

probable cause that an offense has been committed and probable cause that a particular person committed that offense. The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the person so named and to take him without unnecessary delay before the nearest judge of a court of record.

Rule 5. Preliminary Proceedings.

(a) Felony Proceedings.

(1) Procedure Following Arrest. If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county or district judge. Thereafter, a felony complaint, information or indictment shall be filed, if it has not already been filed, without unnecessary delay in the proper court and a copy thereof given to the defendant.

(2) Appearance before the Court. At the first appearance of the defendant in court, it is the duty of the judge to inform the accused of and make certain that he understands the following:

(i) He need make no statement and any statement made can and may be used against him;

(ii) He has a right to counsel;

(iii) If he is an indigent person, he has the right to request the appointment of counsel or consult with the Public Defender before any further proceedings are held;

(iv) Any plea he makes must be voluntary on his

part and not the result of undue influence or coercion on the part of anyone;

(v) He has the right to bail, if the offense is bailable, and the amount of bail that has been set by the court;

(vi) The nature of the charges against him;

(vii) He has the right to a jury trial;

(viii) He has the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged was committed by the defendant.

(3) Appearance in the Court not Issuing the Warrant. If the defendant is taken before a court which did not issue the warrant for his arrest, the judge shall inform him of the matters set out in (a)(2) of this Rule and, allowing time for travel, set bail returnable not less than ten days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

(4) Preliminary Hearing - Procedures. Every person accused of a felony in a felony complaint has the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged

in the felony complaint was committed by the defendant. The following procedures shall govern the holding of a preliminary hearing.

(i) Within ten days after the defendant is brought before the county court, either the prosecuting attorney or the defendant may file a written motion for a preliminary hearing. Upon the filing of such a motion, the judge forthwith shall set the hearing. The hearing shall be held within thirty days of the day of the setting, unless good cause for continuing the hearing beyond that time be shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their counsel.

(ii) The preliminary hearing shall be held before a judge of the county court in which the criminal action has been filed. The defendant shall not be called upon to plead, although he may cross-examine the witnesses called to testify against him and may introduce evidence in his own behalf. The prosecuting officer shall have the burden of establishing probable cause. The judge presiding at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(iii) If the county judge determines such probable cause does exist, he shall order the defendant bound over to the appropriate court of record for trial. In appropriate cases, the defendant may be admitted to or continued on bail by the county judge, but bond shall be made returnable in the trial court and at a day and time certain. All

county court records, except the reporter's transcript notes, or recording, shall be transferred forthwith by the clerk of the county court to the clerk of the appropriate court of record.

(iv) If from the evidence it appears to the county judge that there is not probable cause to believe that the offense charged has been committed by the defendant, the county judge shall dismiss the complaint and discharge the defendant. Dismissal of a felony complaint shall not be a bar to further prosecution of the accused person for the same offense if new or additional evidence is found by the prosecution.

(v) Dismissal of a felony complaint following a preliminary hearing shall not be a bar to a subsequent filing of a direct information in the district court charging the defendant with the same offense.

(5) Procedure Upon Failure to File Motion for Preliminary Hearing.

(i) If the defendant or prosecuting attorney fails to file a motion requesting a preliminary hearing within ten days after the defendant has come before the court, the county judge shall forthwith order the defendant bound over to the appropriate court of record for trial. In no case shall the defendant be bound over for trial to another court until the preliminary hearing has been held, or until the ten day period for filing a motion requesting a

preliminary hearing has expired. In appropriate cases, the defendant may be admitted to, or continued upon bail by the county judge, but bond shall be made returnable in the trial court at a day and time certain. All court records in the case, except the reporter's transcript, notes, or recording shall be transferred forthwith by the clerk to the appropriate court of record.

(b) Bail in Absence of a County Judge. If no county judge is immediately available to set bond in the case of a person in custody for the commission of a bailable felony, any available district judge may set bond, or such person may be admitted to bail pursuant to Rule 46.1.

(c) Misdemeanor and Petty Offense Proceedings.

(1) Procedure Following Arrest. If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county judge. Thereafter a complaint or summons and complaint shall be filed, if it has not already been filed, immediately in the proper court and a copy thereof given to the defendant at or before the time he is arraigned. Trial may be held forthwith if the court calendar permits, immediate trial appears proper, and the parties do not request a continuance for good cause. Otherwise the case shall be set for trial as soon as possible.

(2) Appearance before The Court. At the first appearance of the defendant in the county court he shall be advised in accordance with the provisions set forth in (a)(2)(i) through (vii) of this Rule and in the event that the accused is charged with a class 1 misdemeanor, he has

the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged was committed by the defendant.

(3) Appearance in the County Court not Issuing the Warrant. If the defendant is taken before a county court which did not issue the warrant for his arrest, the judge shall inform him of the matters set out in (a)(2) of this Rule and, allowing time for travel, set bail returnable not less than ten days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

(4) Preliminary Hearing - Procedures - Failure to File Motion for Preliminary Hearing. In the event that the person is accused of a class 1 misdemeanor, he has the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the complaint was committed by the defendant. The procedures to be followed in holding the preliminary hearing and the failure to request a preliminary hearing shall be as provided in (a)(4) of this Rule, except for the provisions relating to bind over. Dismissal of a complaint following a preliminary hearing shall not be a bar to a

subsequent filing of a direct information in the district court charging the defendant with the same offense.

III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury.

(a) The Chief Judge of the District Court in each county or a judge designated by him may order a Grand Jury summoned where authorized by law or required by the public interest.

(b) The Grand Jury shall hear witnesses as may be determined by the Grand Jury and may find an indictment on the sworn testimony of one witness only, except in cases of perjury, when at least two witnesses to the same fact shall be necessary. An indictment may also be found upon the information of two of their own body.

(c) The foreman of the Grand Jury may swear or affirm all witnesses who may come before the Grand Jury.

Rule 7. The Indictment and The Information.

(a) The Indictment.

(1) An indictment shall be a written statement presented in open court by a Grand Jury to the district court which charges the commission of any crime by an alleged offender.

(2) Requisites of the indictment. Every indictment or accusation of the Grand Jury shall be deemed technically sufficient and correct which states the offense in the terms and language of the statute defining it or so plainly that the nature of the offense may be plainly understood. It also should contain therein: