

IN THE SUPREME COURT, STATE OF WYOMING

October Term, A.D. 2014

In the Matter of Amendments to)
Rule 41 of the Wyoming)
Rules of Criminal Procedure)

**ORDER ADOPTING AMENDMENTS TO RULE 41 OF THE
WYOMING RULES OF CRIMINAL PROCEDURE**

The Permanent Rules Advisory Committee, Criminal Division, has recommended that the Court amend Rule 41 of the Wyoming Rules of Criminal Procedure. The Court finds the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Rule 41 of the Wyoming Rules of Criminal Procedure, attached hereto, be, and hereby are, adopted by the Court to be effective July 1, 2015; and it is further

ORDERED that this order and the amendments to Rule 41 be published in the advance sheets of the Pacific Reporter; the amendments to Rule 41 be published in the Wyoming Court Rules Volume; and that this order and the amendments to Rule 41 be published online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The amendments to Rule 41 shall thereafter be spread at length upon the journal of this Court.

DATED this 3rd day of February, 2015.

BY THE COURT:

/s/

E. JAMES BURKE
Chief Justice

Wyoming Rules of Criminal Procedure

Rule 41. Search and seizure.

(a) Scope and Definitions.

(1) Scope. This rule does not modify any law inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made.

(2) Definitions. The following definitions apply under this rule.

(A) "Property" includes documents, books, papers, any other tangible objects and information.

(B) "Tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

~~(a-)~~ b) Authority to issue warrant. Upon the request of the attorney for the state or a federal, state, or local peace officer, a search warrant authorized by this rule may be issued by a judicial officer. If issued by a judicial officer other than a district judge it shall be by a judicial officer for the jurisdiction wherein the property sought is located.

~~(b-)~~ c) Property or persons which may be seized with a warrant. A warrant may be issued under this rule to search for and seize any:

(1) Property that constitutes evidence of the commission of a criminal offense;

(2) Contraband, the fruits of crime, or things otherwise criminally possessed;

(3) Property designed or intended for use or which is or has been used as the means of committing a criminal offense; or

(4) Person for whose arrest there is probable cause, or who is unlawfully restrained.

~~(c-)~~ d) Issuance of warrant. A warrant shall issue on an affidavit sworn to before a person authorized by law to administer oaths and establishing the grounds for issuing the warrant. If the judicial officer is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, the judicial officer shall issue a warrant particularly identifying the property or person to be seized and naming or describing the person or place to be searched. Before ruling on a request for a warrant the judicial officer may require the ~~affiant~~ applicant to appear personally and may examine under oath the ~~affiant~~ applicant and any witnesses the ~~affiant~~ applicant may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. ~~The warrant shall be directed to any officer authorized to enforce or assist in enforcing the state law. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property or person specified. The warrant shall direct that it be served between 6 a.m. and 10 p.m., unless the issuing authority, by appropriate provision in the warrant, and reasonable cause shown, authorizes its execution at other times. It shall~~

~~designate the judicial officer to whom it shall be returned.~~ The following additional rules may apply:

(1) Warrant on Sworn Testimony. The judicial officer may wholly or partially dispense with a written affidavit and base a warrant on recorded sworn testimony, which record shall be preserved as if in writing.

(2) Recording Testimony. Testimony taken in support of a warrant must be preserved by a court reporter or by recording device.

(3) Requesting a Warrant by Telephonic or Other Reliable Electronic Means. A judicial officer may issue a warrant based on information communicated by telephone or other reliable electronic means.

(4) Procedures for Telephonic or Electronic Warrant. If a judicial officer proceeds under this rule, the following procedures apply:

(A) Taking Testimony Under Oath. The judicial officer must place under oath--and may examine--the applicant and any person on whose testimony the application is based.

(B) 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 judicial officer must acknowledge the attestation in writing on the affidavit.

(C) Preparing a Proposed Duplicate Original of a Warrant. The applicant must prepare a proposed duplicate original of a warrant and must read or otherwise transmit its contents verbatim to the judicial officer.

(D) Preparing an Original Warrant. If the applicant reads the contents of the proposed duplicate original, the judicial officer must enter those contents into an original warrant. If the applicant transmits the contents by reliable electronic means, the transmission received by the judicial officer may serve as the original.

(E) Modification. The judicial officer may modify the warrant. The judicial officer must then:

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

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

(e) Contents of Warrant. The warrant shall be directed to any peace officer authorized to enforce or assist in enforcing the state law. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall designate the judicial officer to whom it shall be returned.

