



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

Rule 7.1 Duty of Arresting Officer

COUNTY LAW UPDATE

by Mike Rainwater on 08/28/07

In *State v. Johnson*, No. CACR 06-775, the Arkansas Court of Appeals ruled, on 4/4/7, that an arresting officer who knows that a misdemeanor arrest warrant violates Rule 7.1 cannot later claim “good-faith reliance” on the judge’s decision to issue the warrant -- because:

- a. all law enforcement officers are presumed to know that law, including Rule 7.1, and
- b. Rule 7.1(b) states that a misdemeanor warrant (as opposed to a summons) can be issued only if: i) the offense was a misdemeanor that involved violence OR ii) there is reason to believe that the accused would not respond to a summons.

So, what does this mean? The *State v. Johnson* opinion appears to require a law enforcement officer to examine a misdemeanor warrant and decide whether the warrant violates Rule 7.1. The Arkansas Attorney General asked the Ark. Supreme Court to review the decision of the Court of Appeals, but the Supreme Court refused -- leaving the Ct. of Appeals decision the final decision. The decision does not provide a clear roadmap for law enforcement officers to follow. The purpose of this article is to suggest some procedures to follow until we can all figure out the practical application of this decision.

Use a Citation When in Doubt: If the officer is not sure the warrant complies with Rule 7.1, the warrant should be treated as a “summons” and the accused should be “cited” to appear in court to answer the charge set forth in the warrant. Since a warrant will not have the Affidavit for Warrant attached, the officer will likely be left with relying only on the description of the offense to make the Rule 7.1 determination. Is the misdemeanor either: i) a misdemeanor that involved violence? or ii) an offense that gives reason to believe that the accused would not respond to a summons? (By the way, persons already in jail on a misdemeanor warrant can be released on a summons, using Rule 5.2(b).)

Tell all Deputies to Read & Follow the Opinion: All sheriffs need to provide all sheriff’s deputies (full-time and auxiliary) a copy of the decision and order each deputy to “read and follow” it. According to the opinion, every law enforcement officer is presumed to know the law and cannot claim “good faith reliance” if the officer’s conduct is not in accord with the law. The opinion states that a summons, *and not a warrant*, should be issued under Rule 7.1(b) if: i) the offense was a misdemeanor that did not involve violence and ii) there was no reason to believe that the accused would not respond to a summons. The opinion is a good summary of Arkansas law on arrest (and search) -- so it is a good read. A copy is attached. Key points of law are underlined.

Contact the Prosecuting Attorney and Local Judges: Take a copy of the opinion and this county law update to your prosecuting attorney and ask him or her for instructions for your agency. Also, ask the prosecuting attorney to schedule a meeting with your local judges so that the judges, the prosecuting attorney, and the sheriff can agree on a protocol to be followed for the county. One topic for conversation would be whether the form of the warrant for misdemeanor arrest should be changed to include a Rule 7.1 fact-statement/judicial-determination -- sort of like an emergency clause on a quorum court ordinance.

Contact the Public Defender: Provide the county public defender a copy of the opinion and this county law update and advise him or her -- so that a writ of *habeas corpus* can be presented for any person who believes his or her misdemeanor arrest (and subsequent jail detention) may have been in violation of Rule 7.1

SUMMARY: Until the prosecuting attorney and local judge instruct otherwise, treat a misdemeanor arrest warrant as a summons, citing the accused to appear in court, unless the arresting officer can reasonably conclude that the warrant is in compliance with rule 7.1(b).