

RULE CHANGE 2017(08)
COLORADO RULES OF CRIMINAL PROCEDURE

Rule 4. Warrant or Summons Upon Felony Complaint

(a) Issuance.

(1) **Request by Prosecution.** Upon the filing of a felony complaint in the county court, the prosecuting attorney shall request ~~that~~ the court ~~issue either to order that~~ a warrant ~~shall issue~~ for the arrest of the defendant, or ~~that a~~ summons ~~shall issue and to~~ be served ~~upon~~ the defendant.

(2) **Affidavits or Sworn Testimony.** If a warrant is requested, the felony complaint must contain or be accompanied by a sworn statement of facts establishing probable cause to believe that a criminal offense ~~has been committed, and that the offense was committed~~ has been committed, and that the offense was committed by the person for whom the warrant is sought. In lieu of such a sworn statement, the felony complaint may be supplemented by sworn testimony of such facts. Such testimony must be transcribed and then signed under oath by the witness giving the testimony.

(3) **Summons in Lieu of Warrant.** Except in class 1, class 2, and class 3 felonies, level 1 and level 2 drug felonies, and ~~in~~ unclassified felonies punishable by a maximum penalty of more than 10 years, whenever a felony complaint has been filed prior to the arrest of the person named as defendant therein, the court, ~~with the consent of the prosecuting attorney,~~ shall have power to issue a summons commanding the appearance of the defendant in lieu of an arrest warrant ~~for his arrest, unless a law enforcement officer presents in writing a basis to believe there is a significant risk of flight or that the victim's or public's safety may be compromised. If empowered to issue a summons under this subsection (a)(3),~~ ~~the~~ court shall issue a summons instead of an arrest warrant when the prosecuting attorney so requests.

(4) **Standards Relating to Issuance of Summons.** Except in class 1, class 2, and class 3 felonies, level 1 and level 2 drug felonies, and unclassified felonies punishable by a maximum penalty of more than 10 years the general policy shall favor issuance of a summons instead of a warrant for the arrest of the defendant ~~except where there is reasonable ground to believe that, unless taken into custody, the defendant will flee to avoid prosecution or will fail to respond to a summons.~~ When an application is made to a court for issuance of an arrest warrant or summons, the court may require the applicant to provide such information as reasonably is available concerning the following:

(I) – (V) [NO CHANGE]

(5) **Failure to Appear.** If any person properly summoned pursuant to this Rule fails to appear as commanded by the summons, the court shall forthwith issue a warrant for ~~the his~~ arrest of that person.

(6) **Corporations.** When a corporation is charged with the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(b) Form.

(1) **Warrant** The arrest warrant shall be issued by a judge of a court of record directed to any peace officer and shall:

(I) State the defendant's name or if that is unknown, any name or description by which ~~he~~the defendant can be identified with reasonable certainty;

(II) – (V) [NO CHANGE]

(2) **Summons.** If a summons is issued in lieu of a warrant pursuant to this Rule, the summons shall:

(I) [NO CHANGE]

(II) State the defendant's name ~~of the person~~ and ~~his~~ address;

(III) – (IV) [NO CHANGE]

(V) Be signed by the judge or the clerk with the title of ~~his~~the office; and

(VI) [NO CHANGE]

(c) Execution or Service and Return.

(1) **Warrant.**

(I) – (II) [NO CHANGE]

(III) Manner. The warrant shall be executed by arresting the defendant. ~~The warrant. The officer~~ need not ~~be in the officer's~~ ~~have the warrant in his~~ possession at the time of the arrest, in which event the officers shall then inform the defendant of the offense and of the fact that a warrant has been issued, and upon request shall show the warrant to the defendant as soon as possible. If the warrant is in the officer's possession at the time of the arrest, then the officer ~~but if he has the warrant at that time he~~ shall show the warrant ~~it~~ to the defendant immediately upon request. ~~If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense and of the fact that a warrant has been issued, and upon request he shall show the warrant to the defendant as soon as possible.~~

(IV) Return. The peace officer executing a warrant shall make return thereof to the issuing court. At the request of the prosecuting attorney any unexecuted warrant shall be returned

| ~~and cancelled to the issuing county judge and be cancelled by him.~~ At the request of the prosecuting attorney, made while a complaint is pending, a warrant returned unexecuted and not cancelled, or a duplicate thereof, may be delivered by the county judge to any officer or other authorized person for execution.

