

Supreme Court's Advisory Committee on the Rules of Criminal Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

***The meeting is scheduled
in the Council Room.**

March 18, 2014
12:00 p.m. - 2:00 p.m.

Agenda

1. Welcome and approval of minutes - Patrick Corum
2. H.B. 70 - Patrick Corum
3. Rules published for public comment - Patrick Corum
4. Rule 7 - probable cause reviews - update - Brent Johnson
5. Rule 2 - time computation - Brent Johnson
6. Rule 40 - GPS warrants - Vincent Meister
7. Rule 14 - subpoenas - Patrick Corum
8. Reorganization of rules - update - Judge Brendan McCullagh
9. Falkner v. Hon. Lindberg - Judge Brendan McCullagh
10. Rule 38 - notices of appeal - Brent Johnson
11. Rule 14 - material witnesses - Brent Johnson
12. Rule 40 - recording testimony - Brent Johnson
13. Rule 35 - victims rights colloquy - Brent Johnson
14. Other business
15. Adjourn

Second Substitute H.B. 70

This document includes House Floor Amendments incorporated into the bill on Tue, Mar 4, 2014 at 11:35 AM by jeyring. -->

Representative Marc K. Roberts proposes the following substitute bill:

1

FORCIBLE ENTRY AMENDMENTS

2

2014 GENERAL SESSION

3

STATE OF UTAH

4

Chief Sponsor: Marc K. Roberts

5

Senate Sponsor: Luz Robles

6 Cosponsors:

7 Brian M. Greene

8 Eric K. Hutchings

Brian S. KingLee B. Perry

V. Lowry Snow

Mark A. WheatleyRyan D. Wilcox

Larry B. Wiley 9

10 **LONG TITLE**

11 **General Description:**

12 This bill modifies the Utah Code of Criminal Procedure regarding the use of forcible
13 entry by law enforcement officers when conducting a search or making an arrest.

14 **Highlighted Provisions:**

15 This bill:

16 . requires that the issuance of a warrant under the provisions of this bill shall be in
17 accordance with Rule 40, Utah Rules of Criminal Procedure;

18 . amends existing law regarding the use of forcible entry by law enforcement

officers

19 when executing a warrant;

20 . requires law enforcement officers to identify themselves before forcing entry into a
 21 building;
 22 . amends existing law to allow law enforcement officers to force entry into a building
 23 without first issuing a demand or explanation if there is probable cause to believe

24 that evidence will be easily or quickly destroyed, or there is reason to believe giving
 notice will

25 endanger the officer or another person;
 26 . requires law enforcement officers to use the least amount of force necessary

when

27 executing forcible entry, as authorized; and
 28 . providing an effective date.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill takes effect on July 1, 2014.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **77-7-8** , as last amended by Laws of Utah 2003, Chapter 29

36 **77-23-210** , as last amended by Laws of Utah 2007, Chapter 153

37

38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **77-7-8** is amended to read:

40 **77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring**

a

41 **warrant.**

42 (1) (a) Subject to Subsection (2), a peace officer when making an arrest may forcibly
 43 enter the building in which the person to be arrested is, or in which there ~~are~~

reasonable

44 ~~grounds~~ is probable cause for believing him to be.

45 (b) Before making the forcible entry, the officer shall:

46 (i) identify himself or herself as a law enforcement officer; and

47 (ii) demand admission and explain the purpose for which admission is desired.

48 (c) (i) The officer need not give a demand and explanation, or identify himself or
 49 herself, before making a forcible entry under the exceptions in [Section] Subsection

50 77-7-6 H. [~~(1)(a)~~] .H or where there is [reason] probable cause to believe evidence will
 50a be *easily or*

51 *quickly* secreted or destroyed.

52 (ii) *The officer shall identify himself or herself and state the purpose of entering the*
 53 *premises as soon as practicable after entering the premises.*

54 (d) *The officer may use only that force which is reasonable and necessary to*

effectuate

55

forcible entry under this section.

56 (2) If the building to be entered under Subsection (1) appears to be a private residence

57 or the officer knows the building is a private residence, and if there is no consent to enter or

58 there are no exigent circumstances, the officer shall, before entering the building:

59 (a) obtain an arrest or search warrant if the building is the residence of the person to be

60 arrested; or

61 (b) obtain a search warrant if the building is a residence, but not the residence of the person whose arrest is sought.

