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ARCrP 7.1

Supreme Court Fixes Rule 7.1 Problem

COUNTY LAW UPDATE

by Mike Rainwater on 11/16/07

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. 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. Use of a summons rather than an arrest warrant is discretionary.

Significance of Johnson v. State Being Overturned: The law has been restored to the pre-Johnson v. State status.

What Legal Protection to the Arresting Officer Does the Arrest Warrant Provide? A warrant protects an officer from a claim of “false arrest” or “illegal search” unless, on an objective basis, the application for a warrant is to lacking in indicia of probable cause that no reasonably competent officer would have concluded that a warrant should issue. But if officers of reasonable competence should disagree on this issue, the warrant provides functional judicial immunity for the arresting officer. *Malley v. Briggs*, 475 U.S. 335, 89 L.Ed.2d 271, 106 S.Ct. 1092 (1986).

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 7.1. Arrest with a warrant: basis for issuance of arrest warrant.

(a) A judicial officer may issue an arrest warrant for a person who has failed to appear in response to a summons or citation.

(b) In addition, a judicial officer may issue a warrant for the arrest of a person if, from affidavit, recorded testimony, or other information, it appears there is reasonable cause to believe an offense has been committed and the person committed it. A judicial officer may issue a summons in lieu of an arrest warrant as provided in Rule 6.1. ~~If the offense is a misdemeanor a summons should issue unless:~~

~~(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 available to the judicial officer.~~

(c) A judicial officer who has determined in accordance with Rule 7.1(b) that an arrest warrant should be issued may authorize the clerk of the court or his deputy to issue the warrant.