

Rule Change 2004(9)

**Chapter 29. Colorado Rules of Criminal Procedure
For All Courts of Record In Colorado**

The following rule is amended as of July 1, 2004:

RULE 4.1. COUNTY COURT PROCEDURE -- MISDEMEANOR AND PETTY
OFFENSE -- WARRANT OR SUMMONS UPON COMPLAINT

**Amended and Adopted by the Court, En Banc, May 27, 2004,
effective July 1, 2004.**

BY THE COURT:

Alex J. Martinez

Justice, Colorado Supreme Court

Rule 4.1. County Court Procedure -- Misdemeanor and Petty Offense -- Warrant or Summons Upon Complaint

Where the offense charged is a misdemeanor or petty offense, the action may be commenced in the county court as provided below in this Rule. This Rule shall have no application to misdemeanors or petty offenses prosecuted in other courts or to felonies.

(a) Definitions.

(1) "Complaint" means a written statement charging the commission of a crime by an alleged offender filed in the county court.

(2) ~~Repealed. "Peace officer" means a peace officer as defined in section 18-1-901 (3) (1), 8 C.R.S. (1978).~~

(3) "Summons" means a written order or notice directing that a person appear before a designated county court at a stated time and place and answer to a charge against him.

(4) "Summons and complaint" means a document combining the functions of both a summons and a complaint.

(b) Initiation of the Prosecution.

(1) Prosecution of a misdemeanor or petty offense may be commenced in the county court by:

(I) The issuance of a summons and complaint;

(II) The issuance of a summons following the filing of a complaint;

(III) The filing of a complaint following an arrest;

(IV) The filing of a summons and complaint following arrest; or

(V) In the event that the offense is a class 2 petty offense, by the issuance of a notice of penalty assessment pursuant to statute.

(c) Summons, Summons and Complaint.

(1) **Summons.** ~~A summons may be issued by the clerk of the county court, if a sworn complaint has been filed by any person with the county court requesting issuance of a summons. The summons need contain only the date, time, and place of appearance of the defendant. A copy of the complaint shall be attached to and served with the summons. The~~ A summons issued by the county court in a conjunction with prosecution ~~effor~~ for a misdemeanor or a class 1 petty offense may be served by giving a copy to the defendant personally or by leaving a copy at the defendant's usual place of abode with some person over the age of eighteen years residing therein or, except that personal service shall be made by a peace officer. If service is made by mailing a copy to the defendant's last known address by certified mail, return receipt requested, ~~the summons shall be mailed~~ not less than ten days prior to the time the defendant is required to appear. Service by mail shall be complete upon the return of the receipt signed by the defendant. Personal service shall be made by a peace officer or any disinterested party over the age of eighteen years.

(2) ~~**Issuance of a Warrant after Complaint.** A copy of the summons issued under subsection (c) (1) of this Rule shall be supplied to the district attorney or deputy district attorney for such county before service. If the district attorney so requests, and upon a showing of probable cause reduced to writing, a warrant may be issued by the county judge.~~

Repealed.

(3) **Summons and Complaint.** A summons and complaint may be issued by any peace officer for an offense constituting a misdemeanor or a petty offense:

(I) Committed in his presence; or

(II) If not committed in his presence, which he has probable cause to believe was committed and probable cause to believe was committed by the person charged.

Except for penalty assessment notices which shall be handled according to the procedures set forth in section 16-2-201 and subsection (e) of this Rule, Aa copy of the summons and complaint shall be filed immediately with the county court before which appearance is required and a

second copy shall be given to the district attorney or his deputy for such county.

(4) **Content of Summons and Complaint.** A summons and complaint issued by a peace officer shall contain the name of the defendant, shall identify the offense charged, including a citation of the statute alleged to have been violated, shall contain a brief statement or description of the offense charged, including the date and approximate location thereof, and shall direct the defendant to appear before a specified county court at a stated time and place. ~~However, the date and approximate location shall not be deemed to be material elements of the offense charged as long as the court has jurisdiction.~~

(d) **Arrest followed by a Complaint.** If a peace officer makes an arrest without a warrant of a person for a misdemeanor or a petty offense, the arrested person shall be taken without unnecessary delay before the nearest available county or district judge. Thereafter, a complaint shall be filed immediately in the county court having jurisdiction of the offense and a copy thereof given to the defendant at or before the time he is arraigned. The provisions of this Rule are subject to the right of the arresting authority to release the arrested person pursuant to section 16-3-105.

(e) Penalty Assessment Procedure.

(1) When a person is arrested for a class 2 petty offense, the arresting officer may either give the person a penalty assessment notice and release him upon its terms, or take him before a judge of the county court in the county in which the alleged offense occurred. The choice of procedures shall be based upon circumstances which reasonably persuade the officer that the alleged offender is likely or unlikely to comply with the terms of the penalty assessment notice.

(2) The penalty assessment notice shall be a summons and complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, that payment of the specified fine without an appearance is

an acknowledgment of guilt, and that an appearance must be made or the specified fine paid on or before a certain date or a bench warrant will issue for the offender's arrest. In traffic cases, the penalty assessment notice shall also advise the traffic offender of the immediate consequences of payment of the specified fine without an appearance.

(3) In traffic cases, a duplicate copy of the notice shall be sent by the officer to the Colorado department of revenue, motor vehicle division, Denver, Colorado. In all cases, a duplicate copy shall be sent to the clerk of the county court in the county in which the alleged offense occurred.

(4) If the person given a penalty assessment notice chooses to acknowledge his guilt, he may pay the specified fine in person or by mail at the place and within the time specified in the notice. If he chooses not to acknowledge his guilt, he shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which he was found guilty, but customary court costs may be assessed against him in addition to such fine.

(f) Failure to Appear. If a person upon whom a summons or summons and complaint has been served pursuant to this Rule fails to appear in person or by counsel at the place and time specified therein, a bench warrant may issue for his arrest. In the case of a penalty assessment notice, if the person to whom a penalty assessment notice has been served pursuant to this Rule fails to appear in person or by counsel, or if he fails to pay the specified fine at a specified time and place, a bench warrant may issue for his arrest.