

**Rule 7.**

**Effective Date: November 1, 2012**

1       **Rule 7. Proceedings before magistrate.**

2       (a) When a summons is issued in lieu of a warrant of arrest, the defendant shall appear  
3 before the court as directed in the summons.

4       (b) When any peace officer or other person makes an arrest with or without a warrant,  
5 the person arrested shall be taken to the nearest available magistrate for setting of bail. If  
6 an information has not been filed, one shall be filed without delay before the magistrate  
7 having jurisdiction over the offense.

8       (c)(1) In order to detain any person arrested without a warrant, as soon as is  
9 reasonably feasible but in no event longer than 48 hours after the arrest, a determination  
10 shall be made as to whether there is probable cause to continue to detain the arrestee. The  
11 determination may be made by any magistrate, although if the arrestee is charged with a  
12 capital offense, the magistrate may not be a justice court judge. The arrestee need not be  
13 present at the probable cause determination.

14       (c)(2) A written probable cause statement shall be presented to the magistrate,  
15 although the statement may be verbally communicated by telephone, telefaxed, or  
16 otherwise electronically transmitted to the magistrate.

17       (c)(2)(A) A statement which is verbally communicated by telephone shall be reduced  
18 to a sworn written statement prior to submitting the probable cause issue to the magistrate  
19 for decision. The person reading the statement to the magistrate shall verify to the  
20 magistrate that the person is reading the written statement verbatim, and shall write on the  
21 statement that person's name and title, the date and time of the communication with the  
22 magistrate, and the determination the magistrate directs to be indicated on the statement.

23       (c)(2)(B) If a statement is verbally communicated by telephone, telefaxed, or  
24 otherwise electronically transmitted, the original statement shall, as soon as practicable,  
25 be filed with the court where the case will be filed.

26       (c)(3) The magistrate shall review the probable cause statement and from it determine  
27 whether there is probable cause to continue to detain the arrestee.

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28 (c)(3)(A) If the magistrate finds there is not probable cause to continue to detain the  
29 arrestee, the magistrate shall order the immediate release of the arrestee.

30 (c)(3)(B) If the magistrate finds probable cause to continue to detain the arrestee, the  
31 magistrate shall immediately make a bail determination. The bail determination shall  
32 coincide with the recommended bail amount in the Uniform Fine/Bail Schedule unless the  
33 magistrate finds substantial cause to deviate from the Schedule.

34 (c)(4) The presiding district court judge shall, in consultation with the Justice Court  
35 Administrator, develop a rotation of magistrates which assures availability of magistrates  
36 consistent with the need in that particular district. The schedule shall take into account the  
37 case load of each of the magistrates, their location and their willingness to serve.

38 (c)(5) Nothing in this subsection (c) is intended to preclude the accomplishment of  
39 other procedural processes at the time of the determination referred to in paragraph (c)(1)  
40 above.

41 (d)(1) If a person is arrested in a county other than where the offense was committed  
42 the person arrested shall without unnecessary delay be returned to the county where the  
43 crime was committed and shall be taken before the proper magistrate under these rules.

44 (d)(2) If for any reason the person arrested cannot be promptly returned to the county  
45 and the charge against the defendant is a misdemeanor for which a voluntary forfeiture of  
46 bail may be entered as a conviction under Subsection 77-7-21(1), the person arrested may  
47 state in writing a desire to forfeit bail, waive trial in the district in which the information  
48 is pending, and consent to disposition of the case in the county in which the person was  
49 arrested, is held, or is present.

50 (d)(3) Upon receipt of the defendant's statement, the clerk of the court in which the  
51 information is pending shall transmit the papers in the proceeding or copies of them to the  
52 clerk of the court for the county in which the defendant is arrested, held, or present. The  
53 prosecution shall continue in that county.

54 (d)(4) Forfeited bail shall be returned to the jurisdiction that issued the warrant.

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55 (d)(5) If the defendant is charged with an offense other than a misdemeanor for which  
56 a voluntary forfeiture of bail may be entered as a conviction under Subsection 77-7-21(1),  
57 the defendant shall be taken without unnecessary delay before a magistrate within the  
58 county of arrest for the determination of bail under Section 77-20-1 and released on bail  
59 or held without bail under Section 77-20-1.

60 (d)(6) Bail shall be returned to the magistrate having jurisdiction over the offense,  
61 with the record made of the proceedings before the magistrate.

62 (e)The magistrate having jurisdiction over the offense charged shall, upon the  
63 defendant's first appearance, inform the defendant:

64 (e)(1) of the charge in the information or indictment and furnish a copy;

65 (e)(2) of any affidavit or recorded testimony given in support of the information and  
66 how to obtain them;

67 (e)(3) of the right to retain counsel or have counsel appointed by the court without  
68 expense if unable to obtain counsel;

69 (e)(4) of rights concerning pretrial release, including bail; and

70 (e)(5) that the defendant is not required to make any statement, and that the statements  
71 the defendant does make may be used against the defendant in a court of law.

