

# Administrative Office of the Courts

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## AGENDA

### 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

May 23, 2007 - 5:15 p.m.

- |    |                                 |              |
|----|---------------------------------|--------------|
| 1. | WELCOME AND APPROVAL OF MINUTES | Laura Dupaix |
| 2. | RULE 15.5 REPORT                | Laura Dupaix |
| 3. | RULE 24(k)                      | Laura Dupaix |
| 4. | RULE 40 COMMENT                 | Laura Dupaix |
| 5. | RULE 18 SUBCOMMITTEE            |              |
| 6. | OTHER SUBCOMMITTEE REPORTS      |              |
| 7. | OTHER BUSINESS                  |              |
| 8. | ADJOURN                         |              |

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

## Rules - Comments

### Comments: Rules of Criminal Procedure

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Line 60: Caption refers to forwarding of record to court with jurisdiction but I don't see that required in the rule. If that's a requirement, it would be helpful to identify exactly what it means - is it about whether it's filed in Justice Court v. District Court or in the County where the search takes place?

Line 62: Not sure that requiring the magistrate to "seal" the is necessarily practical. The magistrate may not be somewhere where he or she has envelopes, etc.

Line 69: Requiring the warrant to be put in a sealed envelope for 20 days is unnecessarily cumbersome. The clerks office has the ability to protect the warrants from public view when necessary and should be allowed to do so in whatever way works for that organization.

Line 122: I don't know if they should have to go to the judge who signed the warrant if available or can go to any judge with an application to have sealed longer.

Posted by Peggy Gentles April 5, 2007 04:49 PM

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Approved effective April 30, 2007 as an expedited amendment under Rule 11-101(6)(F). Subject to further change after the comment period.

1 **Rule 40. Remotely Communicated 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 time.

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

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

13 (b) Grounds for issuance.

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

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

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

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

20 (c) Conditions precedent to issuance.

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

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

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30 warrant such conditions that reasonably afford protection of the following interests of the person or  
31 entity in possession of such evidence:

32 [(a)] (c)(2)(A) protection against unreasonable interference with normal business;

33 [(b)] (c)(2)(B) protection against the loss or disclosure of protected confidential sources of  
34 information; or

35 [(c)] (c)(2)(C) protection against prior or direct restraints on constitutionally protected rights.

36 (d) Search warrant served in readable form.

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

39 (e) Time for service – Officer may request assistance.

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

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

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

49 (f) Receipt for property taken.

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

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

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

57 (h) Safekeeping of property.

58 The officer seizing the property shall be responsible for its safekeeping and maintenance until the

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59 court otherwise orders.

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

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

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

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

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

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

77 (j) Findings required for service without notice.

78 If the magistrate finds upon proof, under oath, that the object of the search may be quickly destroyed,  
79 disposed of, or secreted, or that physical harm may result to any person if notice were given, the  
80 magistrate may direct that the officer need not give notice of authority and purpose before entering  
81 the premises to be searched.

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

84 In addition to other warrants provided by this rule, a magistrate, upon a showing of probable cause  
85 to believe a state, county, or city law or ordinance, has been violated in relation to health, safety,  
86 building, or animal cruelty, may issue a warrant for the purpose of obtaining evidence of a violation.

87 A warrant may be obtained from a magistrate upon request of a peace officer or state, county, or

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

92 *(l) Remotely communicated search warrants.*

93 ~~[(a)]~~ (1)(1) Means of communication. When reasonable under the circumstances, a search warrant  
94 may be issued upon sworn or affirmed testimony of a person who is not in the physical presence of  
95 the magistrate, provided the magistrate is satisfied that probable cause exists for the issuance of the  
96 warrant. All communication between the magistrate and the peace officer or prosecuting attorney  
97 requesting the warrant may be remotely transmitted by voice, image, text, or any combination of  
98 those, or by other means.

99 ~~[(b)]~~ (1)(2) Communication to be recorded. All testimony upon which the magistrate relies for a  
100 finding of probable cause shall be on oath or affirmation. The testimony and content of the warrant  
101 shall be recorded. Recording shall be by writing or by mechanical, magnetic, electronic,  
102 photographic storage or by other means.

103 ~~[(c)]~~ (1)(3) Issuance. If the magistrate finds that probable cause is shown, the magistrate shall issue  
104 a search warrant.

105 ~~[(d)]~~ (1)(4) Signing warrant. Upon approval, the magistrate may direct the peace officer or the  
106 prosecuting attorney requesting ~~[the]~~ a warrant from a remote location to sign the magistrate's name  
107 on ~~[the]~~ a warrant at a remote location.

