

1 **Rule 40. Search Warrants**

2 (a) Definitions.

3 As used in this rule:

4 (a)(1)"Daytime" means the hours beginning at 6 a.m. and ending at 10 p.m. local
5 time.

6 (a)(2)"Recorded "or "recording" includes the original recording of testimony, a return
7 or other communication or any copy, printout, facsimile, or other replication that is
8 intended by the person making the recording to have the same effect as the original.

9 (a)(3) "Search warrant" is an order issued by a magistrate in the name of the state
10 and directed to a peace officer, describing with particularity the thing, place, or person to
11 be searched and the property or evidence to be seized and includes an original written
12 or recorded warrant or any copy, printout, facsimile or other replica intended by the
13 magistrate issuing the warrant to have the same effect as the original.

14 (b) Grounds for issuance.

15 Property or evidence may be seized pursuant to a search warrant if there is probable
16 cause to believe it:

17 (b)(1) was unlawfully acquired or is unlawfully possessed;

18 (b)(2) has been used or is possessed for the purpose of being used to commit or
19 conceal the commission of an offense; or

20 (b)(3) is evidence of illegal conduct.

21 (c) Conditions precedent to issuance.

22 (c)(1) A search warrant shall not issue except upon probable cause, supported by
23 oath or affirmation, and shall particularly describe the person or place to be searched
24 and the person, property, or evidence to be seized.

25 (c)(2) If the item sought to be seized is evidence of illegal conduct, and is in the
26 possession of a person or entity for which there is insufficient probable cause shown to
27 the magistrate to believe that such person or entity is a party to the alleged illegal
28 conduct, no search warrant shall issue except upon a finding by the magistrate that the
29 evidence sought to be seized cannot be obtained by subpoena, or that such evidence
30 would be concealed, destroyed, damaged, or altered if sought by subpoena. If such a

31 finding is made and a search warrant issued, the magistrate shall direct upon the
32 warrant such conditions that reasonably afford protection of the following interests of the
33 person or entity in possession of such evidence:

34 (c)(2)(A) protection against unreasonable interference with normal business;

35 (c)(2)(B) protection against the loss or disclosure of protected confidential sources of
36 information; or

37 (c)(2)(C) protection against prior or direct restraints on constitutionally protected
38 rights.

39 (d) Search warrant served in readable form.

40 A copy of a search warrant shall be served in a readable form upon the person or
41 place to be searched.

42 (e) Time for service -- Officer may request assistance.

43 (e)(1) The magistrate shall insert a direction in the warrant that it be served in the
44 daytime, unless the affidavit or recorded testimony states sufficient grounds to believe a
45 search is necessary in the night to seize the property prior to its being concealed,
46 destroyed, damaged, altered, or for other good reason; in which case the magistrate
47 may insert a direction that it be served any time of the day or night.

48 (e)(2) The search warrant shall be served within ten days from the date of issuance.
49 Any search warrant not executed within this time shall be void and shall be returned to
50 the court or magistrate as not executed.

51 (e)(3) An officer may request other persons to assist in conducting the search.

52 (f) Receipt for property taken.

53 The officer, when seizing property pursuant to a search warrant, shall give a receipt
54 to the person from whom it was seized or in whose possession it was found. If no
55 person is present, the officer shall leave the receipt in the place where the property was
56 found.

57 (g) Return -- Inventory of property taken.

58 The officer, after execution of the warrant, shall promptly make a signed return of the
59 warrant to a magistrate of the issuing court and deliver a written or recorded inventory of
60 anything seized, stating the place where it is being held.

61 (h) Safekeeping of property.

62 The officer seizing the property shall be responsible for its safekeeping and
63 maintenance until the court otherwise orders.

64 (l) Magistrate to retain and file copies - Documents sealed for twenty days -
65 Forwarding of record to court with jurisdiction.

66 (i)(1) At the time of issuance, the magistrate shall retain and seal a copy of the
67 search warrant, the application and all affidavits or other recorded testimony on which
68 the warrant is based and shall, within a reasonable time, file those sealed documents in
69 court files which are secured against access by the public. Those documents shall
70 remain sealed until twenty days following the issuance of the warrant unless that time is
71 extended or reduced under Section (m). Unsealed search warrant documents shall be
72 filed in the court record available to the public.

73 (i)(2) Sealing and retention of the file may be accomplished by:

74 (i)(2)(A) placing paper documents or storage media in a sealed envelope and filing
75 the sealed envelope in a court file not available to the public;

76 (i)(2)(B) storing the documents by electronic or other means under the control of the
77 court in a manner reasonably designed to preserve the integrity of the documents and
78 protect them against disclosure to the public during the period in which they are sealed;
79 or

80 (i)(2)(C) filing through the use of an electronic filing system operated by the State of
81 Utah which system is designed to transmit accurate copies of the documents to the
82 court file without allowing alteration to the documents after issuance of the warrant by
83 the magistrate.

84 (j) Findings required for service without notice. If the magistrate finds upon proof,
85 under oath, that the object of the search may be quickly destroyed, disposed of, or
86 secreted, or that physical harm may result to any person if notice were given, the
87 magistrate may direct that the officer need not give notice of authority and purpose
88 before entering the premises to be searched.

