

Rule 4.1. Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means

(a) IN GENERAL. A judge may consider information communicated by telephone or other reliable electronic means when reviewing a complaint or deciding whether to issue a warrant or summons.

(b) PROCEDURES. If a judge decides to proceed under this rule, the following procedures apply:

(1) *Taking Testimony Under Oath*. The judge must place under oath—and may examine—the applicant and any person on whose testimony the application is based.

(2) *Creating a Record of the Testimony and Exhibits*.

(A) *Testimony Limited to Attestation*. If the applicant does no more than attest to the contents of a written affidavit submitted by reliable electronic means, the judge must acknowledge the attestation in writing on the affidavit.

(B) *Additional Testimony or Exhibits*. If the judge considers additional testimony or exhibits, the judge must:

(i) have the testimony recorded verbatim by an electronic recording device, by a court reporter, or in writing;

(ii) have any recording or reporter's notes transcribed, have the transcription certified as accurate, and file it;

(iii) sign any other written record, certify its accuracy, and file it; and

(iv) make sure that the exhibits are filed.

(3) *Preparing a Proposed Duplicate Original of a Complaint, Warrant, or Summons*. The applicant must prepare a proposed duplicate original of a complaint, warrant, or summons, and must read or otherwise transmit its contents verbatim to the judge.

(4) *Preparing an Original Complaint, Warrant, or Summons*. If the applicant reads the contents of the proposed duplicate original, the judge must enter those contents into an original complaint, warrant, or summons. If the applicant transmits the contents by reliable electronic means, the transmission received by the judge may serve as the original.

(5) *Modification*. The judge may modify the complaint, warrant, or summons. The judge must then:

(A) transmit the modified version to the applicant by reliable electronic means; or

(B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

(6) *Issuance*. To issue the warrant or summons, the judge must:

(A) sign the original documents;

(B) enter the date and time of issuance on the warrant or summons; and

(C) transmit the warrant or summons by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.

(c) SUPPRESSION LIMITED. Absent a finding of bad faith, evidence obtained from a warrant issued under this rule is not subject to suppression on the ground that issuing the warrant in this manner was unreasonable under the circumstances.

COMMENT TO 2017 AMENDMENTS

This new rule is substantially identical to its federal counterpart, adopted in 2011. The federal rule brought together in one rule the procedures for using a telephone or other reliable electronic means for reviewing complaints and applying for and issuing warrants and summonses. Such procedures are new to the Superior Court rules.

The rule permits a judge to issue a warrant or summons based on sworn information communicated to the judge by telephone or other reliable electronic means. Like its federal counterpart, this rule provides that, absent a finding of bad faith, evidence seized pursuant to a warrant issued in that manner will not be subject to suppression on the ground that issuing the warrant in that manner was unreasonable under the circumstances. Like the federal rule, this rule does not purport to address suppression of seized evidence based on a claim that the warrant was issued in violation of the Constitution.