108 ~~[(e)]~~ (1)(5) Filing of warrant and testimony. The warrant and recorded testimony shall be retained  
109 by and filed with the court pursuant to Section (i). Filing may be by writing or by mechanical,  
110 magnetic, electronic, photographic storage or by other means.

111 ~~[(f) Original testimony and warrant. "Recorded testimony" includes the original recording of~~  
112 ~~testimony or any copy, printout, facsimile, or other replication of testimony that is intended by the~~  
113 ~~person making the recording to have the same effect as the original testimony. "Warrant" includes~~  
114 ~~an original written or recorded warrant or any copy, printout, facsimile or other replica intended by~~  
115 ~~the magistrate issuing the warrant to have the same effect as the original.]~~

16 ~~[(g)]~~ (1)(6) Usable copies made available. Except as provided in Sections (i) and (m) of this rule, any

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117 person having standing [~~to request suppression of evidence discovered as a result of the search]~~  
118 may request and shall be provided with a copy of the warrant and a copy of the recorded testimony  
119 submitted in support of the application for the warrant. The copies shall be provided in a reasonably  
120 usable form.

121 *(m) Sealing and Unsealing of Search Warrant Documents*

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

126 *(m)(1)(A) applications for search warrants;*

127 *(m)(1)(B) search warrants;*

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

129 *(m)(1)(D) the application, affidavits or other recorded testimony and order for sealing the*  
30 *documents.*

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

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

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

136 *or*

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

138 Sealed documents shall be maintained in a file not available to the public. If a document is not sealed  
139 in its entirety, the court may order a copy of the document with the sealed portions redacted to be  
140 placed in the public file and an un-redacted copy to be placed in the sealed file. Except as required  
141 by Section (i), no document may be designated as "Filed under Seal" or "Confidential" unless it is  
142 accompanied by a court order sealing the document.

143 *(m)(3) Unsealing of documents.* Any person having standing may file a motion to unseal search  
144 warrant documents with notice to the prosecutor and law enforcement agency. If the prosecutor or  
45 law enforcement agency files an appropriate and timely objection to the unsealing, the court may

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146 hold a hearing on the motion and objection. Where no objection to unsealing the documents is filed,  
147 the defendant may prepare an order for entry by the court. The court may order the unsealing of the  
148 documents or order copies of the documents to be delivered to a designated person without unsealing  
149 the documents and require the person receiving the documents not to disclose the contents to any  
150 other person without the authorization of the court.

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

153 **URCrP 40**

154 **Advisory Committee Notes**

155 (a) This section is adapted from former Sec. 77-23-201 Utah Code Ann.

156 (b) This section is adapted from former Sec. 77-23-202 Utah Code Ann.

157 (c) This section is adapted from former Sec. 77-23-203 Utah Code Ann.

58 (d) This section is adapted from former Sec. 77-23-204 Utah Code Ann.

159 (e) This section is adapted from former Sec. 77-23-205 Utah Code Ann.

160 (f) This section is adapted from former Sec. 77-23-206 Utah Code Ann. The statute contained the  
161 words "Failure to give or leave a receipt does not render the evidence seized inadmissible at trial."  
162 This rule is not a departure from that original legislative intent. While the committee did not  
163 consider it necessary to address admissibility in a procedural rule, the elimination of that language  
164 does not suggest that failure to comply with the receipt requirement should be a basis for exclusion  
165 of the evidence seized.

166 (g) This section is adapted from former Sec. 77-23-207 Utah Code Ann.

167 (h) This section is adapted from former Sec. 77-23-208 Utah Code Ann.

168 (i) Subsection (1) is added in compliance with the order of the Utah Supreme Court in Anderson v.  
169 Taylor, 2006 UT 79. Subsection (2) is added to allow for a planned electronic search warrant system  
170 operated by the Utah Bureau Of Criminal Identification, or other systems which might be employed  
171 by a magistrate. This provision supercedes the supervisory orders of the Court in Anderson v. Taylor  
172 for that purpose. (j) This section is adapted from former Sec. 77-23-210(2) Utah Code Ann.

73 (k) This section is adapted from former Sec. 77-23-211 Utah Code Ann.

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174 (l) This section was formerly Rule 40 Remotely Communicated Search Warrants. Terms used are  
175 intended to be interpreted liberally in order to facilitate remote communications as a means of  
176 applying for and issuing search warrants while at the same time preserving the integrity of the  
177 probable cause application and the terms of warrants that are authorized.  
178 (m) (New section)  
179