

Effective May 2, 2005. Subject to further change after comment period.

1 Rule 40. Remotely communicated search warrants.

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

8 (b) Communication to be recorded. All testimony upon which the magistrate relies for a
9 finding of probable cause shall be on oath or affirmation. The testimony and content of the
10 warrant shall be recorded. Recording shall be by writing or by mechanical, magnetic, electronic,
11 photographic storage or by other means.

12 (c) Issuance. If the magistrate finds that probable cause is shown, the magistrate shall issue a
13 search warrant.

14 (d) Signing warrant. Upon approval, the magistrate may direct the peace officer or the
15 prosecuting attorney requesting the warrant from a remote location to sign the magistrate's name
16 on the warrant.

17 (e) Filing of warrant and testimony. The warrant and recorded testimony shall be filed with
18 the court. Filing may be by writing or by mechanical, magnetic, electronic, photographic storage
19 or by other means.

20 (f) Original testimony and warrant. "Recorded testimony" includes the original recording of
21 testimony or any copy, printout, facsimile, or other replication of testimony that is intended by
22 the person making the recording to have the same effect as the original testimony. "Warrant"
23 includes an original written or recorded warrant or any copy, printout, facsimile or other replica
24 intended by the magistrate issuing the warrant to have the same effect as the original.

25 (g) Usable copies made available. Any person having standing to request suppression of
26 evidence discovered as a result of the search may request and shall be provided with a copy of
27 the warrant and a copy of the recorded testimony submitted in support of the application for the
28 warrant. The copies shall be provided in a reasonably usable form.

29 Advisory Committee Note

30 Terms used are intended to be interpreted liberally in order to facilitate remote
31 communications as a means of applying for and issuing search warrants while at the same time

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32 [preserving the integrity of the probable cause application and the terms of warrants that are](#)
33 [authorized.](#)

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