62 Section 2. Section 77-23-210 is amended to read:

63 **77-23-210. Force used in executing a search warrant -- When notice of authority**

64 **is required as a prerequisite.**

65 (1) When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment, or other enclosure, the officer executing the warrant may

[use such force as is reasonably necessary to] enter:

68 the ~~[(1)]~~ (a) if, after notice of the officer's authority and purpose, there is no response or

70 officer is not admitted with reasonable promptness; or

71 ~~[(2)]~~ (b) without notice of the officer's authority and purpose[; if the magistrate issuing the warrant directs in the warrant that the officer need not give notice.] as provided in Subsection (3).

72 (2) The officer executing the warrant under Subsection (1) may use only that force which is reasonable and necessary to execute the warrant.

73 (3) (a) The officer shall identify himself or herself and state the purpose of entering the premises as soon as practicable.

74 (b) The officer may enter without notice only if:

75 (i) there is reason to believe the notice will endanger the life or safety of the officer or another person;

76 (ii) there is probable cause to believe that evidence may be easily or quickly secreted or

77 destroyed; or

78 (iii) the magistrate, having found probable cause based upon proof provided under oath, that the object of the search may be easily or quickly secreted or destroyed, or

79 having found reason to believe that physical harm may result to any person if notice were given, has

86

directed that the officer need not give notice of authority and purpose before entering the

87 premises to be searched under Rule 40, Rules of Criminal Procedure.

88 (4) (a) The officer shall take reasonable precautions in execution of any search

warrant

89 to minimize the risks of unnecessarily confrontational or invasive methods which may

result in

90 harm to any person.

91 (b) The officer shall minimize the risk of searching the wrong premises by verifying

92 that the premises being searched is consistent with a particularized description in the

search

93 warrant, including such factors as the type of structure, the color, the address, and

orientation

94 of the target property in relation to nearby structures as is reasonably necessary.

95 **Section 3. Effective date.**

96 This bill takes effect on July 1, 2014.

[\[Bill Documents\]](#)[\[Bills Directory\]](#)

Who represents me?

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Jeni Wood <jeniw@utcourts.gov>

Fwd: Public Comments to URCrP 38

1 message

Brent Johnson <brentj@utcourts.gov>
To: Jeni Wood <jeniw@utcourts.gov>

Tue, Mar 18, 2014 at 10:54 AM

Same with this.

—— Forwarded message ——

From: "Alison Adams-Perlac" <alisonap@utcourts.gov>
Date: Mar 17, 2014 12:09 PM
Subject: Public Comments to URCrP 38
To: "Brent Johnson" <brentj@utcourts.gov>
Cc:

Dear Brent,

The public comment period for URCrP 38 is now closed. The proposal did not receive any comments for the committee's consideration.

You may view the proposal on the web at <http://www.utcourts.gov/resources/rules/comments/URCrP%2038.pdf>.

Please let me know if you have any questions.

Thank you,
Alison

—

Alison Adams-Perlac, J.D.
Staff Attorney
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450 South State Street
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Salt Lake City, Utah 84114-0241
Phone: 801-578-3821
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1 **Rule 38. Appeals from justice court to district court.**

2 (a) Appeal of a judgment or order of the justice court is as provided in Utah Code
3 Section 78A-7-118. A case appealed from a justice court shall be heard in a district
4 courthouse located in the same county as the justice court from which the case is
5 appealed. In counties with multiple district courthouse locations, the presiding judge of
6 the district court shall determine the appropriate location for the hearing of appeals.

7 (b) The notice of appeal.

8 (b)(1) A notice of appeal from an order or judgment must be filed within 30 days of
9 the entry of that order or judgment.

10 (b)(2) Contents of the notice. The notice required by this rule shall be in the form of,
11 or substantially similar to, that provided in the appendix of this rule. At a minimum the
12 notice shall contain:

13 (b)(2)(A) a statement of the order or judgment being appealed and the date of entry
14 of that order or judgment;

15 (b)(2)(B) the current address at which the appealing party may receive notices
16 concerning the appeal;

17 (b)(2)(C) a statement as to whether the defendant is in custody because of the order
18 or judgment appealed; and

19 (b)(2)(D) a statement that the notice has been served on the opposing party and the
20 method of that service.

21 (b)(3) Deficiencies in the form of the filing shall not cause the court to reject the filing.
22 They may, however, impact the efficient processing of the appeal.

