

Rule 41. Search and Seizure

(a) **SCOPE AND DEFINITION.** This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances. The term “property” as used in this rule includes documents, books, papers, any other tangible objects, and information.

(b) **AUTHORITY TO ISSUE A WARRANT.** A search warrant authorized by this rule may be issued by a judge.

(c) **PERSONS OR PROPERTY SUBJECT TO SEARCH OR SEIZURE.** A warrant may be issued for any of the following:

- (1) evidence of a crime;
- (2) contraband, fruits of crime, or other items illegally possessed;
- (3) property designed for use, intended for use, or used in committing a crime; or
- (4) a person to be arrested or a person who is unlawfully restrained.

(d) **OBTAINING A WARRANT.**

(1) *Probable Cause.* Upon application of a law enforcement officer or attorney for the government, a judge may issue a search warrant if there is probable cause to search for and seize a person or property under Rule 41(c). The finding of probable cause may be based upon hearsay evidence in whole or in part.

(2) *Application for Search Warrants.*

(A) *In General.* Each application for a search warrant, which may include depositions or affidavits of other persons containing allegations of fact supporting or tending to support those contained in the application, must be made upon oath to a judge and must include:

- (i) the name and title of the applicant;
- (ii) a statement that there is probable cause to believe that property or persons described in Rule 41(c) as subject to seizure are likely to be found in a designated premise, in a designated vehicle or object, or upon designated persons;
- (iii) allegations of fact supporting such statement; and
- (iv) a request that the judge issue a search warrant directing a search for and seizure of the property or person in question.

(B) *Applications for Warrants to be Executed at Any Time.* The application may contain a request that the search warrant be made executable at any hour of the day or night, if accompanied and supported by allegations of fact supporting that:

- (i) there is probable cause to believe that it cannot be executed during the hours of daylight;
 - (ii) the property sought is likely to be removed or destroyed if not seized forthwith;
- or
- (iii) the property or person sought is not likely to be found except at certain times or in certain circumstances.

(C) *Requesting a Warrant in the Presence of a Judge.*

(i) *Warrant on an Affidavit.* When a law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(ii) *Warrant on Sworn Testimony.* The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

(iii) *Recording Testimony.* Testimony taken in support of a warrant must be recorded by a court reporter or by a suitable recording device, and the judge must file the transcript or recording with the clerk, along with any affidavit.

(D) *Requesting a Warrant by Telephonic or Other Reliable Electronic Means.* In accordance with Rule 4.1, a judge may issue a warrant based on information communicated by telephone or other reliable electronic means.

(e) CONTENTS OF THE WARRANT.

(1) *In General.* A search warrant must contain:

(A) The name of the issuing court, the name and signature of the issuing judge, and the date of issuance;

(B) If the warrant is addressed to a specific law enforcement officer, the name of that officer, otherwise, the classifications of officers to whom the warrant is addressed;

(C) A designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(D) A description of the property or person whose seizure is the object of the warrant;

(E) A direction that the warrant be executed during the hours of daylight, or an authorization for execution at any time of the day or night where:

(i) the judge has found cause therefor under Rule 41(d)(2)(B); or

(ii) the warrant is issued under D.C. Code § 48-921.02 (2014 Repl.); and

(F) A direction that the warrant and an inventory of any property or person seized pursuant thereto be returned to the court on the next court day after its execution.

(2) *Warrant Seeking Electronically Stored Information.* A warrant under this rule may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in this rule refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

(f) EXECUTING AND RETURNING THE WARRANT.

(1) *Time of Execution.* A search warrant must not be executed more than 10 days after the date of issuance. A search warrant may be executed on any day of the week and, in the absence of express authorization in the warrant, must be executed only during hours of daylight.

(2) *Place of Execution.* A search warrant may be executed anywhere within the District of Columbia.

(3) *Manner of Execution.* An officer executing a warrant directing a search of a dwelling house, other building, or vehicle may break and enter any of these premises pursuant to 18 U.S.C. § 3109. An officer executing a warrant directing a search of a person must give, or make reasonable effort to give, notice of the officer's identity and purpose to the person.

(4) *Noting the Time.* An officer executing the warrant must enter on its face the exact date and time it is executed.

