

Rule 4. Arrest Warrant or Summons on a Complaint

(a) **ISSUANCE.** If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it. At the request of an attorney for the government, the judge must issue a summons, instead of a warrant, to a person authorized to serve it. A judge may issue more than one warrant or summons on the same complaint. If an individual defendant fails to appear in response to a summons, a judge or magistrate judge must issue a bench warrant. A judge may issue an arrest warrant in lieu of a bench warrant. Except for good cause shown by specific statements appearing in the complaint or in an affidavit filed with the complaint, no warrant shall be issued unless the complaint has been approved by an appropriate prosecutor. If an organizational defendant fails to appear in response to a summons, a judge may take any action authorized by law.

(b) **PROBABLE CAUSE.** The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) **FORM.**

(1) *Warrant.* An arrest warrant must:

(A) contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty;

(B) describe the offense charged in the complaint;

(C) command that the defendant be arrested and brought without unnecessary delay before the court or other person enumerated in *18 U.S.C. § 3041*;

(D) be signed by a judge;

(E) state or contain the name of the court; and

(F) state or contain the date of the issuance of the warrant.

(2) *Summons.* A summons must be in the same form as a warrant except that it must require the defendant to appear before the court at a stated time and place.

(d) **EXECUTION OR SERVICE, AND RETURN.**

(1) *By Whom.* Only a law enforcement officer or other authorized officer may execute a warrant. The summons may be served by any person authorized to serve a summons in a civil action in the Superior Court or by any officer authorized to execute an arrest warrant.

(2) *Territorial Limits.* A warrant or summons for a felony under D.C. Code §§ 16-1022 and -1024 (2012 Repl. & 2017 Supp.) or for an offense punishable by imprisonment for more than 1 year may be executed or served at any place within the jurisdiction of the United States. A warrant or summons for an offense punishable by imprisonment for not more than 1 year, or by a fine only, or by such imprisonment and a fine, may be executed or served in any place in the District of Columbia.

(3) *Time Limit.* An arrest warrant or summons for an offense punishable by imprisonment for not more than 1 year, or by a fine only, or by such imprisonment and a fine, may not be executed more than 1 year after the date of issuance.

(4) *Manner.*

(A) A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the

warrant's existence and of the offense charged and, at the defendant's request, must show the original or a duplicate original warrant to the defendant as soon as possible.

(B) A summons is served on an individual defendant:

- (i) by delivering a copy to the defendant personally;
- (ii) by leaving a copy at the defendant's residence or usual place of abode with a person of suitable age and discretion residing at that location; or
- (iii) by mailing a copy to the defendant's last known address.

(C) A summons is served on an organization by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. A copy must also be mailed to the organization's last known address within the District of Columbia or to its principal place of business elsewhere in the United States.

(5) *Return.*

(A) After executing a warrant, the officer must return it to the judge, magistrate judge, or other judicial officer before whom the defendant is brought in accordance with Rule 5. The officer may do so by reliable electronic means. At the request of an attorney for the government, an unexecuted warrant must be brought back to and cancelled by a judge.

(B) The person to whom a summons was delivered for service must return it on or before the return day.

(C) At the request of an attorney for the government, a judge may deliver an unexecuted warrant, an unserved summons, or a copy of the warrant or summons to a law enforcement officer or other authorized person for execution or service.

(e) WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS. In accordance with Rule 4.1, a judge may issue a warrant or summons based on information communicated by telephone or other reliable electronic means.

COMMENT TO OCTOBER 2017 AMENDMENTS

This rule incorporates the 2016 federal amendment to section (a). Section (a) now distinguishes between individual and organizational defendants by limiting the issuance of a warrant to individual defendants. The remaining 2016 amendments to the federal rule were rejected as inapplicable to the Superior Court because they addressed service of the summons outside of the United States and/or were inconsistent with D.C. Code §§ 23-562 and -563 (2012 Repl.).

COMMENT TO MARCH 2017 AMENDMENTS

This rule has been amended consistent with the 2011 amendments to the federal rule. Subsection (d)(4)(A) permits an arresting officer to show the arrestee either "the original or a duplicate original warrant." Subsection (d)(5)(A) permits an arresting officer to return the warrant by reliable electronic means. Finally, a new section (e) was added to refer to new Rule 4.1 (Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means) and to permit warrants and summonses to be sought and approved by reliable electronic means.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) takes into account the dictates of D.C. Code § 23-561 (a)(2) (2012 Repl.) which states: “If a person fails to appear in response to a summons, a warrant shall issue for his arrest.” It also retains the language of the former rule requiring approval by an appropriate prosecutor of any complaint before an arrest warrant issues, except where good cause is shown.

Paragraph (b) retains the language of the former rule regarding the use of hearsay to support probable cause. The language was removed from the federal rule as unnecessary, in part because this principle is addressed in *Federal Rule of Evidence 1101*. Because this jurisdiction has not adopted the Federal Rules of Evidence, the Superior Court rule did not follow this change.

Subparagraphs (c)(1)(E) and (F) retain the additional requirement of the former rule that the warrant contain the name of the court and the date of the issuance of the warrant to conform with the requirements of D.C. Code § 23-561 (b)(1) (2012 Repl.).

Subparagraph (c)(2) differs from subparagraph (b)(2) of the federal rule by substituting “the court” for “Magistrate Judge.”

Subparagraphs (d)(2) and (3) include territorial and time limits not found in the federal rule. See D.C. Code § 23-563 (a)–(b) (2012 Repl.) (dealing with warrants or summons issued by the Superior Court); D.C. Code §§ 16-1022, -1024 (2012 Repl.) (defining the crime and punishment for parental kidnapping, which, although a felony, is punishable by a fine of not more than \$1000 and/or imprisonment for not more than six months). The time limit in subparagraph (d)(3) is not intended to apply to bench warrants issued as to any offense.

Subparagraphs (d)(2) and (5) recognize the possibility of arrests on Superior Court warrants within or outside the District of Columbia. Accordingly, subparagraph (d)(5) provides for a return to the appropriate judge, magistrate judge, or other appropriate federal, state or local judicial officer.

Subparagraph (d)(4) is substantially identical to subparagraph (c)(3) of the federal rule, with changes in the manner of serving a summons to reflect D.C. Code § 23-562 (a)(2) (2012 Repl.).

Subparagraph (d)(5) is substantially identical to subparagraph (c)(4) of the federal rule, with minor changes to reflect local practice.