptly before the court.

(2) Return. — The officer executing a warrant shall make return thereof to the court. At the request of the attorney for the state any unexecuted warrant shall be returned and canceled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the state made at any time while the indictment or information is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the sheriff or other authorized person for execution or service.

(d) Remand to the magistrate court for trial of misdemeanor offense. — If the information or indictment charges a misdemeanor offense and the offense has not previously been brought

before a magistrate, the case may be remanded to the magistrate for a trial on the merits as provided for in Chapter 50, Article 5, Section 7, of the West Virginia Code of 1931, as amended.

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A True Copy

Attest: /s/Edythe Nash Gaiser  
Clerk of Court

