

**8 GCA CRIMINAL PROCEDURE**  
**CH. 15 COMPLAINT: WARRANT AND SUMMONS: ISSUANCE:**  
**EXECUTION & RETURN**

**CHAPTER 15**  
**COMPLAINT: WARRANT AND SUMMONS: ISSUANCE:**  
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**§ 15.10. Complaint Defined.**

The complaint is a written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and filed with a judge of the Superior Court. IN any case required by § 1.15 to be prosecuted by Complaint, the Complaint shall be subject to the same rules of pleading as an indictment for information.

**NOTE:** Section 15.10 is based on former § 806 and former Rule 3. The second sentence has been added to make clear that the complaint must be initiated by the prosecuting attorney. Theoretically, under former law, a complaint could have been filed by a private citizen. This was not the practice, however, and the law placed any subsequent prosecution in the hands of the prosecuting attorney. Section 15.10 merely places control of the prosecution of crimes in the hands of the government from the start. Of course, any private citizen with a legitimate complaint should receive satisfactory action from the prosecutor. See generally 8 More, Federal Practice § 3.05 (2d ed. 1974).

In felony cases, the principal function of the complaint is to serve as an application for a warrant of arrest or a summons. See § 15.20. However, it also serves as a foundation for the preliminary examination. See generally Chapter 45 (commencing with § 45.10). It does not serve as an accusatory pleading; i.e., prosecution of a felony must be based on either an indictment or an information. See § 1.15. In cases where a felony is not charged the complaint serves as the accusatory pleading and is therefore subject to the same rules of pleading as an indictment or information. See Chapter 55 (commencing with § 55.10).

**§ 15.20. Issuance of Summons or Warrant on Complaint.**

(a) If it appears from the complaint and the affidavits filed therewith that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the judge shall issue a summons for the appearance of the defendant.

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(b) Notwithstanding Subsection (a), a warrant shall issue where:

(1) A valid reason is shown for the issuance of an arrest warrant in lieu of a summons; or

(2) A summons having previously issued, the defendant failed to appear in response thereto, or some other valid reason is shown for the issuance of an arrest warrant.

(c) More than one warrant or summons may issue on the same complaint or for the same defendant.

**NOTE:** Section 15.20 supersedes former Rule 4(a) and former §§ 813 and 814(a). The section is based on Subdivisions (a) and (b) and portion of Subdivision (c) of proposed Rule 4 of the Federal Rules of Criminal Procedure. The section expresses a preference for the issuance of a summons except where there is a showing of need for an arrest warrant. A similar statement of policy is set forth in §§ 3.1 through 3.3 of ABA, Project on (Minimum) Standards for Criminal Justice *Pretrial Release* (Approved draft 1968). See also former Rule 9(a) (court could direct issuance of summons upon indictment or information). Normally, arrest will not be necessary. However, a warrant may be issued where there is reasonable cause to believe that the defendant will flee to avoid prosecution or will fail to respond to a summons or, in rare cases, that arrest is necessary to prevent imminent bodily injury to some person. See ABA, *supra* § 3.2.

Rarely, if ever, will the complaint required by § 15.10 be sufficient to show probable cause. Instead, affidavits based on either personal knowledge or reliable information will be needed to establish the necessary facts and in some cases the judge may require the personal appearance of witnesses. See § 15.30.

It should be noted that a warrant or summons may also be issued on an indictment. See § 15.40. However, the code no longer permits issuance on an information. Under the procedures now provided, an information is never filed until after the defendant's first appearance before the court. See §§ 1.17 and 45.50. Many arrests will, of course, not be based on a warrant at all. See §§ 20.15;20.20.

**§ 15.30. Judge May Require Witnesses to Appear.**

Before ruling on a request for a summons or warrant to be issued on a complaint, the judge may require any witnesses the prosecuting attorney may produce to appear personally and be examined under oath. The judge shall promptly make or cause to be made a record or summary of such proceeding. The finding of probable cause required by § 15.20 may be based in whole or in part upon hearsay evidence.

**NOTE:** Section 15.30 supersedes Penal Code §§ 811 and 812. These Sections have been, in turn, superseded by Rule 4 of the Criminal Rules of the Superior Court. These Sections, as well as other Sections of the Penal Code dealing with preliminary procedures have not been followed for many years. Under this Section, the prosecution must show probable cause and include sufficient evidence to show that the Complaint is truthful and accurate. (See 8 Moore Federal Practice, Para. 4.03(2d Ed. 1974);b.