(2) [NO CHANGE]

Rule 9. Warrant or Summons Upon Indictment or Information

(a) Issuance.

(1) **Request by Prosecution**~~When Issued~~. Upon the return of an indictment by a grand jury, or the filing of an information, the prosecuting attorney shall request ~~that~~ the court ~~to order that a warrant shall~~ issue **either a warrant** for the arrest of the defendant; or ~~that~~ a summons **to be** ~~shall issue and be~~ served upon the defendant.

(2) [NO CHANGE]

(3) **Summons in Lieu of Warrant**. Except in class 1, class 2, and class 3 felonies, **level 1 and level 2 drug felonies,** and ~~in~~ unclassified felonies punishable by a maximum penalty of more than 10 years, whenever an indictment is returned or an information has been filed prior to the arrest of the person named as defendant therein, the court, ~~with the consent of the prosecution,~~ shall have power to issue a summons commanding the appearance of the defendant in lieu of a warrant for his arrest, **unless a law enforcement officer presents in writing a basis to believe there is a significant risk of flight or that the victim's or public's safety may be compromised. If empowered to issue a summons under this subsection (a)(3), the court shall issue a summons instead of an arrest warrant when the prosecuting attorney so recommends.**

(4) **Standards Relating to Issuance of Summons**. ~~The court shall issue a summons instead of an arrest warrant when the prosecuting attorney so requests.~~ **Except in class 1, class 2, and class 3 felonies, level 1 and level 2 drug felonies, and unclassified felonies punishable by a maximum penalty of more than 10 years, the general policy shall favor issuance of a summons instead of a warrant for the arrest of the defendant.** When an application is made to a court for issuance of an arrest warrant or summons, the court may require the applicant to provide such information as reasonably is available concerning the following:

(I) – (V) [NO CHANGE]

(5) **Failure to Appear**. **If any person properly summoned pursuant to this Rule fails to appear as commanded by the summons, the court shall forthwith issue a warrant for the arrest of that person.**

(6) **Corporations**. **When a corporation is charged with the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.**

(b) – (c) [NO CHANGE]

Rule 4. Warrant or Summons Upon Felony Complaint

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(1) **Request by Prosecution.** Upon the filing of a felony complaint in the county court, the prosecuting attorney shall request that the court issue either a warrant for the arrest of the defendant or a summons to be served on the defendant.

(2) **Affidavits or Sworn Testimony.** If a warrant is requested, the felony complaint must contain or be accompanied by a sworn statement of facts establishing probable cause to believe that a criminal offense has been committed, and that the offense was committed by the person for whom the warrant is sought. In lieu of such a sworn statement, the felony complaint may be supplemented by sworn testimony of such facts. Such testimony must be transcribed and then signed under oath by the witness giving the testimony.

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(I) State the defendant's name or if that is unknown, any name or description by which the defendant can be identified with reasonable certainty;

(II) – (V) [NO CHANGE]

(2) **Summons.** If a summons is issued in lieu of a warrant pursuant to this Rule, the summons shall:

(I) [NO CHANGE]

(II) State the defendant's name and address;

(III) – (IV) [NO CHANGE]

(V) Be signed by the judge or the clerk with the title of the office; and

(VI) [NO CHANGE]

(c) Execution or Service and Return.

(1) **Warrant.**

(I) – (II) [NO CHANGE]

(III) Manner. The warrant shall be executed by arresting the defendant. The warrant need not be in the officer's possession at the time of the arrest, in which event the officers shall then inform the defendant of the offense and of the fact that a warrant has been issued, and upon request shall show the warrant to the defendant as soon as possible. If the warrant is in the officer's possession at the time of the arrest, then the officer shall show the warrant to the defendant immediately upon request.

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(b) – (c) [NO CHANGE]

Amended and Adopted by the Court, En Banc, September 11, 2017, effective immediately.

By the Court:

Nathan B. Coats
Justice, Colorado Supreme Court