

**THE CRIMINAL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**Criminal Rules 4(a)(2) and 9(a)** —Aligning the rules’ standards for issuing summons and warrants.

Both Rule 4(a)(2) and Rule 9(a) address when the court will issue a warrant rather than a summons. Rule 4 applies when a complaint is filed; Rule 9 upon indictment or information. But their standards differ materially.

Under Rule 4(a)(2), a warrant may issue if “the defendant poses a danger to other persons and the community.” But that factor is not a consideration under the current Rule 9(a). This proposal changes that and adds the “danger” language to Rule 9(a). It also replaces the current “danger” language in Rule 4(a)(2), as shown below:

The court must issue a summons as opposed to a warrant unless the court finds that an arrest is necessary to ensure the defendant’s presence in court, or that an arrest is necessary because the defendant poses *an articulable danger to a victim, other persons, or the community*.

The committee agreed that the new “danger” standard is less ambiguous. The very fact that there is probable cause to charge the defendant with a crime will almost always establish that the defendant poses *some* danger to someone.

The real question — for purposes of a judge’s decision to issue an arrest warrant — is whether the defendant poses the kind of danger that requires an immediate arrest, rather than trusting to a summons. While the danger need not be imminent, there has to be some articulable danger to justify a warrant.

Besides aligning the two rules’ warrant standards, the proposal replaces the current Rule 4(a)(2) and Rule 9(a) with clearer language. In so doing, superfluous or inaccurate provisions are removed.

For instance, the committee agreed that there is no need for these rules to mention a court’s authority to deal with bail violations. Criminal Rules 4 and 9 deal with a different situation: instances where initial charges are being filed and the court must decide what process to issue against the defendant. No process is necessary when an indictment is returned or information is filed in an ongoing case with the same offense(s).

The sentence at the end of Rule 4(a)(2), stating that “In any case in which it is lawful for an officer to arrest a person without a warrant, the officer may give the person a summons instead of arresting the person[,]” is deleted as both erroneous and superfluous. Judges, not officers, issue summons. Officers issue citations. The discretion to issue a citation rather than make an arrest is addressed in AS 12.55.180.

Because Rule 4(a)(2) and Rule 9(a)’s warrant standards should be aligned and both provisions would benefit from clearer language, the Criminal Rules Committee recommends the following proposal:

**Rule 4. Warrant or Summons Upon Complaint.**

(a) **Issuance.**

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(2) Summons or Warrant. ~~The court must issue a summons as opposed to a warrant unless the judge or magistrate judge finds that an arrest is necessary to ensure the defendant's presence in court, or that an arrest is necessary because the defendant poses an articulable danger to a victim, other persons, or the community.—A summons shall be issued in all cases unless the judge or magistrate judge has reason to believe that the defendant will not appear in response to a summons or that the defendant poses a danger to other persons and the community.~~

~~No warrant shall issue where bail has previously been established in that case except upon a showing that conditions of release have been violated, that a warrant is necessary to assure the presence of the defendant in court, or that the defendant poses a danger to other persons and the community. In any case in which it is lawful for an officer to arrest a person without a warrant, the officer may give the person a summons instead of arresting the person.~~

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**Rule 9. Warrant or Summons Upon Indictment or Information.**

(a) **Issuance of Summons or Warrant.** Upon the return of the indictment or filing of the information the court shall issue either a summons or a warrant for each defendant named in the indictment or information unless the defendant is already on bail or recognizance for the same offense(s). The court must issue a summons as opposed to a warrant unless the court finds that an arrest is necessary to ensure the defendant's presence in court, or that an arrest is necessary because the defendant poses an articulable danger to a victim, other persons, or the community. No summons or warrant may issue for a defendant named in an information unless the allegations are supported by statements made under oath. ~~issue a warrant of arrest for each defendant named in the information, if it is supported by oath, or in the indictment, except that no warrant should be issued for any defendant who has theretofore been held to answer for the offense or offenses charged or who is on bail or recognizance for that offense or offenses, and in other cases no warrant should be issued unless the court has reason to believe that the defendant will not appear in response to a summons. The clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney, or by direction of the court. Upon like request or direction the clerk shall issue more than one warrant or summons for the same defendant. The clerk shall deliver the warrant or summons to a peace officer or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.~~

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