

IN THE SUPREME COURT OF ALABAMA
October 15, 2020

ORDER

IT IS ORDERED that Rule 2.3, Rule 4.3, Rule 4.4, and Rule 7.4, Alabama Rules of Criminal Procedure, be amended to read in accordance with Appendices A, B, C, and D, respectively, to this order;

IT IS FURTHER ORDERED that the amendments to Rule 2.3, Rule 4.3, Rule 4.4, and Rule 7.4, be effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to the follow Rule 2.3, Rule 4.3, Rule 4.4, and Rule 7.4:

"Note from the reporter of decisions: The order amending Rule 2.3, Rule 4.3, Rule 4.4, and Rule 7.4, effective October 15, 2020, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d."

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

Witness my hand this 15th day of October, 2020.



Clerk, Supreme Court of Alabama

FILED
October 15, 2020
11:10 am
Clerk
Supreme Court of Alabama

APPENDIX A

RULE 2.3. CONTENTS OF A COMPLAINT

A complaint is a statement made upon oath before a judge, magistrate, or official authorized by law to issue warrants of arrest, setting forth essential facts constituting an offense and alleging that the defendant committed the offense. The complaint may be written, typed, electronic, or computer-generated.

APPENDIX B

RULE 4.3. PROCEDURE UPON ARREST

(a) On Arrest Without a Warrant.

(1) A person arrested without a warrant:

(i) May be cited by a law-enforcement officer to appear either at a specified time and place or at such time and place as he or she shall be subsequently notified of and may be released; or

(ii) May be released by a law-enforcement officer upon execution of an appearance bond or a secured appearance bond in an amount set according to the schedule contained in Rule 7.2(b), or on his or her personal recognizance pursuant to Rule 7.2(a), or on a signature bond, and directed to appear either at a specified time and place or at such time and place as he or she shall be subsequently notified of; or

(iii) Shall be afforded an opportunity to make bail in accordance with Rules 4.3(b)(3) and 4.4. A judge or magistrate in the county of arrest shall determine whether probable cause exists to believe that the defendant committed the charged offense, by examining any necessary witnesses in accordance with the procedures for making a probable-cause determination provided in Rule 2.4. If the judge or magistrate finds there is probable cause for the arrest of the person, a complaint shall promptly be prepared, filed, and served on the defendant, and the judge shall proceed as provided in Rule 4.4 for initial appearance. If a probable-cause determination is not made by a judge or magistrate without undue delay, and in no event later than forty-eight (48) hours after arrest, then, unless the offense for which the person was arrested is not a bailable offense, the person shall be released upon execution of an appearance bond in the amount of the minimum bond set in Rule 7.2(b), or on his or her personal recognizance pursuant to Rule 7.2(a), or on a signature bond, and shall be directed to appear either at a specified time and place or at such time and place as he or she shall be subsequently notified of; or

(iv) In the event the defendant is released on the minimum bond amount provided in the bail schedule, or on personal recognizance or on a signature bond by the judge

or magistrate, the prosecutor may file a motion with the court to reconsider the bond amount and the conditions of release, and the procedures thereafter shall be in accordance with Rule 7.5.

(2) If a person arrested without a warrant has been released and cited or directed to appear without having been taken before a judge or magistrate for a probable-cause determination, the officer or private person who made the arrest shall without undue delay make a complaint before a judge or magistrate as provided in Rules 2.3 and 2.4. If the judge or magistrate finds probable cause, the complaint shall be served on the defendant in the manner provided in Rule 3.4 for service of summons, or shall be delivered to the defendant at the time of the defendant's appearance. If the judge or magistrate does not find probable cause, the person arrested shall promptly be notified and advised that an appearance will not be required. Notification shall be made by the magistrate or clerk of the court by mail directed to the defendant at the defendant's last known address.

(b) On Arrest With a Warrant.

(1) If provision therefor has been made by the judge or magistrate issuing the arrest warrant, a person arrested with a warrant shall be released on an appearance bond in the amount set in accordance with the schedule contained in Rule 7.2(b), or on his or her personal recognizance pursuant to Rule 7.2(a), or on a signature bond, and directed to appear either at a specified time and place or at such time and place as he or she shall be subsequently notified of.

