

## CrR 41. SEARCH AND SEIZURE

(a) and (b) [Reserved].

**(c) Telephonic Search Warrant Applications.** Telephonic search warrant applications may be made to a full-time magistrate judge unless otherwise ordered by a United States district judge of this district. One magistrate judge shall be designated at all times, on a rotating basis, to receive warrant applications. Whenever possible, the magistrate judge shall have voice recording equipment available to record all telephonic applications for search warrants.

(1) A telephonic application for a search warrant shall be made with the prior approval of the U.S. Attorney, or an assistant U.S. Attorney, for this district. Whenever possible:

(A) The application shall be made by conference call in which both a law enforcement agent and an assistant U.S. Attorney are able to converse with the magistrate judge.

(B) Prior to calling the magistrate judge, the law enforcement agent and the assistant U.S. Attorney shall have agreed to a form of affidavit which can be read to the magistrate judge verbatim insofar as circumstances permit.

(2) The magistrate judge must decide whether it is reasonable to dispose with a written affidavit before authorizing a telephonic search warrant application. Among the factors the magistrate judge may consider in making this determination are:

(A) Whether the agent can appear before the magistrate judge during regular court hours;

(B) Whether the agent requesting a search warrant is a significant distance from the magistrate judge;

(C) Whether the factual situation is such that it would be unreasonable for a substitute agent, who is located near the magistrate judge, to present a written affidavit in person to the magistrate judge in lieu of proceeding with a telephonic application; and,

(D) The possibility that if a search warrant were not issued pursuant to the telephone application, there would be a significant risk that evidence would be destroyed.

(3) On the first day following the issuance of a search warrant based on a telephonic application, the magistrate judge shall have a duplicate tape made of the application, furnish that tape to the U.S. Attorney's Office who shall cause a transcription of the tape to be made and returned to the magistrate judge.

(4) Deviation from the procedures set forth in this rule may be grounds for the magistrate judge to refuse a warrant application, but shall not necessarily be grounds for a motion to suppress evidence which has been seized.

**(d) through (h) [Reserved].**

[Effective May 1, 1992; amended effective July 1, 1997.]