

Alabama Rules of Criminal Procedure

Rule 5. Preliminary hearing.

Rule 5.4. Action taken upon finding of probable cause or of no probable cause.

(a) **HOLDING A DEFENDANT TO ANSWER.** If it appears from the evidence that an offense has been committed and that there is probable cause to believe that the defendant committed it, the judge shall enter a written order finding probable cause and shall order the defendant held in custody or released upon the same conditions and undertakings previously imposed, unless the court, either upon its own motion or upon request of either party, modifies the conditions of release upon good cause shown as provided in Rule 7.

(b) **PRESENTING CASE TO THE GRAND JURY.** (1) If the Court finds probable cause at a preliminary hearing, or (2) if a preliminary hearing is waived or not demanded and the complaint is not dismissed in open court, the district attorney shall present the complaint to the grand jury.

(c) **DISCHARGE OF THE DEFENDANT.** If it does not appear from the evidence that an offense has been committed or that there is probable cause to believe the defendant committed it, the court shall dismiss the complaint and discharge the defendant.

(d) **EFFECT OF DISMISSAL OF A COMPLAINT.** The dismissal of a complaint shall not preclude a subsequent prosecution of the defendant for the same offense.

(e) **TRANSMITTAL OF RECORD.** Within fourteen (14) days after waiver or conclusion of the preliminary hearing, all original papers and records shall be transmitted to the circuit court.

[Amended eff. 1-1-96.]

Committee Comments, Amended Effective January 1, 1996

Rule 5.4(a) is a modification of Ala.Code 1975, § 15-11-10(a), and requires that, upon a finding of probable cause, the judge shall continue confinement or release of the defendant on the same conditions as allowed initially, unless the court, on its own motion or on request of either party, modifies the conditions of confinement or release, and clarifies that a defendant out on bond would not necessarily have to post a new bond.

Section (b) is added and relates to Rule 5.4(e) regarding transmission of papers to the circuit court. Prior statutes require that the magistrate send the papers to the grand jury or district attorney. Ala.Code 1975, § 15-11-15.

Subsequent dismissal may occur only with the concurrence of the presiding judge of the circuit court or by a No-Bill being returned by the grand jury.

“Papers and records” under section (e) would include evidence, exhibits, and stipulations that may be withdrawn upon motion of the party offering them. If there is a transcript of the proceeding, it should also be transmitted to the circuit court as provided in this section as a part of the “papers and records.”