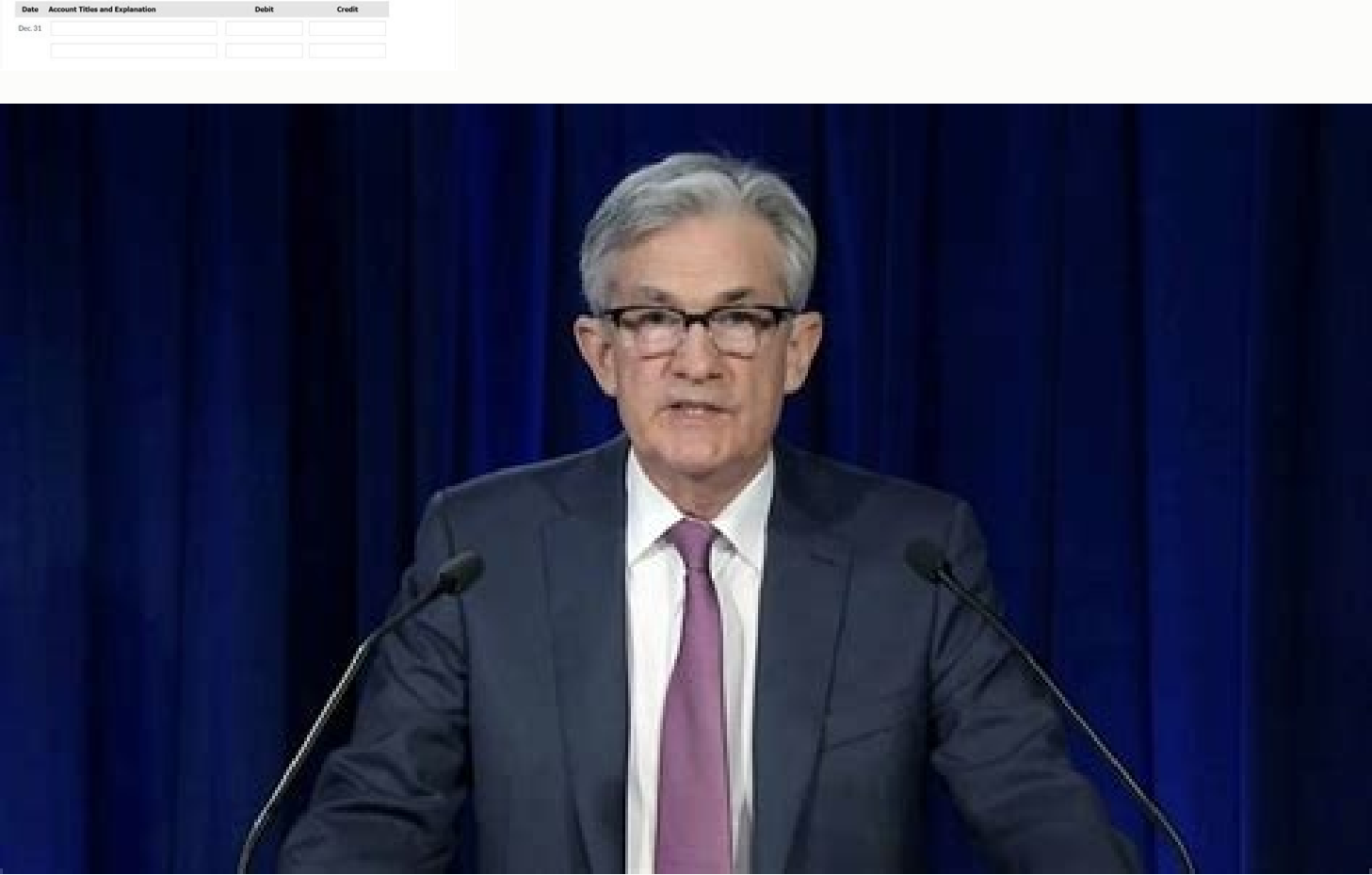


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If a defendant does not appear in response to a summons, the court may, and at the request of a lawyer for the government, issue a warrant. The court shall issue the arrest warrant to an officer authorized to execute it or summon a person authorized to serve it. (b) Form. (1) Warrant. The warrant must conform to Rule 4(b)(1), except that it must be signed by the official and must describe the offense charged in the charge or information. (2) Invocations. The convocation must be in the same way as a warrant, except that it must require the defendant to appear before the court at a time and place declared. (c) Execution or Service; Return; Initial Appearance. (1) Execution or Service. (A) The warrant shall be executed or the summoning served as provided for in Article 4(c)(1), (2) and (3). (B) The official who executes the warrant shall proceed in accordance with Rule 5(a)(1). (2) Return. A warrant or summons must be returned in accordance with Article 4(c)(4). (3) Initial appearance. When a defendant arrested or summoned first appears before the court, the judge shall Rule 5. (d) Warrant by Telephone or Other Means. In accordance with Rule 4.1, a magistrate judge may issue an arrest warrant or summons based on information communicated by telephone or other reliable electronic means. (As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94-149, §3(4), July 31, 1975, 89 Stat. 370; Pub. L. 94-149, §5, Dec. 12, 1975, 89 Stat. 806; Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 28, 1982, eff. Aug. 1, 1982; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 26, 2011, eff. Dec. 1, 2011.) Notes of Advisory Committee on Rules 1944 1. See Note to Rule 4, supra. 2. The provision of Rule 9(a) that a warrant may be issued on the basis of an information only if the latter is supported by oath is necessitated by the Fourth Amendment to the Constitution of the United States. See *Albrecht v. United States*, 273 U.S. 1, 5, 3. The provision of Rule 9(b)(1) that the amount of bail may be fixed by the court and endorsed on the warrant states a practice now prevailing in many districts and is intended to facilitate the giving of bail by the defendant and eliminate delays between the arrest and the giving of bail, which might ensue if bail cannot be fixed until after arrest. Notes of Advisory Committee on Rules 1972 Amendment Subdivision (b) is amended to make clear that the person arrested shall be brought before a United States magistrate if the information or indictment charges a minor offense triable by the United States magistrate. Subdivision (c) is amended to reflect the office of United States magistrate. Subdivision (d) is new. It provides for a remand to the United States magistrate of cases in which the person is charged with a minor offense. The magistrate can then proceed in accordance with rule 5 to try the case if the right to trial before a judge of the district court is waived. Notes of Advisory Committee on Amendment Amendment Rule 9 is revised to give high priority to the issuance of a summons unless a valid reason is given for the issuance of an arrest warrant. See a comparable provision in rule 4. Under the rule, a summons will issue by the clerk unless the attorney for the government presents a valid reason for the issuance of an arrest warrant. Under the old rule, it has been argued that the court must issue an arrest warrant if one is desired by the attorney for the government. See authorities listed in Frankel, *Bench Warrants Upon the Prosecutor's Demand: A View From the Bench*, 71 Colum.L.Rev. 403, 410 n. 25 (1971). For an expression of the view that this is undesirable policy, see Frankel, supra, pp. 410-415. A summons may issue if there is an information supported by oath. The indictment itself is sufficient to establish the existence of probable cause. See C. Wright, *Federal Practice and Procedure: Criminal* §151 (1969); 8 J. Moore, *Federal Practice* 9.02[2] at p. 9-4 (2d ed.) Cipes (1969); Giordenello