

Summons

What is a summon?

summons provides legal notice to a party about a lawsuit. It is the first official notice that a defendant receives to notify him or her that he or she is being sued. In some instances, the summons may specify a specific court date, but in others, it does not. The Summon shall indicate the name of the Court before which the person is required to remain present along with the details of the case and the date on which the person is required to appear before the Court. As per Section 61 of the Code of Criminal Procedure ('Cr. P. C.') every summon that may be issued by the Court shall be in writing along with a duplicate copy bearing the signature of the Presiding Officer/Judge of the Court or any such officer that may be authorized by the Court and shall bear the seal of the Court.

Procedure for issuances and service of a Summon (section deal CrPC 61- 69)

Once a Summon is signed by the Presiding Officer/Judge and seal of the Court is affixed, the Summon is then given to a Police Officer to serve the same on the person summoned to the Court, ideally the summon should be served personally on the person who is summoned by tendering the duplicate copy of the summon.

1 However, if the person who is summoned cannot be found, the summon may be served on an adult male member of the family who resides with the person summoned.

2 In the event, if the summon could not be served, either on a concerned person or any adult male member of the family residing with him/her, after necessary due diligence, the serving officer may affix the duplicate copy of the summon on the door or any other noticeable part of the residence.

3 The Court upon making necessary inquiries as the case may be either declare that the Summon has been duly served or may issue a fresh Summon for service in such manner as it may consider proper.

The Summon may be served on a corporation/entity by serving it on a specifically designated representative of the entity (e.g. an office manager, secretary, and/or Director). If the person summoned is a Government Servant then the summon has to be sent to the head of the department, in which such person is employed. The head of the department has to serve the same on the concerned person and submit a report before the Court with appropriate signatures/endorsements. In addition to the aforesaid, when the person has to be summoned as a witness, the Court may also direct that a copy of the summon may be served on the

person by registered post acknowledgement due along with the service in any of the above modes.

Once the service of summoning has been effected, the person summoned has to remain present before the Court, in the event the person summoned cannot appear it is mandatory to inform the Court of the circumstance due to which the person summoned cannot remain present and upon the discretion of the Court, the person may be allowed to appear on next date. Under no circumstance the person should avoid appearing before the Court, in the event if the person summoned fails to appear before the Court, the Court may hold the person in contempt and/or issue Warrant against such person.

How to draft a summons?

FORM NO. 1

SUMMONS TO AN ACCUSED PERSON

(See section 61)

To (name of accused) of.....(address)

WHEREAS your attendance is necessary to answer to a charge of..... state shortly offence charged), you are hereby required to appear in person (or by pleader, as the case may before the (Magistrate) of..... to the..... Day ofHerein fail not Dated, this..... day of. .20..)

(Seal of the Court)

(Signature)

Warrant

What is a Warrant?

A Warrant is a document issued by a Court to a person or an entity involved in a legal proceeding. A Warrant is issued only in serious offences and/or after duly served summons is disobeyed or if the accused has willfully avoided the services of the summons. If the accused seem to be avoiding the summons, the court, in the second instance issues aailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-ailable warrant is resorted to. Aailable Warrant may be served on a person or an entity to ensure their presence before the Court and a Non –ailable Warrant should be issued to bring a person or representative of any entity to Court when the summons orailable warrants would be unlikely to have the desired result.⁶ A Warrant indicates the name and designation of the Police Officer in charge of executing the Warrant; it shall also bear name and address of the person against whom such Warrant has to be executed along with the offences under which the person is charged ⁷.

Procedure for issuances and Service of a Warrant

A Police Officer may execute a Warrant by arresting and producing the person or representatives of the entity before the Court. Once the person or the representative of the entity is arrested by the Police, he/she must be produced before the Court within 24 hours. In the event, if there is delay in producing such person before the Court, the officer is required to show sufficient cause for delay. As per section 70 of the Cr. P. C. every Warrant of arrest that is issued by the Court under the said section has to be in writing and shall bear the signature of the Presiding Officer/Judge along with the seal of the Court. The Warrant shall be in force until the same has been either executed by the Police officer or is cancelled by the Court that issued such Warrant.

The Court issuing a Warrant for the arrest of a person may use its discretionary powers to make an endorsement on the Warrant that if the person concerned executes a bond with sufficient surety (ies) for his attendance before the Court at the specified time, the Court executing the Warrant may accept such surety and release the person from custody 8.

A Warrant of arrest is usually directed to one or more Police Officers but if no Police Officer is available immediately and if an immediate arrest is required then the Warrant of arrest may be directed to any other person(s) and in such cases, it may be executed by all or any one of them.⁹ Similarly, if an arrest is that of an escaped convict or a proclaimed offender or any person against whom the Non-Bailable Warrant is pending and such person is evading arrest, the Court can direct the Warrant of arrest to any person within his local jurisdiction for the arrest of such person. This procedure for executing the Warrant is commonly known as ‘Private Arrest’.

In the event the Warrant has to be executed outside the local jurisdiction of the Court from which the Warrant has been issued, The Court issuing the Warrant shall forward the Warrant to the Court, Executive Magistrate and/or Commissioner of Police within local limits of whose jurisdiction it is to be executed and then such person shall execute the Warrant. Before executing the Warrant of Arrest the Police officer shall readout/inform and/or notify the substance of the Warrant and if required, show him/her the Warrant.

Format of warrant

FORM NO. 2

WARRANT OF ARREST

(See section 70)

To..... (name and designation of the person or persons who is or are to execute the warrant).

**WHEREAS (name of accused) of..... (address) stands charged with the offence of.....
. (state the offence), you are hereby directed to arrest the said..... .. produce him before me.
Herein fail not.**

Dated, this. day of..... 20...

(Seal of the Court).

(Signature)

(See section 71)

This warrant may be endorsed as follows :-

**If the said..... in the sum of rupees. (or two sureties each in the sum of rupees..... .)
to attend before.shall give bail himself in the sum of rupees..... with one surety me on the...
day of.. and to continue so to attend until otherwise directed by me, he may be released.**

Dated, thisday of..... 20....

(Seal of the Court).

(Signature)

FORM NO. 3

BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT

(See section 81)

**To.....(name), of.. being brought before the District Magistrate of.....(or as the
case may be) under a warrant issued to compel my appearance to answer the charge of
do hereby bind myself to attend in the Court of..... on the day of.....next, to answer
to the said charge, and to continue so to attend until otherwise directed by the Court, and in
case of my making default herein, I bind myself to forfeit, to Government, the sum of rupees.**

Dated, this.....day of 20.....

(Seal of the Court).

(Signature)