23 (c) Duties of the justice court. Within five days of receiving the notice of appeal, the
24 justice court shall transmit to the appropriate district court a certified appeal packet
25 containing copies of:

26 (c)(1) the notice of appeal;

27 (c)(2) the docket;

28 (c)(3) the information, citation, or abstract of citation;

29 (c)(4) the judgment and sentence, if any; and

30 (c)(5) any other orders and papers filed in the case.

31 (d) Duties of the district court.

32 (d)(1) Upon receipt of the appeal packet from the justice court, the district court shall
33 hold a scheduling conference to determine what issues must be resolved by the appeal.
34 The district court shall send notices to the appellant at the address provided on the
35 notice of appeal. Notices to the other party shall be to the address provided in the
36 justice court docket for that party.

37 (d)(2) If the defendant is in custody because of the matter appealed, the district court
38 shall hold the conference within five days of the receipt of the appeals packet. If the
39 defendant is not in custody because of the matter appealed, the court shall hold the
40 conference within 30 days of receipt of the appeals packet.

41 (e) District court procedures for trials de novo. An appeal by a defendant pursuant to
42 Utah Code Ann. §78A-7-118(1) shall be accomplished by the following procedures:

43 (e)(1) If the defendant elects to go to trial, the district court will determine what
44 number and level of offenses the defendant is facing.

45 (e)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems
46 necessary, shall be held in accordance with these rules.

47 (e)(3) After the trial, the district court shall, if appropriate, sentence the defendant
48 and enter judgment in the case as provided in these rules and otherwise by law.

49 (e)(4) When entered, the judgment of conviction or order of dismissal serves to
50 vacate the judgment or orders of the justice court and becomes the judgment of the
51 case.

52 (e)(5) A defendant may resolve an appeal by waiving trial and compromising the
53 case by any process authorized by law to resolve a criminal case.

54 (e)(5)(A) Any plea shall be taken in accordance with these rules.

55 (e)(5)(B) The court shall proceed to sentence the defendant or enter such other
56 orders required by the particular plea or disposition.

57 (e)(5)(C) When entered, the district court's judgment or other orders vacate the
58 orders or judgment of the justice court and become the order or judgment of the case.

59 (e)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this section
60 may only seek to withdraw it pursuant to the provisions of Utah Code Ann. § 77-13-6.

61 (e)(6) Other dispositions. A defendant, at a point prior to judgment, by plea or trial,
62 may choose to withdraw the appeal and have the case remanded to the justice court.
63 Within 10 days of the defendant notifying the court of such an election, the district court
64 shall remand the case to the justice court.

65 (f) District court procedures for hearings de novo. If the appeal seeks a de novo
66 hearing pursuant to Utah Code Ann. § 78A-7-118(3) or (4); and

67 (f)(1) the court shall conduct such hearing and make the appropriate findings or
68 orders.

69 (f)(2) Within 10 days of entering its findings or orders, the district court shall remand
70 the case to the justice court , unless the case is disposed of by the findings or orders, or
71 the district court retains jurisdiction pursuant to §78A-7-118(6).

72 (g) Retained jurisdiction. In cases where the district court retains jurisdiction after
73 disposing of the matters on appeal, the court shall order the justice court to forward all
74 cash bail, other security, or revenues received by the justice court to the district court for
75 disposition. The justice court shall transmit such monies or securities within 20 days of
76 receiving the order.

77 (h) Other bases for remand. The district court may also remand a case to the justice
78 court if it finds that the defendant has abandoned the appeal.

79 (i) Justice court procedures on remand. Upon receiving a remanded case, the justice
80 court shall set a review conference to determine what, if any proceedings need be
81 taken. If the defendant is in custody because of the case being considered, such
82 hearing shall be had within five days of receipt of the order of remand. Otherwise, the
83 review conference should be had within 30 days. The court shall send notice of the
84 review conference to the parties at the addresses contained in the notice of appeal,
85 unless those have been updated by the district court.

86 (j) During the pendency of the appeal, and until a judgment, order of dismissal, or
87 other final order is entered in the district court, the justice court shall retain jurisdiction to
88 monitor terms of probation or other consequences of the plea or judgment, unless those
89 orders or terms are stayed pursuant to Rule 27A.