v. United States, 357 U.S. 480, 78 S.Ct. 1245, 2 L.Ed. 2d 1503 (1958). This is not necessarily true in the case of an information. See C. Wright, supra, §151; 8 J. Moore, supra, 9.02. If the government requests a warrant rather than a summons, good practice would obviously require the judge to satisfy himself that there is probable cause. This may appear from the information or from an affidavit filed with the information. Also a defendant can, at a proper time, challenge an information issued without probable cause. Notes of Committee on the Judiciary, House Report No. 94-247; 1975 Amendment A. Amendments Proposed by the Supreme Court. Rule 9 of the Federal Rules of Criminal Procedure is closely related to Rule 4. Rule 9 deals with arrest procedures after an information has been filed or an indictment returned. The present rule gives the prosecutor the authority to decide whether a summons or a warrant shall be issued. The amendments of the Supreme Court to Article 9 in parallel with its amendments to Article 4 of the Treaty on European Union The basic change made in Article 4 is also made in Article 9. B. Committee action. For reasons referred to in Article 4, does the Committee approve and accept the basic amendment of Article 9? The Committee amended Article 9, similar to the amendments made in Article 4. Notes from the Advisory Committee on Rules - 1979 The Amendment Subdivision (a) is changed to explain the fact that a warrant can only issue based on information if the information or a statement presented with the information shows probable cause for detention. This was generally assumed to be the state of the law, although not specifically established in rule 9; see C. Wright, *Federal Practice and Procedure: Criminal* §151 (1969); 8 J. Moore, *Federal Practice* par. 9.02[2] (2d ed. 1976). In *Gerstein v. Pugh*, 420 U.S. 103 (1975), the Supreme Court rejected the dispute "that the prosecutor's decision to present an information is, in itself, a probable cause determination that provides sufficient reason to hold a pending trial defendant", commenting: Although a conscious decision that the evidence justifies the prosecution provides a measure of protection against unfounded detention, we do not think that the prosecution's judgment is alone, meets the requirements of the Fourth Amendment. In fact, we think that the previous decisions of the Court compel the disapproval of the [such] procedure. In *Albrecht v. United States*, 273 U.S. 1, 5, 47 S.Ct. 250, 251, 71 L.Ed. 505 (1927), the Court held that a warrant issued only on the information of a U.S. attorney was invalid because the accompanying statements were defective. Although the Court's opinion did not explicitly state that the prosecutor's official oath could not provide probable cause, that conclusion was implicit in the trial that the prison was illegal under the Fourth Amendment. No change is made in the with respect to warrants issued upon indictments. In *Gerstein*, the Court indicated it was not disturbing the prior rule that an indictment, fair upon its face, and returned by a properly constituted grand jury conclusively determines the existence of probable cause and requires issuance of an arrest warrant without further inquiry. See *Ex parte United States*, 287 U.S. 241, 250 (1932). The provision to the effect that a summons shall issue by direction of the court has been eliminated because it conflicts with the first sentence of the rule, which states that a warrant shall issue when requested by the attorney for the government, if properly supported. However, an addition has been made providing that if the attorney for the government does not make a request for either a warrant or summons, then the court may in its discretion issue either one. Other stylistic changes ensure greater consistency with comparable provisions in rule 4. Notes of Advisory Committee on Rules 1982 Amendment Note to Subdivision (a). The amendment of subdivision (a), by reference to Rule 5, clarifies what is to be done once the defendant is brought before the magistrate. This