(5) *Inventory*. An officer executing a search warrant must write and subscribe an inventory setting forth the property or person seized under it. In a case involving the seizure of electronic storage media or the seizure or copying of electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied. The officer may retain a copy of the electronically stored information that was seized or copied.

(6) *Receipt*. An officer executing the warrant must:

(A) give a copy of the warrant and the inventory to the person from whom, or from whose premises, the property was taken; or

(B) if that person is not present, leave a copy of the warrant and the inventory with an occupant, custodian, or other person present, or if no person is present, at the place where the officer took the property.

(7) *Return*. An officer must return a copy of the warrant—together with a copy of the inventory—to the court on the next court day after its execution. The officer may do so by reliable electronic means.

(8) *Disposition of Seized Property*. Property seized in the execution of the warrant must be safely kept for use as evidence. No property seized shall be released or destroyed except in accordance with law and upon order of a court or an attorney for the government.

(g) **MOTION TO RETURN PROPERTY**. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

(h) **MOTION TO SUPPRESS**. A defendant may move to suppress evidence, as Rule 12 provides.

COMMENT TO 2017 AMENDMENTS

Subsection (d)(2)(A) of this rule has been amended to recite the things which may be contained in a warrant application before the itemized list of things that must be included. No change of substance is intended. Subsections have been renumbered accordingly.

In terms identical to the federal rule, subsection (d)(2)(C)(ii) of this rule permits a judge to accept sworn testimony, which must be recorded, in person rather than or in addition to in writing, if it is reasonable to do so. Subsection (d)(2)(D), like its federal counterpart, refers to the new Rule 4.1 (Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means) and permits search warrants to be sought and approved by reliable electronic means. The amendment is identical to the 2011 amendment to the federal rule.

Subsection (e)(2) of this rule is new and is substantially identical to its federal counterpart, as amended in 2009. As explained more fully in the Advisory Committee Notes to that amendment, computers and other electronic storage media commonly contain such large amounts of information that it is often impractical for law enforcement to review all of the information during execution of the warrant at the search location. This rule acknowledges the need for a two-step process: officers may seize or copy the

entire storage medium and review it later to determine what electronically stored information falls within the scope of the warrant.

The last two sentences of subsection (f)(5) of this rule are identical to subsection (f)(l)(B) of the federal rule, as amended in 2009. As explained in the Advisory Committee Note to the 2009 federal amendment:

The [former] rule [did] not address the question of whether the inventory should include a description of the electronically stored information contained in the media seized. Where it is impractical to record a description of the electronically stored information at the scene, the inventory may list the physical storage media seized. Recording a description of the electronically stored information at the scene is likely to be the exception, and not the rule, given the large amounts of information contained on electronic storage media and the impracticality for law enforcement to image and review all of the information during the execution of the warrant. This is consistent with practice in the “paper world.” In circumstances where filing cabinets of documents are seized, routine practice is to list the storage devices, i.e., the cabinets, on the inventory, as opposed to making a document by document list of the contents.

Subsection (f)(7) has been amended, in terms identical to the federal rule, to permit an officer to return a search warrant by reliable electronic means.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) excludes definitions that are not applicable to Superior Court practice.

Paragraph (b) omits language dealing with the authority of certain judges and federal magistrates to issue search warrants.

Subparagraph (d)(1) retains the language of the former rule regarding the use of hearsay to support probable cause. The language was removed from the federal rule as unnecessary, in part because this principle is addressed in *Federal Rule of Evidence 1101*. Because this jurisdiction has not adopted the Federal Rules of Evidence, the Superior Court rule did not follow this change.

Subparagraphs (d)(2)-(4) retain the language of paragraph (c) of the former rule.

Paragraph (e) retains the language of paragraph (d) of the former rule, and is analogous to *Federal Rule 41(e)(2)*. Its provisions conform to D.C. Code § 23-521 et seq. (2012 Repl.). Subparagraph (e)(5) has been added to make explicit that a search warrant for controlled substances must contain a direction that it may be served at any time of day or night. See D.C. Code § 48-921.02 (h) (2014 Repl.).

Subparagraphs (f)(1)-(3), which have no federal counterpart, retain the language of subparagraphs (e)(1)-(3) of the former rule. Subparagraph (f)(3) cites *18 U.S.C. § 3109* (the federal “knock and announce” statute), which is made applicable by D.C. Code § 23-524 (a) (2012 Repl.).