72 (f) The magistrate shall, after providing the information under paragraph (e) and  
73 before proceeding further, allow the defendant reasonable time and opportunity to consult  
74 counsel and shall allow the defendant to contact any attorney by any reasonable means,  
75 without delay and without fee.

76 (g) If the charge against the defendant is a class B or C misdemeanor, the magistrate  
77 shall call upon the defendant to enter a plea.

78 (g)(1) If the plea is guilty, the defendant shall be sentenced by the magistrate as  
79 provided by law.

80 (g)(2) If the plea is not guilty, a trial date shall be set. The date may not be extended  
81 except for good cause shown. Trial shall be held under these rules and law applicable to

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82 criminal cases.

83 (h)(1) If a defendant is charged with a felony or a class A misdemeanor, the defendant  
84 shall be advised of the right to a preliminary examination. If the defendant waives the  
85 right to a preliminary examination, and the prosecuting attorney consents, the magistrate  
86 shall order the defendant bound over to answer in the district court.

87 (h)(2) If the defendant does not waive a preliminary examination, the magistrate shall  
88 schedule the preliminary examination. The examination shall be held within a reasonable  
89 time, but not later than ten days if the defendant is in custody for the offense charged and  
90 not later than 30 days if the defendant is not in custody. These time periods may be  
91 extended by the magistrate for good cause shown. A preliminary examination may not be  
92 held if the defendant is indicted.

93 (i)(1) Unless otherwise provided, a preliminary examination shall be held under the  
94 rules and laws applicable to criminal cases tried before a court. The state has the burden  
95 of proof and shall proceed first with its case. At the conclusion of the state's case, the  
96 defendant may testify under oath, call witnesses, and present evidence. The defendant  
97 may also cross-examine adverse witnesses.

98 (i)(2) If from the evidence a magistrate finds probable cause to believe that the crime  
99 charged has been committed and that the defendant has committed it, the magistrate shall  
100 order that the defendant be bound over to answer in the district court. The findings of  
101 probable cause may be based on hearsay in whole or in part. Objections to evidence on  
102 the ground that it was acquired by unlawful means are not properly raised at the  
103 preliminary examination.

104 (i)(3) If the magistrate does not find probable cause to believe that the crime charged  
105 has been committed or that the defendant committed it, the magistrate shall dismiss the  
106 information and discharge the defendant. The magistrate may enter findings of fact,  
107 conclusions of law, and an order of dismissal. The dismissal and discharge do not  
108 preclude the state from instituting a subsequent prosecution for the same offense.

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109 (j) At a preliminary examination, the magistrate, upon request of either party, may  
110 exclude witnesses from the courtroom and may require witnesses not to converse with  
111 each other until the preliminary examination is concluded. On the request of either party,  
112 the magistrate may order all spectators to be excluded from the courtroom.

113 (k)(1) If the magistrate orders the defendant bound over to the district court, the  
114 magistrate shall execute in writing a bind-over order and shall transmit to the clerk of the  
115 district court all pleadings in and records made of the proceedings before the magistrate,  
116 including exhibits, recordings, and any typewritten transcript.

117 (k)(2) When a magistrate commits a defendant to the custody of the sheriff, the  
118 magistrate shall execute the appropriate commitment order.

119 (l)(1) When a magistrate has good cause to believe that any material witness in a  
120 pending case will not appear and testify unless bond is required, the magistrate may fix a  
121 bond with or without sureties and in a sum considered adequate for the appearance of the  
122 witness.

123 (l)(2) If the witness fails or refuses to post the bond with the clerk of the court, the  
124 magistrate may issue a warrant and commit the witness to jail until the witness complies  
125 or is otherwise legally discharged. If the witness is arrested on a warrant issued by the  
126 magistrate, the custodial authority shall notify the issuing magistrate before the end of the  
127 next business day, and the magistrate shall provide a hearing for the witness within  
128 seventy-two hours or, upon a showing of good cause, within a reasonable period of time  
129 after being notified of the arrest.

130 (l)(3) If the witness does provide bond when required, the witness may be examined  
131 and cross-examined before the magistrate in the presence of the defendant and the  
132 testimony shall be recorded. The witness shall then be discharged.

133 (l)(4) If the witness is unavailable or fails to appear at any subsequent hearing or trial  
134 when ordered to do so, the recorded testimony may be used at the hearing or trial in lieu  
135 of the personal testimony of the witness.