

### **Rule 3. Warrant or Summons upon Complaint**

#### **3.01 Issuance**

If the facts in the complaint and any supporting documents or supplemental sworn testimony establish probable cause to believe an offense has been committed and the defendant committed it, a summons or warrant must issue. A summons rather than a warrant must issue unless a substantial likelihood exists that the defendant will fail to respond to a summons, the defendant's location is not reasonably discoverable, or the defendant's arrest is necessary to prevent imminent harm to anyone. A warrant for the defendant's arrest must be issued to any person authorized by law to execute it.

The warrant or summons must be issued by a judge of the district court. If the offense is punishable by fine only, a court administrator may issue the summons when authorized by court order.

A summons must issue in lieu of a warrant if the offense is punishable by fine only in misdemeanor cases.

A judge must issue a summons whenever requested to do so by the prosecutor.

If a defendant fails to appear in response to a summons, a warrant must issue.

#### **3.02 Contents of Warrant or Summons**

**Subd. 1. Warrant.** The warrant must be signed by a judge and must contain the name of the defendant, or, if unknown, any name or description by which the defendant can be identified with reasonable certainty. It must describe the offense charged in the complaint. The warrant and complaint may be combined in one form. For all offenses, the amount of bail must be set, and other conditions of release may be set, by a judge and stated on the warrant.

**Subd. 2. Directions of Warrant.** The warrant must direct that the defendant be brought promptly before the court that issued the warrant if the court is in session.

If the court specified is not in session, the warrant must direct that the defendant be brought before the court without unnecessary delay, and not later than 36 hours after the arrest, exclusive of the day of arrest, or as soon as a judge is available.

**Subd. 3. Summons.** The summons must summon the defendant to appear at a stated time and place to answer the complaint before the court issuing it, and must be accompanied by a copy of the complaint.

#### **3.03 Execution or Service of Warrant or Summons; Certification**

**Subd. 1. By Whom.** The warrant must be executed by an officer authorized by law. The summons may be served by any officer authorized to serve a warrant, and if served by mail or electronic means, it may also be served by the court administrator.

**Subd. 2. Territorial Limits.** The warrant may be executed or the summons may be served at any place within the State, except where prohibited by law.

**Subd. 3. Manner.** A warrant is executed by the defendant's arrest. If the offense charged is a misdemeanor, the defendant must not be arrested on Sunday or, on any other day of the week, between the hours of 10:00 p.m. and 8:00 a.m. except, when exigent circumstances exist, by direction of the judge, stated on the warrant. A misdemeanor warrant may also be executed at any time if the person is found on a public highway or street. The officer need not have the warrant in possession when the arrest occurs, but must inform the defendant of the warrant's existence and of the charge.

The summons must be served on an individual defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's usual place of abode with a person of suitable age and discretion residing there, or by mailing it to the defendant's last known address, or by serving it electronically as authorized by Rule 14 of the General Rules of Practice for the District Courts. A summons directed to a corporate defendant must be issued and served in the manner prescribed by law for service of summons on corporations in civil actions, or by mail addressed to the corporation at its principal place of business, or to an agent designated by the corporation to receive service of process.

**Subd. 4. Certification; Unexecuted Warrant or Summons.** The officer executing the warrant must certify the execution to the court before which the defendant is brought.

On or before the date set for appearance, the officer to whom a summons was delivered for service must certify its service to the court before which the defendant was summoned to appear.

At the prosecutor's request, an unexecuted warrant or an unserved summons may be delivered by a judge to any authorized officer or person for execution or service.

### **3.04 Defective Warrant, Summons or Complaint**

**Subd. 1. Amendment.** A person arrested under a warrant or appearing in response to a summons must not be discharged from custody or dismissed because of any defect in form in the warrant or summons if the warrant or summons is amended to remedy the defect.

**Subd. 2. Issuance of New Complaint, Warrant or Summons.** Pretrial proceedings may be continued to permit a new complaint to be filed and a new warrant or summons issued if the prosecutor promptly moves for a continuance on the ground that:

(a) the initial complaint does not properly name or describe the defendant or the offense charged; or

(b) the evidence presented establishes probable cause to believe that the defendant has committed a different offense from that charged in the complaint, and the prosecutor intends to charge the defendant with that offense.

If the proceedings are continued, the new complaint must be filed and process promptly issued. In misdemeanor cases, if the defendant during the continuance is unable to post bail that might be required under Rule 6.02, subd. 1, then the defendant must be released subject to such non-monetary conditions as the court deems necessary under that Rule.

**Subd. 3. Procedure upon Issuance of New Complaint.** Upon the issuance of the new complaint, the court must inform the defendant of the charges; the defendant's rights, including the right to have counsel appointed if eligible; and the opportunity to enter a plea as permitted by Rules 5.06, 5.07, and 5.08. The court must also review conditions of release under Rule 6.02, subd. 2. Pretrial proceedings, including any prior waiver of rights, must be reopened to the extent required by the new complaint.

(Amended effective November 1, 2014; amended effective July 1, 2015.)

### ***Comment - Rule 3***

*Rule 3.01 does not define probable cause for the purpose of obtaining a warrant of arrest or to prescribe the evidence that may be considered on that issue. These issues are determined by federal Fourth Amendment constitutional law. See e.g., State ex rel. Duhn v. Tahash, 275 Minn. 377, 147 N.W.2d 382 (1966); State v. Burch, 284 Minn. 300, 170 N.W.2d 543 (1969).*

*See Rule 4.02, subd. 5(3) for restrictions on the issuance of a warrant for an offense for which the prosecution has obtained a valid complaint after the time in which the court had ordered the complaint to be prepared.*

*Issuance of a warrant instead of a summons should not be grounds for objection to the arrest, to the jurisdiction of the court, or to any subsequent proceedings. In overcoming the presumption for issuing a summons rather than a warrant, the prosecutor may, among other factors, cite to the nature and circumstances of the particular case, the past history of response to legal process and the defendant's criminal record. The remedy of a defendant who has been arrested by warrant is to request the imposition of conditions of release under Rule 6.02, subd. 1 upon the initial court appearance.*

*Minnesota law requires that the defendant be taken before the court "without unreasonable delay." See, e.g., Stromberg v. Hansen, 177 Minn. 307, 225 N.W. 148 (1929). See also Minnesota Statutes, section 629.401. Rule 3.02, subd. 2 imposes more definite time limitations while permitting a degree of flexibility. The first limitation (Rule 3.02, subd. 2) is that the defendant must be brought directly before the court if it is in session. The second limitation (Rule 3.02, subd. 2) is that if the court is not in session, the defendant must be taken before the nearest available judge of the issuing court without unnecessary delay, but not more than 36 hours after the arrest or as soon after the 36-hour period as a judge of the issuing court is available.*

*In computing the 36-hour time limit in Rule 3.02, subd. 2, the day of arrest is not counted. The 36 hours begin to run at midnight following the arrest. Also, Rule 34.01 expressly does not apply to Rule 3.02, subd. 2. Saturdays are to be counted in computing the 36-hour time limit under this rule. See also Rule 4.02, subd. 5.*

*The provisions of Rule 3.03, subd. 2 that a warrant may be executed or a summons served at any place within the State is in accord with existing law governing service of criminal process. The phrase "except where prohibited by law" was added to exclude those places, such as federal reservations, where state service of process may be prohibited by law.*

*For service of summons on corporations, Rule 3.03, subd. 3 adopts the method prescribed by law for service of process in civil actions. See Minn. R. Civ. P. 4.03(c).*