

ALASKA COURT SYSTEM
OFFICE OF THE ADMINISTRATIVE DIRECTOR
ADMINISTRATIVE BULLETIN NO. 86
Effective Date: April 15, 2017

TO: ALL HOLDERS OF ADMINISTRATIVE BULLETIN SETS:

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All Judges	Court Analysts
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SUBJECT: Search Warrant Records

1. Definition of Terms.

- a. "Search warrant records" include search warrants, affidavits, receipts and inventories, other documents filed with the search warrant, motions and proposed orders that are filed before any criminal charges related to the search warrant, orders, log notes, and audio tapes and CDs of search warrant proceedings.
- b. "Sealed" search warrant records. Search warrant records are sealed at the time the warrant is issued or denied.¹ They remain sealed until they become "confidential" or "public" under Criminal Rule 37(e). "Sealed" is defined in Administrative Rule 37.5(c)(5) to mean "access to the record is restricted to the judge and persons authorized by written order of the court."

When a search warrant is issued after criminal charges are filed, the warrant records are sealed until the prosecutor files notice that the warrant relates to those charges

- c. "Confidential" search warrants records. Search warrant records become confidential, instead of sealed, four years after the warrant is issued if no charges related to the warrant have been filed and a judge has not

¹ Criminal Rule 37(e)(1) and (2).

delayed the unsealing of the record.² Administrative Rule 37.5(c)(4) makes confidential records accessible to “the parties to the case.” The only party to the search warrant application is the prosecuting authority.³ The clerk may give the records to a prosecutor representing the government entity that requested the search warrant. The clerk may unseal the records in order to determine the prosecuting authority.

- d. “Public” search warrant records. Search warrant records become public when the:
- (1) warrant is identified in a charging document and no order that the records remain sealed is in effect; or
 - (2) warrant was issued after related charges were filed and the prosecutor files notice that the warrant was issued in relation to those charges; or
 - (3) court orders that the warrant be made public.⁴

However, the public may not be given access to the addresses, telephone numbers, and for some offenses the names, of victims and witnesses because the Victims’ Rights Act (VRA)⁵ makes this information confidential.

Also, **defendants** do not have unrestricted access to confidential search warrant information. The VRA requires the court, in certain situations when the defendant is proceeding without counsel, to protect the address and telephone number of victims and witnesses by providing the information only to a person specified by the court or by imposing other restrictions that the court considers necessary. AS 12.61.120(b). Also, when a defendant is represented by counsel, the court must order the defendant’s counsel to not disclose the address and telephone numbers of victims and witnesses to the defendant. AS 12.61.120(a). Criminal Rule 37(e)(4) requires defense counsel not to disclose this information.

² Criminal Rule 37(e)(3).

³ SCO 1389 amended Criminal Rule 37(e) to make search warrant records “confidential” four years after issuance of the warrant when no charges have been filed. The court rules attorney’s memos to the Criminal Rules Committee and the supreme court indicate that the intent was that the only party to the search warrant case would be the prosecuting authority, thus only the prosecuting authority would have access to confidential search warrant records.

⁴ Criminal Rule 37(e)(2)

⁵ AS 12.61.010-.900

2. Search Warrant Storage.

a. Search Warrant Envelope (CR-707)

Search warrant records must be stored in a Search Warrant Envelope, separate from the case files. When a search warrant becomes a public document under Criminal Rule 37(e)(1) or (2), the search warrant records must remain in the search warrant envelope. They are not to be moved to the corresponding criminal case files.

b. When to Seal

When a warrant is issued or denied, **immediately** place all related documents in the CR-707 envelope and seal the envelope.

c. How to Seal

The envelope must be sealed using tamper-resistant security tape (Venice Item No. B5-9A2, Exhibit Security Tape). Completely seal the opening of the envelope so the envelope cannot be opened without breaking the seal or tearing the envelope. Then, write on the tape the date of sealing and the clerk's full signature.

Recordings: If a search warrant hearing is recorded using CourtSmart, follow the CourtSmart procedures for sealing the hearing before the hearing begins. If a judicial officer records a search warrant hearing on a cassette tape or other removable storage media, the storage media should be sealed in the search warrant envelope.

d. Returns and Inventories

File returns of service and inventories in a new search warrant envelope marked with the warrant number. Check the "Return" box in the right margin. Seal the "return" envelope and file it with the "warrant" envelope.

e. Motions and Orders Re Search Warrants.

