

Alabama Rules of Criminal Procedure

Rule 3. Arrest warrant or summons upon commencement of criminal proceedings; search warrant.

Rule 3.1. Issuance of arrest warrant or summons.

(a) ISSUANCE. Upon return of an indictment, or upon a finding of probable cause made pursuant to Rule 2.4, the judge or magistrate shall immediately cause to be issued an arrest warrant or a summons, as provided in Rule 3.2.

(b) SUMMONS. If the defendant is not in custody, if the offense charged is bailable as a matter of right, and if there is no reason to believe that the defendant will not respond to the summons, a summons may be issued, at the sole discretion of the issuing judge or magistrate.

(c) SUBSEQUENT ISSUANCE OF WRIT OF ARREST. If a defendant who has been duly summoned fails to appear, or if after issuance of a summons there is reasonable cause to believe that the defendant will fail to appear, or if for any reason the summons cannot be served or delivered, a writ of arrest shall issue. More than one writ of arrest or summons may issue on the same complaint or indictment.

(d) DOCKETING CASE. A case shall be docketed upon service of a summons or upon the defendant's arrest.

Committee Comments

Rule 3.1(a) is a restatement of Alabama law in that a warrant for the arrest of a defendant will issue only if it reasonably appears from a complaint or from affidavits filed with the complaint or testimony of witnesses that an offense has been committed and there is probable cause to believe that the defendant committed it. Art. I, § 5, Alabama Constitution of 1901, provides that “no warrants shall issue to ... seize any person or thing without probable cause, supported by oath or affirmation.”

In *Giordenello v. United States*, 357 U.S. 480, 485-86, 78 S.Ct. 1245, 1250, 2 L.Ed.2d 1503 (1958), the United States Supreme Court held that “[t]he language of the Fourth Amendment, that ‘... no Warrants shall issue, but upon probable cause ...’ of course applies to arrest as well as search warrants.” Cf. *Whiteley v. Warden, Wyoming State Penitentiary*, 401 U.S. 560, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971).

See *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), in which the “totality-of-the-circumstances” test was adopted as basis for probable cause for issuance of a warrant and in which the two-pronged test of

Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964), was abandoned.

Rule 3.1(b) is new to Alabama as a matter of official rule (if not occasional informal practice). The judge or magistrate is permitted to issue a summons when an arrest under a warrant is not necessary to secure the presence of the defendant and there is little apprehension that the defendant will flee. The rule makes no distinction between the use of a summons in felonies or misdemeanors. A similar plan has been adopted by the federal system in Rule 4(a), Fed.R.Crim.P., and Rule 221, Unif.R.Crim.P.

There are many reasons to use a summons in lieu of an arrest warrant in certain cases. The use of a summons reduces the burden that the criminal justice system places on those accused of crime. While in custody, a defendant represents a heavy financial burden on the state. All indications from other jurisdictions and the federal system are that the use of the summons in lieu of an arrest warrant has been operationally successful, and its use is recommended where indicated. The approach taken here is consistent with the release standards favoring recognizance bonds as set out in Rule 7. The results will not be essentially different from the practice engaged in by some district attorneys and law enforcement officers of "sending word" to come in and accept service of a warrant.

While there is no specific sanction imposed against one who fails to respond to a summons, Rule 3.1(c) makes it clear that should the defendant fail to respond, or if there later arises a reasonable likelihood that the defendant will not respond as ordered, or if the summons cannot be served, an arrest warrant must be issued. Also, it is within the inherent power of the court to issue more than one arrest warrant or summons in a particular case, as needed, based upon a single complaint.