

WARRANT OF ARREST OR SUMMONS UPON COMPLAINT

(a) Issuance of Warrant of Arrest.

(1) *Generally.* If a complaint is filed and if the offense charged may be tried in the jurisdiction in which the warrant issues, and if the sentence for the offense charged may include confinement in jail, the court may direct the clerk to issue a warrant for the arrest of the defendant unless the defendant has already been arrested in connection with the offense charged and is in custody or has been released on obligation to appear in court.

(2) *Probable Cause.* A warrant of arrest must be supported by an affidavit, a statement as provided in GR 13, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically, stenographically or by any reliable method. The evidence shall be preserved. The court must determine there is probable cause to believe that the defendant has committed the crime alleged before issuing the warrant. The evidence shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(3) Ascertaining Defendant's Current Address.

(i) *Search for Address.* The court shall not issue a warrant unless it determines that the complainant has attempted to ascertain the defendant's current address by searching the following: (A) any statewide court information system database used by the court when the warrant is issued, (B) the driver's license and identicard database maintained by the Department of Licenses; and (C) the database maintained by the Department of Corrections listing persons incarcerated and under supervision. The court in its discretion may require that other databases be searched.

(ii) *Exemptions from Address Search.* The search required by subdivision (i) shall not be required if (A) the defendant has already appeared in court (in person or through counsel) after filing of the same case, (B) the defendant is known to be in custody, or (C) the defendant's name is unknown.

(iii) *Effect of Erroneous Issuance.* If a warrant is erroneously issued in violation of this subsection (a)(3), that error shall not affect the validity of the warrant.

(b) Issuance of Summons in Lieu of Warrant.

(1) *Generally.* If a complaint is filed, the court may direct the clerk to issue a summons commanding the defendant to appear before the court at a specified time and place.

(2) *When Summons Must Issue.* The court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant (i) will not appear in response to a summons, (ii) will commit a violent offense, (iii) will interfere with witnesses or the administration of justice, or (iv) is in custody.

(3) *Summons for Felony Complaint.* If the complaint charges the commission of a felony, the court may direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent bodily harm to the accused or another, in which case it may issue a warrant.

(4) *Summons.* A summons shall be in writing and in the name of the charging jurisdiction, shall be signed by the clerk with the title of that office, and shall state the date when issued. It shall state the name of the defendant and the nature of the charge, and shall summon the

defendant to appear before the court at a stated time and place. The summons shall inform the defendant that failure to appear as commanded may result in the issuance of a warrant for the arrest of the accused.

(5) *Failure To Appear on Summons.* If a person fails to appear in response to a summons, or if delivery is not effected within a reasonable time, a warrant of arrest may issue, if the sentence for the offense charged may include confinement in jail.

(c) Requisites of a Warrant. The warrant shall be in writing and in the name of the charging jurisdiction, shall be signed by the judge or clerk with the title of that office, and shall state the date when issued. It shall specify the name of the defendant, or if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. The warrant shall specify the offense charged against the defendant and that the court has found that probable cause exists to believe the defendant has committed the offense charged and shall command the defendant be arrested and appear before the court issuing the warrant. If the offense is not a capital offense, the court shall set forth in the order for the warrant, bail and/or other conditions of release.

(d) Execution; Service.

(1) *Execution of Warrant.* The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) *Delivery of Summons.* The summons may be served any place within the state. It may be served by a peace officer, who shall deliver a copy of the same to the defendant personally, or it may be delivered by the court mailing the same, postage prepaid, to the defendant at his or her last known address.

(e) Return. The officer executing a warrant shall make return thereof to the court before whom the defendant is brought pursuant to these rules. At the request of the prosecuting authority any unexecuted warrant shall be returned to the issuing court to be canceled. The peace officer to whom a summons has been given for service shall, on or before the return date, file a return thereof with the court before whom the summons is returnable. For reasonable cause, the court may order that the warrant be returned to it.

(f) Defective Warrant or Summons.

(1) *Amendment.* No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any irregularity.

(2) *Issuance of New Warrant or Summons.* If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant or the offense with which he or she is charged, or that although not guilty of the offense specified in the warrant or summons, there is reasonable ground to believe that he or she will be charged with some other offense, the judge shall not discharge or dismiss the defendant but may allow a new complaint to be filed and shall thereupon issue a new warrant or summons.

(g) Failure to Issue Warrant--Dismissal. Upon five days' notice to the prosecuting attorney, the court shall dismiss a charge without prejudice if (i) 90 days have elapsed since the citation or complaint was filed and (ii) on the date that the order of dismissal is entered, no warrant has been issued and the defendant has not appeared in court.

September 1, 2003; September 1, 2006; September 1, 2014; February 1, 2021; July 9, 2024;
December 24, 2024.]