

Alabama Rules of Criminal Procedure

Rule 4. Arrest and initial appearance.

Rule 4.4. Initial appearance.

(a) IN GENERAL. At defendant's initial appearance the judge or magistrate shall:

(1) Ascertain the defendant's true name and address and, if necessary, amend the formal charges to reflect defendant's true name, instructing the defendant to notify the court promptly of any change of address;

(2) Inform the defendant of the charges against him;

(3) Inform the defendant of the right to be represented by counsel, advise the defendant that he will be afforded time and opportunity to retain counsel, advise the defendant that if he is indigent and unable to obtain counsel, counsel will be appointed to represent him, and, inform the defendant of the right to remain silent; and

(4) Determine conditions of release in accordance with Rule 7.3.

(b) FELONIES CHARGED BY COMPLAINT. When a defendant is charged by complaint with commission of a felony, the judge or magistrate, in addition to the procedures required by section (a), shall

(1) Inform the defendant of the right to demand a preliminary hearing and the procedure by which that right may be exercised; and

(2) If so demanded, set the time for a preliminary hearing in accordance with Rule 5.1(a).

(c) WHEN INITIAL APPEARANCE NOT REQUIRED. It shall not be necessary to hold an initial appearance in any case in which the defendant has been released from custody.

Committee Comments

The purpose of Rule 4.4(a) is to insert the judicial process between the police and the defendant at the earliest practicable time in order to minimize the effects of carelessness, abuse of power, or unavoidable error in the police function. These rules dispense with the formality where the defendant has already been released. If he has not been released, however, Rule 4.4(a) insures procedural compliance with *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16

L.Ed.2d 694 (1966), and *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964), as well as provides for the prompt determination of the conditions for release.

Subsection (1) assures the formal accuracy of the defendant's name and address in the official records.

Subsection (2) assures that the defendant is properly advised of the charges. The rule's requirements can be met by giving to the defendant a copy of the complaint or indictment if he does not already have one.

Subsection (3) gives notice to a defendant of the right to counsel and, where applicable, of his right to appointed counsel under Rule 6.1(a), and of the right to remain silent. It is neither intended nor expected that a determination of the defendant's right to appointed counsel would be made or counsel appointed at the initial appearance.

Under subparagraph (4), the judge or magistrate is required to determine the conditions of release. The range of possible conditions and the standards and procedures are set forth in Rule 7. The judge or magistrate before whom a defendant who is arrested in another county is brought for initial appearance is not bound by a previous release determination in the case. See Rule 7.4(b) and (c).

Rule 4.4(b) imposes the additional burden at the initial appearance of informing a defendant charged with a felony but not yet indicted of the right to demand a preliminary hearing, and if demanded, of setting a date for the hearing. If the defendant has been indicted, there is no right to preliminary hearing (see Rule 5.1).