(1) **Motions Filed in a Criminal Case.** When a motion regarding a search warrant is filed in a criminal case in which the charging document lists the search warrant, the motion and order must be filed in the criminal case file. A copy of the order must be placed in the search warrant envelope.

(2) **Motions Filed When No Criminal Case.** When a motion is filed regarding a search warrant and no criminal charges list the search warrant, the motion and order must be filed with the search warrant.

(a) Warrant Status is Sealed.

If the order directs the clerk to unseal the warrant to make it available for inspection, the motion and order can be filed in the warrant envelope. Otherwise, the motion and order must be placed in a separate search warrant envelope and filed with the search warrant envelope. Seal the envelope with tamper-resistant security tape (Venice Item No. B5-9A2).

(b) Warrant Status is Confidential – Clerk May Access Record for Case Processing Purposes. Place the motion and order in the search warrant envelope.

3. Search Warrant Retention.

See Administrative Bulletin 25.

4. Requests for Search Warrant Records.

a. Inventory of Property Taken.

Pursuant to Criminal Rule 37(b),⁶ the person from whom or from whose premises property was seized can ask for a copy of the inventory filed by law enforcement. The applicant for the warrant can also request a copy of the inventory. If a request is made and the records are still sealed, forward the request to a judicial officer who will need to order the records unsealed.

b. All Other Search Warrant Records.

Depending on who requests search warrant records, the following procedures may require clerks to redact any information that potentially could be protected by the Victims' Rights Act (AS 12.61.010 - .900). If anyone other than the prosecutor or defense counsel requests un-redacted copies of search warrant records, they must file a motion asking the court for access to the information.

All persons requesting copies of search warrant records must complete a Request for Search Warrant Records, form CR-714. The clerk can help the customer locate the criminal case number if the customer provides the name of the defendant.

⁶ Criminal Rule 37(b) states: "...the magistrate judge or judge or the court to which the return is made 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."

Step 1. Verify that:

- (1) the charging document in a criminal case references the search warrant number, or
- (2) the prosecutor has filed notice in a criminal case that a search warrant related to the case was issued after the case was filed, or
- (3) a judge issued an order authorizing the warrant records to be unsealed, or
- (4) a prosecutor is requesting the records of a search warrant that was issued at least four years earlier.

If not, the records are still sealed. Exception: If four years have passed, the prosecutor may access the records. Any other requestor must file a motion to unseal the records.

Step 2. The following procedures explain what to do depending on who is asking for the records.

1. Defense Counsel or Prosecutor
 - a. Verify that the person requesting the records is either defense counsel or the prosecuting attorney in the case. If the attorney sends someone to request the records, explain that the attorney must sign the request form. If you do not know the person requesting the records, you should ask for a letter from the attorney on the attorney's letterhead authorizing the person to request records on his or her behalf.
 - b. Collect copy fees from private defense counsel.
 - c. Attach to the top of the requested records the original or a copy of the CR-714 request and give the records to the attorney. Courts are not required to keep the original or a copy of the request.

2. Defendant (represented or unrepresented) or member of the public
 - a. Prepare the requested records by redacting the following from the search warrant documents and any audio recordings (unless a judge's order allows the requestor access to an unredacted copy):
 - (1) all names **except** the names of defendants, peace officers, and any person who requested the warrant.
 - (2) all addresses; and
 - (3) all telephone numbers.
 - b. Collect copy fees (except from indigent defendants)
 - c. Attach to the top of the redacted records the original or a copy of the CR-714 request and give the records to the requestor. Courts are not required to keep the original or a copy of the request.

Dated: May 23, 2017
Nunc Pro Tunc: April 15, 2017

/s/
Christine E. Johnson
Administrative Director

Other bulletins that mention search warrants: Administrative Bulletins: 7, 20, 22, and 25.

History: Original bulletin issued effective December 15, 2014; amended effective March 15, 2015; amended effective April 15, 2017.

The March 15, 2015 change added paragraph 4.a about requests made under Criminal Rule 37(b).

The April 15, 2017 revision was made to comport with changes to Criminal Rule 37(e) that went into effect on April 15 (SCO 1900). The rule was amended to address warrants issued after a criminal case is filed. To alert clerks when these warrants become public, the rule requires the prosecutor to file a notice that the warrant relates to a criminal case. The following sections of the bulletin were amended:

- 1.b – definition of sealed;
- 1.d – when records become public;
- 4.b, Step 1 – adding a new (2).