

Rule 40-I. State Fugitives and Extradition

(a) Warrants for the Arrest of Fugitives from Justice. A judge may issue a warrant to bring a defendant before the court to answer a complaint on oath of any credible witness setting forth:

- (1) that the defendant has committed a specified offense in any state;
 - (2) that the defendant is a fugitive from justice;
 - (3) that the defendant is within the District of Columbia;
 - (4) that the defendant is liable by the Constitution and laws of the United States to be delivered over upon the demand of the governor of that state; and
 - (5) such other matters as are necessary to bring the case within the provisions of law.
- (b) Preliminary Examination.

(1) The defendant arrested on a warrant issued under Rule 40-I(a) shall be taken before the court for preliminary examination.

(2) If there is reasonable cause to believe that the complaint is true and that the person may be lawfully demanded of the Chief Judge, the defendant shall be detained or released according to law, in like manner as if the offense had been committed in the District of Columbia.

(3) The defendant shall be ordered to appear before the court at a future date, allowing 30 days to obtain a requisition from the governor of the state from which the person is a fugitive.

(4) The complaint of fugitivity from another jurisdiction shall create a presumption that the person is unlikely to appear if released, which may be overcome only by clear and convincing proof.

(c) Appearance Date. If the defendant appears before the court on the date ordered, the defendant shall be discharged, unless the defendant is demanded by requisition or unless the court finds cause to detain or to release the defendant until a later date.

(d) Period of Detention. A defendant detained on a fugitive warrant shall not be held in jail longer than to allow a reasonable time for a proper requisition to be applied for and obtained. In determining what is a reasonable time the court must consider the circumstances of the case and the distance of the place where the offense allegedly was committed.

(e) Waiver of Further Proceedings.

(1) A defendant arrested on a fugitive warrant may waive further proceedings, orally and in writing, in open court at any time prior to the filing of a requisition.

(2) Following waiver, the court, if the United States Attorney consents, may release the defendant on such conditions as the court deems necessary to ensure the defendant's appearance before the proper official in the state from which the defendant is a fugitive, and shall order the defendant's return to the jurisdiction of that state in the custody of a proper official.

(3) Following waiver, if the defendant is not released, the defendant shall be ordered to return to the jurisdiction from which the defendant is a fugitive in the custody of a proper official and may be detained to await return. Such detention shall not exceed 3 days, not including Saturdays, Sundays, and holidays, unless the court finds good reason to extend the defendant's detention for an additional 3 days to obtain the attendance of a proper official of the demanding jurisdiction.

(f) Further Proceedings Not Waived. If a defendant has not waived further proceedings and a requisition from the governor of the jurisdiction from which the person is a fugitive is presented to the court, the court shall order the requisition to be filed and referred to the Chief Judge for extradition proceedings and shall order the defendant committed pending those proceedings.

(g) Extradition.

(1) In all cases where the laws of the United States so provide, the Chief Judge shall cause to be apprehended and delivered up in the manner and under the regulations provided by *18 U.S.C. § 3181 et seq.* any fugitive from justice who shall be found in the District of Columbia.

(2) The Chief Judge may also surrender, on demand of the governor of any state, any defendant in the District of Columbia charged in that state with committing an act in the District of Columbia or in another state, intentionally resulting in a crime in the state whose authority is making the demand, even though the accused was not in that state at the time of the commission of the crime and has not fled from that state.

(3) No defendant shall be delivered over to the executive authority or an agent demanding the defendant unless the defendant first is taken before the Chief Judge who shall inform the defendant of the demand for the defendant's surrender, of the crime with which the defendant is charged, and that the defendant has the right to legal counsel.

(4) If the defendant states a desire to test the legality of the arrest, the Chief Judge shall hold a hearing to determine whether the defendant shall be delivered over as demanded. At the hearing, the defendant shall have the same rights to challenge the defendant's detention and extradition as if the hearing were upon a writ of habeas corpus.

(5) An order delivering over a defendant shall state the time of day when it was issued.

(6) A defendant may waive the right to appear before the Chief Judge and voluntarily return in custody of a proper official to the jurisdiction of the state demanding the defendant.

(7) No defendant demanded by the governor of a state shall be released upon bond or other obligation except pursuant to an order of a court of the demanding state.

(8) A judge designated by the Chief Judge or acting Chief Judge shall have the same power to act pursuant to this paragraph as the Chief Judge.

COMMENT TO 2016 AMENDMENTS

This rule, retained from the former rule, has no federal counterpart. In keeping with general stylistic changes made to the federal rules, the rule has been redrafted to make it more easily understood and to maintain consistency throughout the rules.

In paragraph (a), the phrase "a judge" has been substituted for "the court." The latter phrase is now defined to include both judges and magistrate judges. A magistrate judge is not authorized to issue an arrest warrant on a complaint.