

Criminal Rules Advisory Committee
Minutes of Meeting June 24, 2019

Present: Justice Richard Bevan, Chair; Judge Jessica Lorello, Judge Theresa Gardunia, Ken Jorgensen, Shawna Dunn, Erik Fredericksen, Denyce Thompson-Udink, Sarah Tompkins, and Cathy Derden.

Attended by phone: Judge Clark Peterson, Judge Bruce Pickett, Kelly Mallard, JaNiece Price, Jim Thomas, Chuck Peterson.

The purpose of the meeting was to consider amending I.C.R. 4 to allow for the process of applying for an arrest warrant by telephone or other electronic means similar to the process set out in I.C.R. 41 for search warrants.

Denyce Thompson-Udink provided a proposed draft with some edits by Shawna Dunn for the Committee to review. Sara Tompkins provided a copy of Federal Rule of Criminal Procedure 4.1.

Some points of discussion included:

1. Ensuring the sworn oral testimony is recorded and made part of the record. While there is a statute requiring transcription of oral testimony in support of a search warrant, there is no statute addressing arrest warrants. Thus, the majority of the Committee was in favor of stating that it must be transcribed upon request. It was also noted that an arrest warrant is always going to be linked to a criminal case so that it will always be filed with the case. The consensus was that it is the court's responsibility to make sure the testimony is recorded but different counties have different practices as to who does the recording so no attempt was made to set forth a particular practice.
2. Providing for methods relating to the judge's signature on the warrant. It was suggested that the rule reference I.C.R. 2.2, which already provides for use of an electronic signature on a warrant. It was also agreed that the language found in I.C. § 19-4406 relating to search warrants be incorporated that allows for the judge to verbally authorize his or her signature on a duplicate original warrant to be later signed by the judge.

There was also discussion about the current reference in the rule to a complaint being presented in support of an arrest warrant and a complaint being filed in support of a summons, the preference for a summons and whether this was an issue. This was resolved by language in the section on transmission of the warrant, providing that the complaint or citation need not have been filed with the court prior to its presentation to the magistrate for consideration of an arrest warrant.

It was agreed that a draft rule incorporating the points of discussion be circulated for a vote after the meeting.

Draft After Meeting on June 24, 2019.

I.C.R. 4. Arrest Warrant; Summons: Determination of Probable Cause

(a) **Issuance of Arrest Warrant.** After a complaint is presented to a magistrate, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate may issue a warrant for the arrest of the defendant only after making a determination that there is probable cause to believe that an offense has been committed and that the defendant committed it.

- (1) *In General.* The finding of probable cause must be based on substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis, considering the totality of the circumstances, to believe probable cause exists for the warrant. The magistrate may rely on information provided in the form of an affidavit or sworn oral statement.
- (2) *Warrant on an Affidavit.* When a law enforcement officer or a prosecutor presents an affidavit or declaration in support of a warrant, the magistrate may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.
- (3) *Warrant on Sworn Oral Statement.* When the magistrate bases its findings on a sworn oral statement, the statement must be recorded and is considered part of the record. All sworn statements given in support of an application for a warrant must be given on oath or affirmation and must identify the speaker.
- (4) *Requesting a Warrant by Telephonic or Other Reliable Electronic Means.* A magistrate may issue a warrant based on information communicated by telephone or other reliable electronic means. The affidavit or sworn oral statement as recorded must be filed with the clerk of the court, and transcribed by the court upon request.

(b) **Issuance of Summons.** After a complaint is filed with a court, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate, or the clerk of the court, may issue a summons requiring the defendant to appear before the court at a time certain without first making a determination of whether there is probable cause.

(c) **Issuing Arrest Warrant or Summons, Preference for Summons.** If the magistrate finds probable cause for a complaint, in determining whether a warrant or summons should issue, the magistrate must give preference to the issuance of a summons. In making the determination as to whether to issue a warrant or summons, the magistrate must consider the following factors:

- (1) the residence of the defendant,
- (2) the employment of the defendant,
- (3) the family relationships of the defendant in the community,
- (4) the past history of response of the defendant to legal process,
- (5) the past criminal record of the defendant,
- (6) the nature of the offense charged, and

(7) whether there is reasonable cause to believe that the defendant will flee prosecution or will fail to respond to a summons.

(d) Form; Transmission.

(1) *Arrest Warrant.* The arrest warrant must be signed by the magistrate and must be on the Supreme Court form found in Appendix A. An electronic signature may be used as provided in Rule 2.2. In addition, if the warrant is based on information communicated by telephone or other reliable electronic means, the magistrate may verbally authorize a law enforcement officer to sign the magistrate's name on a duplicate original warrant, which verbal authorization must be recorded. After service of the warrant, this duplicate original warrant must be returned to the magistrate who authorized the signing of his or her name on it. The magistrate must then endorse his or her name and enter the date on the warrant when it is returned to the magistrate. Any failure of the magistrate to make such an endorsement does not in itself invalidate the warrant.

The amount of bail may be determined by the issuing magistrate and stated on the warrant at the time of its issuance.

(2) *Transmission of Complaint or Warrant of Arrest.* ~~A warrant of arrest may be sent by email or by facsimile process to any peace officer or other officer serving the warrant.~~ A complaint or warrant of arrest may be presented to a magistrate by email, facsimile or other electronic process and subsequently transmitted between the prosecutor, the magistrate and to any law enforcement officer or other officer involved in serving the warrant. The complaint or citation need not have been filed with the court prior to its presentation to the magistrate for consideration of an arrest warrant.

(3) *Summons.* The summons must be signed by either the magistrate or the clerk of the court and must contain the same information as the warrant. The summons must be on the Supreme Court form found in Appendix A.

(e) Execution or Service, and Return.
