

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:5. SEARCH WARRANTS

Rule 3:5-1. Authority to Issue

A search warrant may be issued by a judge of a court having jurisdiction in the municipality where the property sought is located.

Note: Source-R.R. 3:2A-1.

Rule 3:5-2. Grounds for Issuance

A search warrant may be issued to search for and seize any property, including documents, books, papers and any other tangible objects, obtained in violation of the penal laws of this State or any other state; or possessed, controlled, designed or intended for use or which has been used in connection with any such violation; or constituting evidence of or tending to show any such violation.

Note: Source-R.R. 3:2A-2, 3:2A-7.

Rule 3:5-3. Issuance and Contents

(a) An applicant for a search warrant shall appear personally before the judge, who must take the applicant's affidavit or testimony before issuing the warrant. The judge may also examine, under oath, any witness the applicant produces, and may require that any person upon whose information the applicant relies appear personally and be examined under oath concerning such information. If the judge is satisfied that grounds for granting the application exist or that there is probable cause to believe they exist, the judge shall date and issue the warrant identifying the property to be seized, naming or describing the person or place to be searched and specifying the hours when it may be executed. The warrant shall be directed to any law enforcement officer, without naming an officer, and it shall state the basis for its issuance and the names of the persons whose affidavits or testimony have been taken in support thereof. The warrant shall direct that it be returned to the judge who issued it.

(b) A Superior Court judge may issue a search warrant upon sworn oral testimony of an applicant who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication. The judge shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise, adequate longhand notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the applicant must identify himself or herself, specify the purpose of the request and disclose the basis of his or her information. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a search

warrant. A warrant may issue if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure to obtain a written warrant, and that sufficient grounds for granting the application have been shown. Upon approval, the judge shall memorialize the specific terms of the authorization to search and shall direct the applicant to enter this authorization verbatim on a form, or other appropriate paper, designated the duplicate original search warrant. This warrant shall be deemed a search warrant for the purpose of R. 3:5. The judge shall direct the applicant to print the judge's name on the warrant. The judge shall also contemporaneously record factual determinations as to exigent circumstances. If a recording is made, the judge shall direct that the testimony be transcribed as soon as practicable. This transcribed record shall be certified by the judge. The judge shall promptly issue a written confirmatory search warrant and shall enter thereon the exact time of issuance of the duplicate original warrant. In all other respects, the method of issuance and contents of the warrant shall be that required by subsection (a) of this rule.

Note: Source-R.R. 3:2A-3, 3:2A-4 (second sentence); former rule redesignated paragraph (a) and paragraph (b) adopted July 26, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994.

Rule 3:5-4. Secrecy

A search warrant shall be issued with all practicable secrecy and the affidavit or testimony upon which it is based shall not be filed with the criminal division manager's office or made public in any way prior to execution. The disclosure, prior to its execution, that a warrant has been applied for or issued, except as necessary for its execution, may constitute a contempt. After execution a warrant and accompanying papers shall remain confidential except as provided in R. 3:5-6(c).

Note: Source-R.R. 3:2A-9 (first paragraph); amended July 13, 1994 to be effective January 1, 1995; amended July 12, 2002 to be effective September 3, 2002.

Rule 3:5-5. Execution and return with inventory

(a) A search warrant may be executed by any law enforcement officer, including the Attorney General or county prosecutor or sheriff or members of their staffs. The warrant must be executed within 10 days after its issuance and within the hours fixed therein by the judge issuing it, unless for good cause shown the warrant provides for its execution at any time of day or night. The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property is taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made and verified by the officer executing the warrant in the presence of the person from whom or from whose premises the property is taken or, if such person is not present, in the presence of some other person. The judge shall upon request deliver a copy of the inventory to the person

from whom or from whose premises the property was taken and to the applicant for the warrant.

(b) If a duplicate original search warrant has been executed, the person who executed the warrant shall enter the exact time of its execution on its face. If a tape or stenographic record of the oral testimony has been made, the judge shall require the applicant to sign a transcript of that record. In all other respects, execution and return of the duplicate original search warrant shall be that required by paragraph (a) of this rule.

Note: Source-R.R. 3:2A-4; former rule redesignated as paragraph (a) and paragraph (b) adopted July 26, 1984 to be effective September 10, 1984.

Rule 3:5-6. Filing; Confidentiality

(a) Except as provided in subsection b, the judge who issued the warrant shall attach thereto the return, inventory, and all other papers in connection therewith, including the affidavits and a transcript or summary of any oral testimony and, where applicable, a duplicate original search warrant, and shall file them with the criminal division manager's office of the county wherein the property was seized. When a tape or stenographic record has been made, it shall also be filed by the judge.