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Witkin California Criminal Procedure, Proceedings Before Trial § 97A (Supp. 1973). If the arrest is eventually determined to have been made without probable cause any evidence obtained as a result of the arrest will be suppressed. See *Wong Sun v. U.S.*, 371 U.S. 471(1963).

**§ 15.40. Summons or Warrant on Indictment; When.**

(a) After the return of an indictment and upon the application of the prosecuting attorney, the clerk shall issue a summons for the appearance of any defendant named in the indictment.

(b) Notwithstanding Subsection (a), the court shall issue a warrant where:

(1) A valid reason is shown for the issuance of an arrest warrant in lieu of summons; or

(2) A summons having previously issued, the defendant failed to appear in response thereto, or some other valid reason is shown for the issuance of an arrest warrant.

(c) More than one warrant or summons may issue on the same indictment or for the same defendant.

**NOTE:** Section 15.40 supersedes former Rule 9(a) and former § 814(a). The section is based on subdivision (a) of proposal Rule 9 of the Federal Rules of Criminal Procedure. This Section also states a preference for the issuance of a summons, which here may be issued by a clerk of the court. Compare § 15.20 and see Note thereto. To obtain a warrant an application must be made to the court which must be satisfied that there is a need therefore. The finding of an indictment by the grand jury establishes probable cause for the arrest, hence, there is no requirement of an additional showing for this purpose. Compare §§ 15.20 and 15.30. Process would not, or course, be issued where indictment follows the defendant's first appearance.

**§ 15.50. Warrant; Form, Who May Accept.**

The warrant shall be signed by the judge and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty and shall describe the offense charged in the complaint or indictment. The warrant shall command that the defendant be arrested and brought before the court. The court may, however, set conditions upon which the defendant may be released pending his first appearance and endorse such on the warrant. The officer in charge of the detention facility where the defendant is held in custody is authorized to accept and approve any bond or deposit required by a warrant and shall promptly after acceptance file or deposit the same with the clerk of the court

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from which the warrant issued and release the defendant subject to the conditions set forth in the warrant.

**NOTE:** Section 15.50 continues the substance of former Rule 4(b)(1) and former Rule 9(b)(1). See also former § 814(b)(1). Compare Fed.R.Crim.P.4(b)(1). See generally 8 Moore, Federal Practice § 4.04 (2d ed. 1974). Although § 15.50 authorized the court to set conditions (including bail) on the release of the defendant and endorse such on the warrant, these are merely preliminary determinations and should not influence in any way the fixing of conditions for the defendant's release after his first appearance. See § 40.10.

**§ 15.60. Summons; Form.**

The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place and shall be signed by the clerk when it is issued pursuant to § 15.40.

**NOTE:** Section 15.60 is based on former rules 4(b)(2) and 9(b)(2). See also former § 814(b)(2). See Note to § 15.50. See also Fed. R. Crim. P. 4(b)(2); 9(b)(2). See generally 8 Moore, Federal Practice ¶4.05[2](3d ed. 1974).

**§ 15.70. Execution of Warrant: When and By Whom.**

(a) A warrant may be executed or a summons may be served at any place within the Territory.

(b) A warrant shall be executed by the arrest of the defendant by a peace officer.

(c) The summons may be served by any person authorized to serve a summons in a civil action. The summons shall be served by delivering a copy to the defendant personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing it to the defendant's last known address.

(d) A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service or process and where the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address.

**NOTE:** Section 15.70 continues the substance of portions of former Rules 4(c)(1)-(3) and 9(c)(1) and former §§ 814(c)(1) and 1392. See also Fed. R. Crim. P. 4(c)(1)-(3); 9(c)(1). See generally 8 Moore, Federal Practice Paras. 4.04(4); 4.05(2); 9.01(2)(1974). However, the procedures for making an arrest are now spelled out in more detail in Chapter 20 of this Code.

**§ 15.80. Warrant: Return; Unexecuted Warrant Revived by Prosecutor.**

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(a) The officer executing a warrant shall make a return thereof to the court before whom the defendant is brought pursuant to § 45.10. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the judge by whom it was issued and shall be cancelled by him.

(b) On or before the return day the person to whom a summons was delivered for service shall make a return thereof to the court before whom the summons is returnable.

(c) At the request of the prosecuting attorney made at any time while the complaint or indictment is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the judge or clerk to the peace officer or other authorized person for execution or service.

**NOTE:** Section 15.80 continues the substance of former Rule 4(c)(4) and 9(c)(2) and former § 814(c)(2). *See also* Fed. R. Crim. P. 4(c)(4);9(c)(2).

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