

Wiretap Guidelines

Directive # 4-00
Issued by:

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Acting Administrative Director

Chief Justice Poritz has approved revisions to the Wiretap Guidelines that were promulgated in 1987 as Directive #5-87. The revisions were recommended by the Conference of Wiretap and Communications Data Warrant Judges in consultation with the Office of the Attorney General. The revised guidelines are as follows:

1. The wiretap judge issuing the wiretap order shall retain originals of all applications, orders, and other documents or exhibits, with a conformed copy returned to the applicant.
2. Each wiretap order shall contain a date certain which shall be the effective date of the order and the date from which the length of its validity shall be calculated.
3. Once a wiretap order has expired by the passage of the time limit in the order, for further interceptions of wire or oral communications to be permissible a new application pursuant to N.J.S.A. 2A:156A-10(f) shall be required unless a renewal application is submitted.

All extensions and renewals will reflect the same court number (with appropriate number of X-s) so long as the renewal or extension is a continuation of the same investigation. Lengthier delays in seeking renewals or extensions must include a statement within the affidavit of the reasons for the delay.

All electronic surveillance applications are to include a statement to the court of the total amount of time previously authorized by the court at the same facility or location.

4. No wiretap tape shall be unsealed unless pursuant to an order of one of the authorized wiretap judges.
5. At the time a sealing or resealing order is submitted to the wiretap judge for signature, the original tapes shall be counted by the wiretap judge and then placed in a container and sealed. No sealing or resealing order shall be signed unless the wiretap judge has had the opportunity to make a physical count of the tapes. Orders to seal may also be entered by the Communication Data Warrant Judge (ACDW@) in the vicinage of the designated judge who authorized the interception in the absence or unavailability of the wiretap judge. In those vicinages where the wiretap judge is also the CDW judge, orders to seal may also be entered by the Assignment Judge or the Acting Assignment Judge.
6. Once the tapes have been sealed, they shall be returned to the applicant for safekeeping.
7. Where a request is made for the unsealing of a wiretap container for the

purpose of removing the original wiretap tapes for use other than in a judicial proceeding, the following procedures shall be followed:

- A. The law enforcement agency requesting the unsealing and the removing of the original tapes shall make an exact copy of the tapes in the wiretap judge's chambers and in the presence of the wiretap judge.
- B. Those exact copies shall then be sealed in the container in place of the original tapes.
- C. When the original wiretap tapes are returned to the court by the law enforcement agency, the seal of the container shall be broken by the wiretap judge and the original tapes, and any copies made pursuant to Guideline 7A, shall be inserted into the container. The container shall then be resealed by the wiretap judge. An affidavit from the law enforcement agency stating that no alteration has been made to the original tapes shall be filed with the wiretap judge.

8. Where a request is made for the unsealing of wiretap containers for the purpose of removing the original wiretap tapes for use in a judicial proceeding, the following procedures shall be followed:

- A. The law enforcement agency requesting the unsealing shall obtain an order from the wiretap judge authorizing the transportation of the wiretap tapes intact to the trial judge and the unsealing of the container by the trial judge.
- B. Only the trial judge shall break the seal on the container and thereafter said judge shall assume continuous responsibility for the container and tapes until they are resealed following their use in the judicial proceeding.
- C. Upon completion of the judicial proceeding the trial judge shall reseat the tapes and documents in the container pursuant to Guideline 5 and order the law enforcement agency that originally requested the unsealing to retain the container pursuant to Guideline 6. The trial judge shall then endorse upon the copy of the order received pursuant to Guideline 8A the fact of resealing and forward that order to the wiretap judge for filing.

9. Upon application by the prosecuting agency that requested the electronic surveillance, and upon good cause shown, the wiretap judge who authorized the interception or that judge's successor, may grant an order allowing destruction of the wiretap tapes, provided that ten years have elapsed since the termination of the interception. That application shall be granted only if the prosecuting agency certifies in the application that there is no pending investigation, proceeding or indictment involving the intercepted communications. Furthermore, the wiretap judge to whom the application for destruction of the tapes is presented shall determine, in the

judge's discretion, whether notice to anyone is to be required prior to the entry of an order allowing destruction of the tapes.

10. Following interception of oral or wire communications authorized by a wiretap judge, in the event a search warrant is issued based on whole or in part on communications so intercepted, the application for the search warrant shall be filed only in the file of the wiretap judge. Notice of that fact shall be filed with the criminal division manager's office together with the warrant and inventory pursuant to *R.* 3:5-6.

Any problem in the application or interpretation of these Guidelines should be referred to an authorized wiretap judge. If the problem is not resolved at that stage, it will be placed before a meeting of the wiretap judges *en banc* for their consideration and recommendation to the Chief Justice.