(b) In the event a search warrant is issued based in whole or in part on oral, wire, or electronic communications authorized by a wiretap judge under the provisions of the New Jersey Wiretapping and Electronic Surveillance Control Act, N.J.S.A. 2A:156A-1 et seq., the judge who issued the warrant shall file only with the wiretap judge the application for the search warrant and all other affidavits, documents and exhibits submitted in connection therewith, as well as any tape or stenographic record of oral testimony taken by the wiretap judge. The judge who issued the warrant shall file a notice of such filing with the wiretap judge, as aforesaid, together with the warrant and, where applicable, a duplicate original search warrant and inventory with the criminal division manager's office of the county wherein the property was seized.

(c) All warrants that have been completely executed and the papers accompanying them, including the affidavits, transcript or summary of any oral testimony, duplicate original search warrant, return and inventory, and any original tape or stenographic recording shall be confidential except that the warrant and accompanying papers shall be provided to the defendant in discovery pursuant to R. 3:13-3 and available for inspection and copying by any person claiming to be aggrieved by an unlawful search and seizure upon notice to the county prosecutor for good cause shown.

Note: Source-R.R. 3:2A-5, 3:2A-9 (second paragraph). Amended June 29, 1973 to be effective September 10, 1973; amended July 26, 1984 to be effective September 10, 1984; paragraph designations and text of paragraph (b) adopted and paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 13, 1994, paragraph (c) amended December 9, 1994, to be effective January 1, 1995; paragraph (b) amended June 28, 1996 to be effective September 1, 1996; caption

amended and paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended December 4, 2012 to be effective January 1, 2013.

Rule 3:5-7. Motion to Suppress Evidence and for Return of Property

(a) Applicability; Notice; Time. On notice to the prosecutor of the county in which the matter is pending or threatened, to the applicant for the warrant if the search was with a warrant, and to co-indictees, if any, and in accordance with the applicable provisions of R. 1:6-3 and R. 3:10, a person claiming to be aggrieved by an unlawful search and seizure and having reasonable grounds to believe that the evidence obtained may be used against him or her in a penal proceeding, may apply to the Superior Court in the county in which the matter is pending or threatened to suppress the evidence and for the return of the property seized (1) without a warrant if the matter involves an indictable crime or (2) where the search warrant was issued by a Superior Court judge, even though the offense charged or to be charged may be within the jurisdiction of a municipal court. A motion filed in the Superior Court shall be made pursuant to R. 3:10-2. When an offense charged or to be charged is within the jurisdiction of the Municipal Court, a motion to suppress evidence and for return of property seized resulting from a search warrant issued by a Municipal Court judge or seized without a warrant shall be filed pursuant to R. 7:5-2.

(b) Briefs. If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion. The State shall, within ten days thereafter, submit a brief stating the facts and arguments in support of the search to which the movant may reply by brief submitted no later than three days before the hearing. If the search was made without a warrant, the State shall, within 15 days of the filing of the motion, file a brief, including a statement of the facts as it alleges them to be, and the movant shall file a brief and counter statement of facts no later than three days before the hearing.

(c) Hearing. All such motions by co-indictees shall be consolidated for determination in a single hearing, except for good cause shown. If material facts are disputed, testimony thereon shall be taken in open court.

(d) Appellate Review. Denial of a motion made pursuant to this rule may be reviewed on appeal from a judgment of conviction notwithstanding that such judgment is entered following a plea of guilty.

(e) Return of Property. If a motion made pursuant to this rule is granted, the property shall be delivered to the person entitled thereto, unless otherwise subject to lawful detention, and shall not be admissible in evidence in any court. Delivery of the property need not be made, however, until the expiration of the time within which the State may obtain leave to appeal pursuant to R. 2:5-6.

(f) Consequences of Failure to Move. If a timely motion is not made in accordance with this rule, the defendant shall be deemed to have waived any objection during trial to the admission of evidence on the ground that such evidence was unlawfully obtained.

(g) Effect of Irregularity in Warrant. In the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution.

Note: Source-R.R. 3:2A-6(a)(b). Paragraph (a) amended, paragraphs (b), (c), (d) adopted and former paragraphs (b), (c), (d) redesignated as (e), (f), (g) respectively January 28, 1977 to be effective immediately; paragraphs (a) and (c) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended June 9, 1989 to be effective June 19, 1989; paragraph (a) amended July 13, 1994 to be effective January 1, 1995; paragraph (a) amended January 5, 1998 to be effective February 1, 1998; paragraph (a) amended July 27, 2015 to be effective September 1, 2015.

Rule 3:5-8. Search and Seizure without Search Warrant

Rule 3:5 shall not be construed to make illegal a lawful search and seizure made without a search warrant.

Note: Source-R.R. 3:2A-8.