



MINNESOTA JUDICIAL TRAINING UPDATE



TELEPHONIC SEARCH WARRANTS – 7 STEPS

QUESTION: Although It Doesn't Occur Often, What Happens If You Receive A Phone Call At 3 a.m. From Law Enforcement Asking You To Approve A *Telephonic Search Warrant*? What Standard Do You Apply And What 7 Procedural Steps Must Be Followed For A *Telephonic Search Warrant* To Be Lawful? *Minn. R. Crim. Pro. 36.01* And *State V. Lindsey, 473 N.W.2d 857 (Minn. 1993); State v. Raines, 709 N.W.2d 273 (Minn. App. 2006)*.



FIRST DETERMINATION – IS THE REQUEST REASONABLE?

A request for a *telephonic search warrant* may only be made in circumstances that make it reasonable to dispense with a written affidavit. The following are 3 factors the court should consider in making this determination:

- a. The officer cannot reach the judge in his office during regular court hours;
- b. The officer making the search is a significant distance from the judge;
- c. The need for a search is such that, without the telephonic procedure, a search warrant could not be obtained and there would be a significant risk that evidence would be destroyed.

THERE ARE (7) PROCEDURAL STEPS THE COURT MUST FOLLOW:

- (1) **Record The Entire Conversation. The Judge (Or Requesting Officer) Must Record Verbatim (Electronically, Stenographically, Or By Longhand) The Testimony Of All Persons Involved In Making The Warrant Application.**
 - (a) Judges are cautioned to avoid engaging in any preliminary unrecorded and unsworn conversation with the officer or prosecutor. See ABA Guidelines for the Issuance of Search Warrants, Guideline 11(3) (1990).

- (2) Place Under Oath The Applicant (Officer) And Each Person Who Will Testify.**
- (3) The Officer Must Prepare and Read Verbatim To The Judge The ‘Application For Search Warrant and Warrant’ (Called the ‘Duplicate Original Warrant’)**
- (4) The Judge Must Prepare An ‘Original Warrant’ By Recording, Verbatim, What Has Been Read By The Officer. Any Modifications Made By The Judge Must Be Included On The Original And The Duplicate Original Warrant.**
 - (a) It is recommended judges keep Search Warrant forms at home for this purpose; or the officer could email the completed Search Warrant forms to the judge; or if all else fails the judge can prepare the original search warrant longhand.
- (5) Upon A Finding Of “Probable Cause,” The Judge Directs The Officer To Sign The Judge’s Name On The Duplicate Original Warrant (include date and time).**
- (6) The Judge Then Signs The Original Warrant And Enters On The Face Of The Original Warrant The Exact Time The Judge Signed It.**
- (7) After Warrant is Issued, The Following Post Procedures MUST Be Followed:**
 - (a) The recording must be transcribed, as soon as practical.
 - (b) The actual tape recording and transcription must be submitted to the judge, as soon as practical.
 - (c) The judge must certify the accuracy of the transcription. If the record is longhand the judge must sign it.
 - (d) The following must be filed with the court within 10 days. *See Rule 33.04.*
 - (i) the original warrant (the one prepared by the judge)
 - (ii) the duplicate original warrant (the one prepared by the officer)
 - (iii) the certified transcript of the recorded oral application
 - (iv) the actual tape recording (or other medium used to record, i.e. longhand)

Note: Please keep in mind that in addition to the special requirements for issuance of a *telephonic search warrant*, all other requirements for the issuance of a warrant must also be met, including the basis for a no-knock and nighttime warrant. *See Minnesota Judicial Training Update 10-3 “Search Warrants: 3 Basic Rules That Every Judge Must Know And 9 Additional Rules That Every Judge Should Know; March 11, 2010; Minn. Stat. sec. 626.01 – 18; 629.30.*