

The Honorable Jeff Fine
Clerk of the Superior Court in and for Maricopa County
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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:

)	Supreme Court No. R-23-0024
PETITION TO AMEND RULE)	
2.6 ARIZONA RULES OF)	COMMENT
CRIMINAL PROCEDURE)	
_____)	

The Clerk of the Superior Court in and for Maricopa County (“Clerk of the Maricopa County Superior Court” or “the Clerk”) files the following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, in support of the Petition to Amend Rule 2.6 Arizona Rules of Criminal Procedure, but with recommended changes as discussed below.

The Clerk acknowledges the primary purpose of the proposed rule amendments is to require that returns on search warrants be submitted to the court of the magistrate that issued the warrant. As the custodian of record of search warrants issued by the Superior Court in and for Maricopa County, the Clerk strongly supports a requirement that returns on search warrants be submitted to the issuing court. Not only will such a requirement better facilitate the management of search warrant documents as well data collection related to the issuance of search warrants, but it will also allow for a more streamlined process for both the public and Clerk office staff when handling and responding to public records requests for search warrant documents.

Based on the large volume of search warrant documents currently in the custody of the office of the Clerk, in which no return was ever received by the issuing court, the Clerk believes that the language in A.R.S. § 13-3918(A), whether inadvertent or not, has caused law enforcement

to submit returns to whichever court is most convenient, which may not be the issuing court. Lack of receiving a return has caused issues for the Clerk when its staff is responding public records requests for search warrant documents, especially when the magistrate issuing the warrant orders the warrant, upon issuance, to be sealed. Absent receiving a return, the Clerk is left to guess as to whether the warrant has been executed, whether an extension of time has been granted by a non-issuing magistrate, and whether it should be unsealed and made publicly accessible in accordance with A.R.S. § 13-3918(A). Currently, when a return is not received, the Clerk defers to the order of the issuing magistrate regarding the sealed status of the search warrant.

As noted by Petitioner, the Superior Court in and for Maricopa County, pursuant to Local Rule 4.10, allows for and facilitates the transmission of search warrant documents electronically. Pursuant to Local Rule 4.10, affidavits for search warrants may be submitted electronically; the court may use an electronic oath for electronically transmitted search warrants and returns, magistrates may sign search warrants using an electronic signature; and search warrant returns may also be submitted electronically.

Proposed Rule 2.6(g) provides that delivery of the return may be made by facsimile, electronic means, in a manner permitted by the court, or in person. The Clerk does not object to having these methods of delivery of a return available to law enforcement, but does maintain that if a search warrant is issued electronically, Rule 2.6 require that the return be submitted electronically.

Pursuant to Supreme Court Administrative Order No. 2018-51, the Superior Court in and for Maricopa County may issue electronic search warrants statewide to all law enforcement agencies in the state for blood draws for the offenses of driving under the influence and vehicle-related homicide and aggravated assault. For the Clerk to fulfill its role as custodian of record of

search warrant documents, as is proposed by Petitioner in Rule 2.6(g)(5), for those warrants that are applied for and issued electronically, the return must also be submitted electronically.

The Clerk also supports not requiring the officer to appear before a magistrate, either in person or by telephone, and allowing for the inventory to 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, as such furthers the purpose of electronic processing of search warrant documents. However, the Clerk must still ensure that with the electronic oath and electronic submission of the return, that a magistrate of the issuing court render a determination upon receipt of the return whether the search warrant and the associated documents are to remain sealed, if sealed upon issuance, or if any redactions must be made prior to making the search warrant documents publicly accessible.

The long-standing process in Maricopa County is that upon both issuance of a search warrant and upon receipt of a return, a magistrate of the Superior Court renders a determination as to whether the search warrant documents are to be sealed. Such determination is clearly one to be made by a magistrate or a judicial officer, and not by the Clerk or its staff. A.R.S. § 13-3918 sets forth the time parameters for the execution and return of a search warrant, and provides guidance as to when records relating to a search warrant are to be open to the public.

However, A.R.S. § 13-3918, also sets forth variable conditions as to when a warrant shall be open to the public, such as the magistrate granting an extension of time before a warrant expires as well as an implied determination that the warrant has been executed, both of which are determinations to be made by the issuing court or magistrate, and not by the clerk. As stated by the Court of Appeals in *Phoenix Newspapers, Inc. v. Superior Court In and For Maricopa County*, 180 Ariz. 159, 164, 882 P.2d 1285, 1290 (App. 1993), *rev. denied.*, Nov. 1, 1994,

“[c]onsistent with A.R.S. section 13-3918(A), the issuing court, may, in the exercise of its discretion, balance the presumption of openness against the state’s need to keep confidential information which might jeopardize ongoing criminal investigations.”

Because the state has a legitimate interest in protecting ongoing investigations, upon submission of a return, law enforcement may ask the court to order a search warrant sealed for the reason that the release of information related to the search warrant could put at risk ongoing criminal investigations.

The Clerk wants to ensure that with the electronic submission of a return, law enforcement still has the opportunity to make such a request of the court, and that the court, and not the clerk decides as to whether any search warrant documents are to remain sealed.

So as to ensure that the concerns of the Clerk are incorporated into Rule 2.6, the Clerk, recommends that the Supreme Court adopt Petitioner’s proposed amendments to Rule 2.6, subject to the additional language set forth in the attachment to this Comment.

DATED this 1st day of May, 2023.

/s/ Jeff Fine
Hon. Jeff Fine, Clerk
Superior Court in and for Maricopa County

This Comment has been filed via electronic filing of in accordance with deadlines set forth in the Supreme Court’s January 17, 2023 Order.

A copy of this Comment has been sent via e-mail to the Petitioner at the following:

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington St., Suite 411
Phoenix, AZ 85007
Projects2@courts.az.gov

ATTACHMENT

Modifications to the text are shown by **underscoring** in red font and deletions are shown by **strike through** in red font.

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. **If the search warrant was applied for and issued electronically, delivery must be made by electronic means.**

(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) Upon receipt of an inventory and return, a magistrate must determine if the documents and records related to the search warrant are to be sealed or open to the public.

(6) 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:

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

(8) "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.