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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of	Supreme Court No. R-23-_____
PETITION TO AMEND RULE)
2.6 ARIZONA RULES OF)
CRIMINAL PROCEDURE)
_____)

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully requests this Court amend Rule 2.6 of the Rules of Criminal Procedure concerning the return on a search warrant.

I. Purpose of the Proposed Rule Amendment.

On August 29, 2022, the Arizona Supreme Court adopted new Rule 2.6 to the Rules of Criminal Procedure, effective March 1, 2023, concerning search warrant applications and data collection. In preparation to implement the data collection portion of the new rule, we learned that search warrant returns are often made by law enforcement to magistrates at a court other than the one that issued the warrant.

This practice inhibits the ability for courts to effectively manage the status of warrants and to collect meaningful data because it is difficult for courts to match a return with the search warrant.

The primary purpose of the proposed rule amendment is to require that the procedure for returns on search warrants be made to the court of the magistrate that issued the warrant. This requirement will facilitate the management of warrants and the collection of data sought in accordance with Rule 2.6. In addition, allowing returns to be made by electronic means, instead of in person, should reduce the burden on both law enforcement and the court.

II. Proposed Rule Changes

a. Return to Court of Magistrate That Issued Warrant

A.R.S. § 13-3921(A) requires the officer to “return the warrant to the magistrate,” which supports that the return is to be made to the magistrate that issued the warrant. In addressing the time of the return, A.R.S. § 3918(A) states that the search warrant is to be “returned to a magistrate” within three days. The use of the article “a” in A.R.S. § 3918(A) may have inadvertently prompted some officers to submit their returns to whichever court is most convenient without considering A.R.S. § 13-3921(A). Clarifying the procedure in rule to require that the return is to be made to the court of the magistrate that issued the warrant will allow the return to be correctly paired with the warrant. Currently, courts receiving a return on a

warrant issued by another court attempt to forward the return to the court that issued the warrant. The procedure specified in the proposed rule would eliminate the need for courts to forward returns. The proposed rule also clarifies that the clerk of the magistrate's court that issues the warrant is responsible for maintaining the record of the warrant and any return.

b. Facilitate Electronic Delivery of Returns and Alternatives

Returns are frequently made by law enforcement officers to magistrates in person, reportedly as a holdover from historical practices. The proposed amendment allows delivery of the return to be made by electronic means¹ or in a manner permitted by the court. This permissive language allows local courts the flexibility to continue to use procedures they already have in place to receive returns or to adopt new practices. Under the proposed amendment, returns could also continue to be made by facsimile as contemplated in A.R.S. § 13-3915 or in person.

c. Verify Inventory Through Signed, Written Oath

The proposed rule requires that the inventory contain a true and detailed account of all the property taken and be verified as required by A.R.S. § 13-3921(A)

¹ The Superior Court in Maricopa County facilitates the return of search warrants electronically through procedures established in Local Rule 4.10(e). The Superior Court in Pinal County recently started a pilot program concerning search warrants that allows for returns on warrants issued through the pilot program to be returned electronically. AO 2022-189.

through submission of a signed, written oath. When a return is made in person, the magistrate may place the officer under oath. Requiring a signed, written oath is designed to avoid inadvertent errors as more returns are delivered electronically or through means other than in person. The proposed rule specifies that the officer is to swear or affirm that the information on the return is correct and complete and that the officer has personal knowledge of the information on the return. By requiring verification in this manner, the officer does not need to appear before the magistrate to make a return, either in person or by telephone. Verifying the inventory through a signed, written oath, including those signed electronically, will have the same legal effect as if the oath is taken in the presence of the magistrate.

d. Request to Lengthen Time Before Records Opened to Public

Records of the court relating to a search warrant are typically opened to the public once the return on a warrant is made. A.R.S. § 13-3918. A magistrate may lengthen this time for good cause. *Id.* Currently there is no standard mechanism for law enforcement to make such a request and it may be relayed informally when an officer is making a return to a magistrate in person. The proposed amendment requires that the officer include a request to lengthen the time in the cover sheet accompanying the return along with an explanation for the request. The cover sheet form will be revised to include an area to address such requests if this proposed rule petition is adopted.

III. Review of the Petition.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure as proposed in the appendix.

RESPECTFULLY SUBMITTED this ____ day of January 2023.

By /S/_____

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APPENDIX A

(language to be removed is shown in ~~strikethrough~~, new language is underlined)

RULES OF CRIMINAL PROCEDURE

Rule 2.6. Search Warrant Applications; Data Collection

(a) Applicability. Rule 2.6(b) and (c) apply to search warrant applications requesting an unannounced entry into a structure. Rule 2.6(d) applies to applications requesting service of a search warrant at night. Rule 2.6(e), ~~(f)~~, and ~~(fg)~~, which pertain to returns on search warrants and data collection, apply to every issued search warrant.

(b) through (f) [No changes].

(g) Return of Search Warrant and Inventory.

(1) The return on a search warrant must be made to the magistrate who issued the warrant by delivering the return to that magistrate's court along with a written inventory of the property taken.

(2) Delivery may be made by facsimile, electronic means, in a manner permitted by the court, or in person.

(3) The inventory must contain a true and detailed account of all the property taken and be verified through a signed, written oath swearing or affirming that the information on the return is correct and complete and that the officer has personal knowledge of the information on the return. A signed written oath on a return, including those signed electronically, shall have the same legal effect as if taken in the presence of the magistrate.

(4) A request by the officer to lengthen the time before records relating to a search warrant are open to the public under A.R.S. § 13-3918 must be included in the cover sheet accompanying the return along with an explanation for the request.

(5) The clerk of the court that issued the warrant shall maintain a record of the warrant and any return.

(g)(h) Definitions. For purposes of this rule:

(6) "Night" means the period from 10 p.m. to 6:30 a.m.

(7) "Structure" means any building, place, or vehicle with sides, a door, and a floor, which a reasonable person would believe is used for permanent or temporary lodging or for a business.