Fwd: Public Comments to URCrP 40

message

Alison Adams-Perlac <alisonap@utcourts.gov>
To: Jeni Wood <jeniw@utcourts.gov>

Tue, Mar 18, 2014 at 11:18 AM

—— Forwarded message ——

From: **Alison Adams-Perlac** <alisonap@utcourts.gov>
Date: Mon, Mar 17, 2014 at 12:08 PM
Subject: Public Comments to URCrP 40
To: Brent Johnson <brentj@utcourts.gov>

Dear Brent,

The public comment period for URCrP 40 is now closed. The proposal received two comments for the committee's consideration:

I support the change to rule 40. My name is Sheryl Worsley and I work for KSL Newsradio as the station's News Director. I also serve as the current president of the Utah Headliners, the local chapter of the Society of Professional Journalists. The move to make sealed search warrants open after six months automatically is a step in the right direction. In order for the public to be confident their government is functioning properly and in order to protect against abuse, it is imperative that government actions be open to the review of that public. If the judiciary has determined a person's Fourth amendment right against unreasonable search and seizure is out-weighed by a police or safety interest, the reason for removing that right should not be kept secret. I understand there are some cases where an investigation may be compromised by public disclosure for a time period close to the initial search and this rule addresses that by allowing prosecutors or police to request the seal again. What doesn't make sense is that a warrant could ever be sealed indefinitely. There are no decisions made by public servants which should be forever above scrutiny. I see this rule as a compromise between what we now have and the way it should be, so I support making this change.

Posted by Sheryl Worsley February 11, 2014 07:20 PM

Rule 40. I see no reason to allow government to have the ability to hide the ball any more than they already do. In a search warrant a confidential informant the police do now want known, will be labeled CI and juveniles are usually referred to by initials. I cannot see any valid reason to seal a SW for more than 20 days. This potentially violates the first amendment, fourth, fifth, and sixth. It is often times difficult for court clerks to even find a SW because they are not filed under the defendant's name or case number. What reason would we need this rule except to allow police and others the ability to have an unfair advantage in an already biased system that continually tries to get around our protections.

Posted by stephen February 6, 2014 04:24 PM

Transparency is great, but with 90% of the cases being resolved via plea bargaining and pleas in abeyance, what difference will it make? Not to mention the growing number of "qualifying" cases being scheduled under Early Case Resolution calendars. Legal defenders are striking deals for their "clients" in 30 days or less. Defendants

are threatened with maximum sentences if they even dare to think of taking their cases to trial. All they are told is what will happen if they are found guilty so the majority of them admit guilt to some reduced charge of "attempted possession" without even knowing all of the evidence against them, that's it, case closed. In other words, it's simply not enough. Requiring that there be exigent circumstances before any judge will consider signing an order permitting a SWAT team of heavily armed men to violently and forcibly enter any American's home to seize items such as those used to grow or ingest a plant that is now legally distributed and marketed on a state level for recreational use in Washington and Colorado and used medicinally in 17 other states some of which have the some of the largest populations out of all the 50 states.

Posted by Randomatchappenstance January 30, 2014 10:25 PM

I support the proposed changes to Rule 40, seeing them as a good first step toward improved transparency by the state courts when it comes to the handling of search warrants. These documents are vital public records whose timely release will serve as a critical check on potential abuses by law enforcement and prosecutors.

As a reporter who frequently covers public safety issues and the courts, I understand the government's legitimate interest in protecting confidential informants from harm. I also understand that individuals have a right to privacy. That said, the current practice of sealing search warrants indefinitely goes too far and fails to recognize the public's right to know what government officials are doing in its name.

Posted by Geoff Liesik January 29, 2014 10:18 PM

I support the proposed changes to Rule 40, but see this as only a step in the right direction. I am a investigative reporter for Standard-Examiner and a board member on the Utah Headliners Chapter of the Society of Professional Journalists.

Search warrants should be presumed public unless otherwise stated. Sealing a search warrant, as a general matter of practice should be abolished, because it is not in the interest of the public or it's safety. Rather it should be an exception to the rule. It harms the rights of the general public on multiple levels. Not only are journalists restricted from providing relevant details to the public for investigative stories uncovering public official misdeeds or unlawful search and seizures, it is more commonly an issue for attorneys working to come to a prompt resolution for their client and offer them a right to a speedy trial.

A search warrant is done by public officials doing the public's business. Unless there is a noted harm to society by releasing the information, it must be made public. As stated on the Utah State Courts website, access to search warrants allows protection to the public from "historical abusive searches by authorities."

If a timely review of a search warrant and the grounds the judge granted the warrant on are sealed indefinitely it potentially sends innocent people behind bars with no recourse.

