

Alabama Rules of Criminal Procedure

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

Rule 3.2. Contents of arrest warrant or summons.

(a) **ARREST WARRANT.** An arrest warrant issued upon a complaint shall be signed by the issuing judge or magistrate. An arrest warrant issued upon an indictment shall be signed by the circuit judge presiding, by the circuit clerk, or by a judge or other magistrate designated to do so by the presiding judge of the circuit court by order entered on the minutes of the court. The arrest warrant shall contain the name of the defendant, or if the name is unknown, a name or description by which the defendant can be identified with reasonable certainty; it shall state the offense with which the defendant is charged; and it shall command that the defendant be arrested and brought before the issuing judge or magistrate, or, if the issuing judge or magistrate is unavailable, before the nearest or most accessible district or circuit judge or magistrate in the same county. If the defendant is bailable as a matter of right, the arrest warrant may state the conditions of the defendant's release on his or her own recognizance under Rule 7.2 or an amount of an appearance bond or a secured appearance bond predetermined by the court.

(b) **SUMMONS.** The summons shall be in the same form as the arrest warrant, except that it shall summon the defendant to appear at a stated time and place within a reasonable time from the date of issuance. At the discretion of the issuing judge or magistrate, the summons may command the defendant to report to a designated place to be photographed and fingerprinted prior to appearance in response to the summons. Failure to so report for photographing or fingerprinting shall result in issuance of a warrant for the defendant's arrest unless good cause for such failure is shown. If, upon the defendant's appearance, the defendant has not been photographed and fingerprinted, the issuing judge or magistrate shall direct that the defendant be taken promptly for such photographing and fingerprinting.

[Amended eff. 8-1-97.]

Committee Comments as Amended to Conform to Rule as Amended Effective August 1, 1997

Rule 3.2(a) conforms to prior Alabama law and practice. Under the rule, an arrest warrant based on a complaint must be signed by the issuing judge or magistrate, upon his or her finding of probable cause; must contain the name of the defendant or some description by which the defendant can be identified with reasonable certainty; and must state the offense with which the defendant is

charged. The name or description are matters of form and may be amended as provided in Rule 3.5. An arrest warrant issued after the return of an indictment must be signed “by the circuit judge presiding, by the circuit clerk, or by a judge or other magistrate” designated to do so by order of the presiding circuit judge.

“Magistrates” are judicial officers created by Amendment 328, § 6.01(b), Ala. Const. 1901, and are vested with the authority to issue warrants and to perform other judicial duties incident thereto. An administrative magistrate’s agency is established by, and the judicial authority with which magistrates are empowered is outlined in, §§ 12-17-250 and 12-17-251 and Rule 18 of the Rules of Judicial Administration (Ala.R.Jud.Adm.). Pursuant to those statutes and that rule, magistrates are authorized to perform limited judicial functions such as issuing arrest warrants, approving bond, receiving cash bail, setting bail, and receiving guilty pleas for certain minor misdemeanor offenses and municipal ordinance violations. Magistrates are also empowered by Rule 4.3 of these Rules to hold probable cause and initial appearance hearings.

The position of district court warrant clerk is a type of magistrate, and pursuant to Rule 18.I(A)(1)(d), Ala.R.Jud.Adm., is generally only authorized to issue warrants of arrest returnable to district court. Since Rule 18 specifically provides that magistrates shall exercise the powers and authority granted by that rule and “other applicable rules,” if a district court warrant clerk is designated to issue arrest warrants upon an indictment pursuant to the provisions of this rule, a warrant clerk, who is a type of magistrate, would be authorized to issue warrants returnable to the circuit court.

The rule also gives the issuing officer the flexibility of allowing a personal recognizance release on certain conditions as contemplated in Rules 7.2 and 7.3, where there are circumstances that dictate issuance of a warrant rather than a summons, but yet there is reason for use of a recognizance release. The release of an arrested defendant upon execution of the recognizance would not preclude the defendant’s having to appear at the initial hearing, but might preclude the defendant’s spending the night in jail unnecessarily.

Rule 3.2(b) is new to Alabama practice. The rule specifies that the defendant shall be required to report at a specified time and place within a reasonable time from the date of issuance of the summons. The issuing judge or magistrate may order that the defendant be fingerprinted and photographed prior to appearance. Nothing in this rule mandates that the judge or magistrate issue such an order. If the summons does direct the defendant to so appear, the rule makes it clear that a failure to comply with the provisions of the summons directing the defendant to appear for photographing will result in the arrest of the defendant, unless “good cause” is shown for failure to comply. The rule is essentially the same as Rule 4, Fed.R.Crim.P.

A summons and complaint in lieu of an arrest warrant is authorized for certain municipal ordinance violations (e.g., violations of leash laws, rabies control ordinances, and littering ordinances) pursuant to the provisions of Ala.Code 1975, § 11-45-9.1. A defendant summoned under this statute is expressly exempt from Rule 3.2 and shall not be fingerprinted and photographed.