(2) If the person arrested cannot meet the conditions of release provided on the warrant, or if no such conditions are prescribed or provided for,

(i) If such person was arrested pursuant to a warrant issued upon a complaint, he or she shall be taken without undue delay, except in no event later than seventy-two (72) hours after arrest, before a judge, who shall proceed as provided in Rule 4.4, or

(ii) If such person was arrested pursuant to a warrant issued upon an indictment, he or she shall be taken without undue delay, except in no event later than seventy-two (72) hours after arrest, before a circuit judge, who shall proceed as provided in Rule 4.4.

(3) If the person arrested cannot meet the conditions of release and has not been taken before a judge in the case of a warrant issued on a complaint, or has not been taken before the circuit judge in the case of a warrant issued on an indictment, without undue delay, except in either case in no event later than seventy-two (72) hours after arrest, unless the charge upon which the person was arrested is not a bailable offense, such person shall be released upon execution of an appearance bond in the minimum amount required by the schedule set forth in Rule 7.2(b), or on his or her personal recognizance pursuant to Rule 7.2(a), or on a signature bond, and directed to appear for arraignment either at a specified time and place or at such time and place as he or she shall be subsequently notified of.

(4) Upon request, the defendant shall be given a copy of the charges against him or her.

(c) Assurance of Availability of Circuit Judge or District Judge. The presiding circuit judge shall take such steps as are necessary to assure that a circuit judge or a district judge with appropriate authority is available in the county to hold initial appearances as required by Rules 4.3(a)(1)(iii) and 4.3(b)(2)(i).

(d) Assurance of Availability of Judge or Magistrate In Municipal Court. The presiding municipal judge and the municipal court clerk shall take such steps as are necessary to assure that a judge or magistrate with appropriate authority is available in the city to hold probable-cause hearings as required by Rule 4.3(a)(1)(iii), and the presiding municipal judge shall assure that a municipal judge with appropriate authority is available in the city to hold initial appearances as required by Rules 4.3(a)(1)(iii) and 4.3(b)(2)(i).

APPENDIX C

RULE 4.4. INITIAL APPEARANCE

(a) In General. At a defendant's initial appearance the judge shall:

(1) Ascertain the defendant's true name and address and, if necessary, amend the formal charges to reflect the 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 or her;

(3) Inform the defendant of the right to be represented by counsel, advise the defendant that he or she will be afforded time and opportunity to retain counsel, advise the defendant that, if he or she is indigent and unable to obtain counsel, counsel will be appointed to represent him or her, 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, 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.

APPENDIX D

RULE 7.4. PROCEDURE FOR DETERMINATION OF RELEASE CONDITIONS

(a) Initial Decision. If a defendant has not been released from custody and is brought before a court for initial appearance, a determination of the conditions of release shall be made. The judge shall issue an order containing the conditions of release and shall inform the defendant of the conditions, the possible consequences of their violation, and that a warrant for arrest of the defendant will be issued immediately upon report of a violation.

(b) Amendment of Conditions. If the defendant is in custody, the judge may, for good cause shown, either on the judge's own initiative or on application of either party, modify the conditions of release, after first giving the parties an adequate opportunity to respond to the proposed modification.

(c) Review by Circuit Court. By the second day of each month, the officials having custody of defendants who are being held in jail pending trial or on extraordinary writs shall provide the presiding judge, the district attorney, and the clerk of the circuit court for the counties in which defendants are being held the names of all defendants in their custody, the charge or charges upon which they are being held, and the date they were most recently taken into custody. The circuit court shall review the conditions of release for every defendant who has been in jail for more than ninety (90) days.

(d) Review by Municipal Court. By the second day of each month, the officials having custody of defendants being held in a municipal jail pending trial or on extraordinary writs shall provide the presiding municipal judge, the city attorney, and the municipal court clerk the names of all defendants in their custody, the charge or charges upon which they are being held, and the date they were most recently taken into custody. The municipal court shall review the conditions of release for every defendant who has been in the municipal jail for more than ninety (90) days.