(1) Warrant to Search for and Seize a Person or Property. Except for a tracking device warrant, the warrant must identify the person or property to be searched, identify any person or property to be seized, and designate a judicial officer to whom it must be returned. The warrant must command the peace officer to:

(A) initiate execution of the warrant within a specified time not to exceed 10 days;

(B) execute the warrant during the hours of 6:00 a.m. to 10:00 p.m., unless the judicial officer for good cause expressly authorizes, in the warrant, execution at another time.

(2) Warrant Seeking Electronically Stored Information. A warrant under Rule 41(e)(1) 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 Rule 41(e)(1) and (f)(1)(A) refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

(3) Warrant for a Tracking Device. A tracking device warrant must identify the person or property to be tracked, designate a judicial officer to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The warrant must command the peace officer to:

(A) complete any installation authorized by the warrant within a specified time not to exceed 10 days;

(B) perform any installation authorized by the warrant during the hours of 6:00 a.m. to 10:00 p.m., unless the judicial officer for good cause expressly authorizes, in the warrant, execution at another time; and

(C) return the warrant to the judicial officer designated in the warrant.

~~(d-f) Execution of warrant and return with inventory. The warrant may be executed only within 10 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken, a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made within five days after execution unless the time is extended for good cause and in writing by the judicial officer issuing the warrant and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judicial officer shall upon request deliver a~~

~~copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.~~

(1) Warrant to Search for and Seize a Person or Property.

(A) Noting the Time. The peace officer executing the warrant must enter on it the exact date and time it was executed.

(B) Inventory. A peace officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The peace officer must do so in the presence of another peace officer and the person from whom, or from whose premises, the property was taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. 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 peace officer may retain a copy of the electronically stored information that was seized or copied. If the warrant is self-executing by the person or entity believed to be in possession of the electronically stored information, the warrant shall be considered to have been executed on the date of its transmission to the person or entity. Within 5 days of receiving the information sought in a self-executing warrant the peace officer executing the warrant must make a return to the judicial officer designated in the warrant.

(C) Receipt. The peace officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property.

(D) Return. The peace officer executing the warrant must promptly return it within five days of seizing the property -- together with a copy of the inventory -- to the judicial officer designated on the warrant. The peace officer may do so by reliable electronic means. The judicial officer must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

(2) Warrant for a Tracking Device.

(A) Noting the Time. The peace officer executing a tracking device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) Return. Within 5 days after the use of the tracking device has ended, the peace officer executing the warrant must file a return to the judicial officer designated in the warrant. The peace officer may do so by reliable electronic means.

(C) Service. Within 10 days after the use of the tracking device has ended, the peace officer executing a tracking device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who was tracked or whose property was tracked, or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location, and by mailing a copy to the person's last known address. Upon the applicant demonstrating good cause, the judicial officer may delay notice as provided in Rule 41(f)(3), below.

(3) Delayed Notice. Upon the applicant demonstrating good cause, a judicial officer may delay any notice required by this rule for a reasonable period of time to be noted on the warrant.

~~(e- g)~~ *Motion for return of property.* A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the court in which charges are pending or if charges have not been filed the court from which the warrant issued for the return of the property on the ground that such person is entitled to lawful possession of the property. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings. If a motion for return of property is made or comes on for hearing after criminal charges have been filed, it shall be treated also as a motion to suppress under Rule 12.

~~(f- h)~~ *Filing of papers with clerk.* The judicial officer ~~who has issued a search warrant designated to receive the return~~ shall attach to the warrant the copy of the return, inventory and all of the papers in connection therewith and shall file them with the clerk of the district or circuit court in the county in which the property was seized.

~~(g- i)~~ *Motion to suppress.* A motion to suppress evidence may be made in the court where the case is to be tried as provided in Rule 12.

~~(h)~~ *Scope and definition.* ~~This rule does not modify any law inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers and any other tangible objects.~~

~~(i- j)~~ *Confidentiality of information.* All information filed with the court for the purpose of securing a warrant for a search, including but not limited to an application, affidavits, papers and records, shall be a confidential record until such time as a peace officer has executed the warrant and has made return thereon. During the period of time the information is confidential, it shall be sealed by the court, and the information contained therein shall not be disseminated to any person other than a peace officer, judge, court commissioner or another court employee, in the course of official duties.