89 (k) Violation of health, safety, building, or animal cruelty laws or ordinances --
90 Warrant to obtain evidence.

91 In addition to other warrants provided by this rule, a magistrate, upon a showing of
92 probable cause to believe a state, county, or city law or ordinance, has been violated in
93 relation to health, safety, building, or animal cruelty, may issue a warrant for the
94 purpose of obtaining evidence of a violation. A warrant may be obtained from a
95 magistrate upon request of a peace officer or state, county, or municipal health, fire,
96 building, or animal control official only after approval by a prosecuting attorney. A
97 search warrant issued under this section shall be directed to any peace officer within the
98 county where the warrant is to be executed, who shall serve the warrant. Other
99 concerned personnel may accompany the officer.

100 (l) Remotely communicated search warrants.

101 (l)(1) Means of communication. When reasonable under the circumstances, a search
102 warrant may be issued upon sworn or affirmed testimony of a person who is not in the
103 physical presence of the magistrate, provided the magistrate is satisfied that probable
104 cause exists for the issuance of the warrant. All communication between the magistrate
105 and the peace officer or prosecuting attorney requesting the warrant may be remotely
106 transmitted by voice, image, text, or any combination of those, or by other means.

107 (l)(2) Communication to be recorded. All testimony upon which the magistrate relies
108 for a finding of probable cause shall be on oath or affirmation. The testimony and
109 content of the warrant shall be recorded. Recording shall be by writing or by
110 mechanical, magnetic, electronic, photographic storage or by other means.

111 (l)(3) Issuance. If the magistrate finds that probable cause is shown, the magistrate
112 shall issue a search warrant.

113 (l)(4) Signing warrant. Upon approval, the magistrate may direct the peace officer or
114 the prosecuting attorney requesting a warrant from a remote location to sign the
115 magistrate's name on a warrant at a remote location.

116 (l)(5) Filing of warrant and testimony. The warrant and recorded testimony shall be
117 retained by and filed with the court pursuant to Section (i). Filing may be by writing or by
118 mechanical, magnetic, electronic, photographic storage or by other means.

119 (l)(6) Usable copies made available. Except as provided in Sections (i) and (m) of
120 this rule, any person having standing may request and shall be provided with a copy of
121 the warrant and a copy of the recorded testimony submitted in support of the application
122 for the warrant. The copies shall be provided in a reasonably usable form.

123 (m) Sealing and Unsealing of Search Warrant Documents

124 (m)(1) Application for sealing of documents related to search warrants. A prosecutor
125 or peace officer may make a written or otherwise recorded application to the court to
126 have documents or records related to search warrants sealed for a time in addition to
127 the sealing required by Subsection (i)(1). Upon a showing of good cause, the court may
128 order the following documents to be sealed:

129 (m)(1)(A) applications for search warrants;

130 (m)(1)(B) search warrants;

131 (m)(1)(C) affidavits or other recorded testimony upon which the search warrant is
132 based;

133 (m)(1)(D) the application, affidavits or other recorded testimony and order for sealing
134 the documents.

135 (m)(2) Sealing of search warrant documents. Search warrant documents are public
136 record that may be sealed in entirety or in part and not placed in the public file if all or
137 part of the information in them would:

138 (m)(2)(A) cause a substantial risk of harm to a person's safety;

139 (m)(2)(B) pose a clearly unwarranted invasion of or harm to a person's reputation or
140 privacy; or

141 (m)(2)(C) pose a serious impediment to the investigation.

142 Sealed documents shall be maintained in a file not available to the public. If a
143 document is not sealed in its entirety, the court may order a copy of the document with

144 the sealed portions redacted to be placed in the public file and an un-redacted copy to
145 be placed in the sealed file. Except as required by Section (i), no document may be
146 designated as “Filed under Seal” or “Confidential” unless it is accompanied by a court
147 order sealing the document.

148 (m)(3) Unsealing of documents. Any person having standing may file a motion to
149 unseal search warrant documents with notice to the prosecutor and law enforcement
150 agency. If the prosecutor or law enforcement agency files an appropriate and timely
151 objection to the unsealing, the court may hold a hearing on the motion and objection.
152 Where no objection to unsealing the documents is filed, the defendant may prepare an
153 order for entry by the court. The court may order the unsealing of the documents or
154 order copies of the documents to be delivered to a designated person without unsealing
155 the documents and require the person receiving the documents not to disclose the
156 contents to any other person without the authorization of the court.

157 (m)(4) Length of time documents may remain sealed.

158 (m)(4)(A) The documents may remain sealed until the court finds, for good cause,
159 that the records should be unsealed. for a period of up to six months. Prior to the end of
160 the six month period, the prosecutor, peace officer, or a person with standing may apply
161 to the court to seal the documents for an additional period of up to six months. Upon a
162 finding that conditions for sealing remain, the court may order the documents to be
163 sealed for up to six additional months. The prosecutor, peace officer, or a person with
164 standing may seek, and the court may grant, additional six month extensions provided
165 conditions for sealing remain.

166 (m)(4)(B) If search warrant documents have remained sealed for at least three
167 years, the prosecutor, peace officer, or a person with standing may apply to the court to
168 seal the documents indefinitely. Upon a finding that the conditions for sealing remain,
169 the court may order that the documents be sealed indefinitely, pending further order
170 from the court.

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