

## Preliminary Hearings

Pursuant to Rule 2 of the South Carolina Rules of Criminal Procedure, every defendant charged in a warrant or uniform summons with an offense triable in the General Sessions Court is entitled to a preliminary hearing solely to determine whether sufficient evidence exists to warrant the defendant's detention and trial. If the arrest warrant or uniform traffic ticket was issued from the Lexington County Sheriff's Department or a State Agency, the preliminary hearings will take place in the Lexington County Bond Court located at 521 Gibson Road, Lexington, SC 29072. If the arrest warrant or uniform traffic ticket was issued by a municipal police agency, the preliminary hearing will be held at the issuing agency's municipal court. The defendant or his attorney may cross-examine, or question, any witnesses who testify at a preliminary hearing, but defendants cannot testify, present evidence, or call witnesses.

If the State does not present sufficient evidence at the preliminary hearing or has no evidence to establish probable cause, the defendant is discharged. A discharge by a magistrate at a preliminary hearing, however, does not prevent the State from seeking a direct indictment for the same charge before the grand jury. If neither the defendant nor his attorney appear for the preliminary hearing, the hearing will be deemed waived. The text of Rule 2 follows:

### **RULE 2 PRELIMINARY HEARINGS**

(a) **Notice of Right.** Any defendant charged with a crime not triable by a magistrate shall be brought before a magistrate and shall be given notice of his right to a preliminary hearing solely to determine whether sufficient evidence exists to warrant the defendant's detention and trial. In the case of bailable offenses, the notice shall be given at the bond hearing. In the case of non-bailable offenses, the notice shall be given no later than would be required if the offense were bailable. Notice shall be given orally and also by means of a simple form providing the defendant an opportunity to request a preliminary hearing by signing the form and returning it to the advising magistrate. In all cases, the request for a preliminary hearing shall be made within ten days after the notice.

(b) **Time for Hearing.** If the defendant requests a preliminary hearing, the hearing shall be held within ten days following the request. The hearing shall not be held, however, if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held. The defendant may appear by counsel or in person or both.

(c) **Probable Cause.** If probable cause be found by the magistrate, the defendant shall be bound over to the Court of General Sessions. If there be a lack of probable cause, the defendant shall be discharged; but his

discharge shall not prevent the State from instituting another prosecution for the same offense.

(d) **Conclusion of Hearing.** After concluding the hearing the magistrate shall transmit forthwith to the Clerk of the Court his findings together with all papers in the hearing.

(e) **Delays.** Any delay in the holding of a preliminary hearing shall not be grounds for a delay in the prosecution of the case in the Court of General Sessions.