No option for public scrutiny leads to a silencing of watchdogs seeking to ensure the Fourth Amendment right (of prohibiting unlawful search and seizure) is kept in tact.

Thank you for your consideration in this matter.

Posted by Cimaron Neugebauer January 28, 2014 11:40 AM

This is a terrible proposal. Six months is an entirely too long of period and limits public access to information that is necessary for one, good governance. The events surrounding the Swallow and Shurtleff investigations are prime example of why these warrants should be made public in a seasonable manner.

Further, while recognizing the need for investigative discretion, the rule apparently provides no standard as to what would justify granting an extension. This likely would result in pro forma requests being granted indefinitely. Such a change would decrease any incentive for prosecutors and police to diligently investigate a person of interest in a timely manner.

Finally, there should be no general provision for sealing the records indefinitely. If there is a concern about the reputational effect of an investigation that found no wrong doing or evidence insufficient of a crime, the solution is

more speech, let the issue be debated in public, *not* by restricting the flow of information.

Craig Buschmann
UT Bar No. 10696

Posted by Craig Buschmann January 27, 2014 10:29 AM

I support the proposed changes to Rule 40. I am on the board of the Utah Headliners Chapter of the Society of Professional Journalists. I was one of the chapter's two representatives in this matter. While the proposal does not provide everything the Headliners sought, it is a good first step toward increasing transparency and access in Utah's process for issuing search warrants. The proposal also maintains safeguards to ensure no criminal investigations will be disrupted by a public disclosure.

Posted by Nate Carlisle January 27, 2014 10:24 AM

Way to be transparent. What possible reason could justify sealing search warrants? Any information in the search warrant regarding "confidential informants" is already protected by the moniker "C.I".

Posted by Mike January 24, 2014 11:23 AM

You may view these comments on the web at http://www.utcourts.gov/cgi-bin/mt3/mt-comments.cgi?entry_id=3424.

Please let me know if you have any questions.

Thank you,
Alison

—
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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.

171

Rule 40.

Draft: December 16, 2013

172 Advisory Committee Notes

Formerly cited as MT R RCP Rule 6(a); MT R RCP Rule 6(b); MT R RCP Rule 6(c); MT R RCP Rule 6(d); MT R RCP Rule 6(e)

C

West's Montana Code Annotated Currentness

Title 25. Civil Procedure

▣ Chapter 20. Rules of Civil Procedure (Refs & Annos)

▣ Title II. Commencing an Action; Service of Process, Pleadings, Motions, and Orders

→ → **Rule 6. Computing and Extending Time; Time for Motion Papers**

(a) Computing Time. The following rules apply in computing any time period specified in these rules, or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

Federal Rules of Civil Procedure Rule 5

United States Code Annotated CurrentnessFederal Rules of Civil Procedure for the United States District Courts (Refs & Annos)

^ Title II. Commencing an Action; Service of Process, Pleadings, Motions, and Orders

*Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party:

- (A)** an order stating that service is required;
- (B)** a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;
- (C)** a discovery paper required to be served on a party, unless the court orders otherwise;
- (D)** a written motion, except one that may be heard ex parte; and
- (E)** a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) Seizing Property. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General. A paper is served under this rule by:

- (A)** handing it to the person;
- (B)** leaving it:
 - (i)** at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
 - (ii)** if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
- (C)** mailing it to the person's last known address--in which event service is complete upon mailing;
- (D)** leaving it with the court clerk if the person has no known address;

West's Annotated Code of West Virginia Currentness
State Court Rules
 ▣ Rules of Juvenile Procedure
 → → **RULE 2. Terminology**

As used in these rules:

- (a) "Division" or "DJS" means the West Virginia Division of Juvenile Services.
- (b) "Department" or "DHHR" means the West Virginia Department of Health and Human Resources.
- (c) "Multidisciplinary Team" or "MDT" means the treatment team convened to assess, plan and implement a comprehensive, individualized service and treatment plan for a juvenile and the juvenile's family involved in a status offense proceeding, or in a delinquency proceeding when the court is considering placing the juvenile in the department's custody or placing the juvenile out of home at the department's expense.
- (d) **Computation of Time**--When the number of days prescribed or allowed by these rules is fewer than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the **computation**; however, this provision has no application to detention hearing **time** frames or any **time** frame in these rules stated in **hours**.

CREDIT(S)

[Adopted effective July 1, 2010.]

Rules Juv. Proc., Rule 2, WV R RJP Rule 2

Current with amendments received through 12/1/13

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