



www.CallRainwater.com • Toll Free 800-434-4800 • Phone (501) 868-2500 • Fax (501) 868-2505 • Box 17250, Little Rock, AR 72222-1725

ARCrP Rule 6.1

Use of Summons Rather than an Arrest Warrant

COUNTY LAW UPDATE

by Mike Rainwater on 11/16/07

Use of a summons rather than an arrest warrant is *discretionary*. *Per curiam* opinion, Supreme Court of Arkansas 11/08/07.

Johnson v. State Overturned: In a *per curiam* opinion delivered 11/08/07, the Supreme Court of Arkansas modified Rules 6.1 and 7.1 of the Arkansas Rules of Criminal Procedure to “overturn Johnson v. State, 98 Ark. App. 245, ___ S.W.3d ___ (2007), insofar as that case held that issuance of a summons was mandatory in certain cases.

Reason for Rule Change: In Johnson v. State, the Court of Appeals held that issuance of a summons is mandatory unless the defendant is charged with a violent offense or it appears that the defendant will not respond to a summons. The 2007 changes to Rule 6.1 and Rule 7.1 were intended to make clear that use of a summons rather than an arrest warrant is discretionary.

Illustration of Rule Changes: The “strikeout” below is the removal from the old law. The “underline” portion is the addition of the new law.

Rule 6.1. Authority to issue summons.

(a) ~~All officials having~~ A judicial officer with the authority to issue an arrest warrant may issue, or authorize the clerk of the court to issue, a criminal summons in lieu thereof in ~~all cases~~ any case in which a complaint, information, or indictment is filed or returned against a person not already in custody.

~~(b) The clerk of a court may issue a summons only upon the filing of an information or upon affidavit sworn to by the complainant and approved and indorsed by a prosecuting attorney as provided in Rule 7.1(c).~~

(b) A prosecuting attorney who files an information or approves the filing of a complaint against a person not already in custody may authorize the clerk of a court to issue a criminal summons in lieu of an arrest warrant.

~~(c) A summons shall not be issued pursuant to this Rule if:~~

~~(i) the offense, or the manner in which it was committed, involved violence to a person or the risk or threat of imminent serious bodily injury; or~~

~~(ii) it appears that the person charged would not respond to a summons. In determining whether the defendant would respond to a summons, appropriate considerations include, but are not limited to:~~

~~(A) the nature and circumstances of the offense charged;~~

~~(B) the weight of the evidence against the person;~~

~~(C) place and length of residence;~~

~~(D) present and past employment;~~

~~(E) family relationship;~~

~~(F) financial circumstances;~~

~~(G) apparent mental condition;~~

~~(H) past criminal record;~~

~~(I) previous record of appearance at court proceedings; and~~

~~(J) any other relevant information.~~