

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.  
5 local time.

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

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

16 (b) Grounds for issuance.

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

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

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

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

23 (c) Conditions precedent to issuance.

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

27 (c)(2) If the item sought to be seized is evidence of illegal conduct, and is in  
28 the possession of a person or entity for which there is insufficient probable  
29 cause shown to the magistrate to believe that such person or entity is a party  
30 to the alleged illegal conduct, no search warrant shall issue except upon a  
31 finding by the magistrate that the evidence sought to be seized cannot be  
32 obtained by subpoena, or that such evidence would be concealed, destroyed,  
33 damaged, or altered if sought by subpoena. If such a finding is made and a  
34 search warrant issued, the magistrate shall direct upon the warrant such  
35 conditions that reasonably afford protection of the following interests of the  
36 person or entity in possession of such evidence:

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

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

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

43 (d) Search warrant served in readable form.

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

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

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

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

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

58 (f) Receipt for property taken.

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

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

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

68 (h) Safekeeping of property.

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

71 (i) Magistrate to retain and file copies - Documents sealed for twenty days -  
72 Forwarding of record to court with jurisdiction.

73 (i)(1) At the time of issuance, the magistrate shall retain and seal a copy of  
74 the search warrant, the application and all affidavits or other recorded  
75 testimony on which the warrant is based and shall, within a reasonable time,  
76 file those sealed documents in court files which are secured against access by  
77 the public. Those documents shall remain sealed until twenty days following  
78 the issuance of the warrant unless that time is extended or reduced under

79 Section (m). Unsealed search warrant documents shall be filed in the court  
80 record available to the public.

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

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

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

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

92 (j) Findings required for service without notice. If the magistrate finds upon  
93 ~~proof~~ probable cause, under oath, that the object of the search may be easily  
94 or quickly destroyed, disposed of, or secreted, or has reason to believe that  
95 physical harm may result to any person if notice were given, the magistrate  
96 may direct that the officer need not give notice of authority and purpose before  
97 entering the premises to be searched.

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

100 In addition to other warrants provided by this rule, a magistrate, upon a  
101 showing of probable cause to believe a state, county, or city law or ordinance,  
102 has been violated in relation to health, safety, building, or animal cruelty, may  
103 issue a warrant for the purpose of obtaining evidence of a violation. A warrant  
104 may be obtained from a magistrate upon request of a peace officer or state,

105 county, or municipal health, fire, building, or animal control official only after  
106 approval by a prosecuting attorney. A search warrant issued under this  
107 section shall be directed to any peace officer within the county where the  
108 warrant is to be executed, who shall serve the warrant. Other concerned  
109 personnel may accompany the officer.

110 (l) Remotely communicated search warrants.

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

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

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

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

129 (l)(5) Filing of warrant and testimony. The warrant and recorded testimony  
130 shall be retained by and filed with the court pursuant to Section (i). Filing may

131 be by writing or by mechanical, magnetic, electronic, photographic storage or  
132 by other means.

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

138 (m) Sealing and Unsealing of Search Warrant Documents

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

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

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

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

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

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

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

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

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

158 Sealed documents shall be maintained in a file not available to the public. If  
159 a document is not sealed in its entirety, the court may order a copy of the  
160 document with the sealed portions redacted to be placed in the public file and  
161 an un-redacted copy to be placed in the sealed file. Except as required by  
162 Section (i), no document may be designated as “Filed under Seal” or  
163 “Confidential” unless it is accompanied by a court order sealing the document.

164 (m)(3) Unsealing of documents. Any person having standing may file a  
165 motion to unseal search warrant documents with notice to the prosecutor and  
166 law enforcement agency. If the prosecutor or law enforcement agency files an  
167 appropriate and timely objection to the unsealing, the court may hold a  
168 hearing on the motion and objection. Where no objection to unsealing the  
169 documents is filed, the defendant may prepare an order for entry by the court.  
170 The court may order the unsealing of the documents or order copies of the  
171 documents to be delivered to a designated person without unsealing the  
172 documents and require the person receiving the documents not to disclose  
173 the contents to any other person without the authorization of the court.

174 (m)(4) Length of time documents may remain sealed. The documents may  
175 remain sealed until the court finds, for good cause, that the records should be  
176 unsealed.

177 ADVISORY COMMITTEE NOTE