

Rule 36. Search Warrants on Oral Testimony**Rule 36.01 General Rule**

A request for a search warrant may be made, in whole or in part, on sworn oral testimony, to a judge, subject to the limitations in this rule. Oral testimony may be presented via telephone, radio, or other similar means of communication. Written submissions may be presented by facsimile or electronic transmission, or by other appropriate means.

Rule 36.02 When Request by Oral Testimony Appropriate

An oral request for a search warrant may only be made in circumstances that make it reasonable to dispense with a written affidavit or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. The judge must make this determination the initial focus of the oral warrant request.

Rule 36.03 Application

The person requesting the warrant must prepare a duplicate original warrant and must read the duplicate original warrant, verbatim, to the judge. The judge must prepare an original warrant by recording, verbatim, what has been read by the applicant. The judge may direct modifications, which must be included on the original and any duplicate original warrant. Alternatively, with the permission of the judge, the warrant may be transmitted to the judge by facsimile or electronic transmission, or by other appropriate means.

Rule 36.04 Testimony Requirements

When the officer informs the judge that the purpose of the communication is to request a search warrant, the judge must:

(1) Immediately begin recording, electronically, stenographically, or longhand verbatim the testimony of all persons involved in making the warrant application. Alternatively, with the permission of the judge, the recording may be done by the applicant for the search warrant, but the tape or other medium used to make the record must be submitted to the issuing judge as soon as practical, and no later than the time for filing in Rule 33.04.

(2) Identify and place under oath each person whose testimony forms a basis of the application, and each person applying for the warrant.

(3) As soon as is practical after receiving the testimony, the judge must direct that the record of the oral warrant request be transcribed. The judge must certify the accuracy of the transcription. If a longhand verbatim record is made, the judge must sign it.

Rule 36.05 Issuance of Warrant

The judge must order issuance of a warrant if:

(a) the circumstances make it reasonable to dispense with a written affidavit, or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116;

(b) the warrant request conforms with the law; and

(c) probable cause exists for issuance of the warrant.

The judge may order the issuance of a warrant by directing the applicant to sign the judge's name on the duplicate original warrant, and if so, the judge must immediately sign the original warrant and enter on the face of the original warrant the exact time the judge signed the warrant. Alternatively, the judge may sign the warrant and transmit it to the officer by electronic transmission,

or by other appropriate means. The finding of probable cause may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

Rule 36.06 Filing

The warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents must be filed as Rule 33.04 requires. If the oral warrant request is recorded on tape or other electronic recording device, the original tape or other medium must also be filed with the court.

Rule 36.07 Contents of Warrant

The contents of a warrant issued on oral testimony must be the same as the contents of a warrant on affidavit.

Rule 36.08 Execution

The execution of a warrant obtained through oral testimony is subject to the same laws and principles that govern execution of any other search warrant. In addition, the person who executes the warrant must enter the exact time of execution on the face of the warrant.

(Amended effective July 1, 2015.)

Comment - Rule 36

The procedure found in Rule 36 is derived from State v. Lindsey, 473 N.W.2d 857 (Minn. 1993).

Minnesota Statutes, section 626.16, which requires that a written document be prepared for presentation to the person whose premises or property is searched, or that can be left on the premises if no persons are present, mandates the preparation of the duplicate warrant in Rule 36.03. Judges and judicial officers who may receive oral warrant requests at home are advised to have appropriate forms available for preparation of the original warrant.

Judges are cautioned to avoid engaging in any preliminary unrecorded and unsworn conversation with the officer or prosecutor. See ABA Guidelines for the Issuance of Search Warrants, Guideline 11(3) (1990).

The officer and the judge must keep in mind that in addition to the special requirements for issuance of an oral warrant, all other requirements for the issuance of a warrant must also be met, including the basis for a no-knock and nighttime warrant. See Minnesota Statutes, sections 626.01 to 626.18 and 629.30.

Rules 36.07 and 36.08 emphasize that the use of the oral warrant process does not justify any other departures from traditional warrant law and practice.