means, among other things, that no preliminary hearing is to be held in a Rule 9 case, as Rule 5(c) provides that no such hearing is to be had if the defendant is indicted or if an information against the defendant is filed. Note to Subdivision (b). The amendment of subdivision (b) conforms Rule 9 to the comparable provisions in Rule 4(c)(1) and (2). Note to Subdivision (c). The amendment of subdivision (c) conforms Rule 9 to the comparable provisions in Rules 4(d)(4) and 5(a) concerning return of the warrant. Note to Subdivision (d). This subdivision, incorrect in its present form in light of the recent amendment of 18 U.S.C. §3401(a), has been abrogated as unnecessary in light of the change to subdivision (a). Notes of Advisory on Rules 1993 Amendment The Rule is amended to conform to the Judicial Improvements Act of 1990 [P.L. 101-650, Title III, Section 321] which provides that each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge. Committee Notes on Rules 2002 Amendment The language of Rule 9 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below. Rule 9 has been changed to reflect its relationship to Rule 4 procedures for obtaining an arrest warrant or summons. Thus, rather than simply repeating material that is already located in Rule 4, the Committee determined that where appropriate, Rule 9 should simply direct the reader to the procedures specified in Rule 4. Rule 9(a) has been amended to permit a judge discretion whether to issue an arrest warrant when a defendant fails to respond to a summons on a complaint. Under the current language of the rule, if the defendant fails to appear, the judge must issue a warrant. Under the amended version, if the defendant fails to appear and the government requests that a warrant be issued, the judge must issue one. In the absence of such a request, the judge has the discretion to do so. This change mirrors language in amended Rule 4(a). A second amendment has been made in Rule 9(b)(1). The rule has been amended to delete language permitting the court to set the amount of bail on the warrant. The Committee believes that this language is inconsistent with the 1984 Bail Reform Act. See *United States v. Thomas*, 992 F. Supp. 782 (D.V.I. 1998) (bail amount endorsed on warrant that has not been determined in proceedings conducted under Bail Reform Act has no bearing on decision by judge conducting Rule 40 hearing). The In the current rule 9 (c) (1), referring to the service of a call on an organization, it was transferred to the rule 4. Committee notes on rules - subdivision of amendment of 2011 (D). Rule 9 (D) authorizes a court to issue a warrant of arrest or calling electronically on the return of an accusation or the presentation of an information. In major judicial districts, the need to travel to the court to obtain a prison warrant can be costly, and technology advances make it possible for the safe transmission of a confidential version of the warrant or warrant call. This change works in conjunction with the amendment of the rule 6, which allows the electrical return of an accusation, which eliminates the need to travel to the court in the same way. Changes made in the proposed amendment released for the public comments No altering was made in the amendment, as published. Amendment by Public Law 1975 - Subd. (one). Pub. L. 94 - 64 subd changed. (a) Usually. Subd. (B) (1). Pub. L. 94 - 149 149 Reflection Substituting to the "Rule 4 (C) (1) - For Rule 4 (B) (1) ¶ Ady. Subd. (C) (1). Pub. L. 94 - 149 149 Substituting Reflection ¶ Ady Ady "Rule 4 (D) (1), (2) and (3) ¶ Rule 4 (C) (1), (1), (2) and (3) ¶ references. Effective date of the amendments proposed on April 22, 1974; Effective date of the amendments of 1975 amendments to this rule adopted in the order of the Supreme Court of the United States on April 22, 1974, and the amendments of this rule made by section 3 of the pub. L. 94 - 64, from December 1, 1975, see section 2 of the pub. L. 94 - 64, defined as a note under rule 4 of these rules. the rules.

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