

Alabama Rules of Criminal Procedure

Rule 2. Commencement and prosecution of criminal proceedings.

Rule 2.4. Duty of judge or magistrate upon making of a complaint.

The judge or magistrate before whom a complaint is made may subpoena for examination any necessary witnesses. In the event a duly summoned witness fails to appear, the judge or magistrate is authorized to issue a writ of attachment for the defaulting witness, commanding that said witness be brought before the issuing judge or magistrate at once for the purpose of examination. If the judge or magistrate is reasonably satisfied from the complaint and the evidence, if any, submitted that the offense complained of has been committed and that there is probable cause to believe that the defendant committed it, the judge or magistrate shall proceed under Rule 3.1.

Committee Comments

Under Rule 2.4, the judge or magistrate is required to determine from the complaint, from any affidavits filed with the complaint, and from any testimony taken that the offense complained of has been committed and that there is probable cause for believing that the defendant committed it.

The purpose served by the rule is consistent with Alabama law and the mandates of the Fourth Amendment to the United States Constitution. In *Giordenello v. United States*, 357 U.S. 480, 486, 78 S.Ct. 1245, 1250, 2 L.Ed.2d 1503 (1958), the United States Supreme Court stated that:

“The purpose of the complaint, then, is to enable the appropriate magistrate ... to determine whether the ‘probable cause’ required to support a warrant exists. The [magistrate] must judge for himself the persuasiveness of the facts relied on by a complaining officer to show probable cause. He should not accept without question the complainant’s mere conclusion that the person whose arrest is sought has committed a crime.”

The rule allows the judge or magistrate to examine any witnesses, under oath, that he deems necessary. The rule also makes it clear that the judge or magistrate must subpoena only those witnesses who are deemed necessary by him and that the prosecutor of a complaint cannot require issuance of a subpoena to compel attendance of non-essential witnesses. The requirement of calling “necessary” witnesses does not preclude the use of hearsay testimony even on essential elements of proof, assuming the requirements of the “totality of the circumstances test” are met. See *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

