

Administrative Office of the Courts

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May 17, 2007

Tim Shea
Sr. Staff Attorney
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P.O. Box 140241
Salt Lake City, Utah 84114-0241

Dear Tim:


The Board of Juvenile Court Judges has reviewed the proposed revisions to Utah Rule of Juvenile Procedure 7. The Board has concerns about the deletion of the following subparagraph:

~~(d)(7) On verbal request from a probation officer or other authorized individual a warrant for custody may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the juvenile and shall be supported by an affidavit from the requesting authority the next court business day.~~

Specifically, the Board is concerned that the deletion of subparagraph (d)(7) prevents juvenile court judges from issuing verbal warrants or "pick-up orders" when requested by a probation officer after hours and on weekends. After thorough discussion, the Board decides to solicit a legal memo on the issue from its law clerk. However, the Board will be unable to obtain a complete memo prior to the end of the comment period on May 18, 2007. In the interim, the Board wishes to express its concerns and to request that any revision to Rule 7 contain a clarification regarding the appropriate procedure for issuing a verbal warrant in these circumstances, if any.

Please feel free to contact me on behalf of the Board with any questions or concerns regarding the Board's comments.

Sincerely,


Charles Behrens, Chair
Board of Juvenile Court Judges

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

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From: Carol Verdoia
To: Gregory, Katie; Lindsley, Judge Elizabeth
Date: 4/20/07 10:13AM
Subject: Re: Rule 7

Absolutely -- we seemed to rush through the rule, to an extent, because of the Sp. Ct. deadline and because the committee members had lots of issues and differences of opinion. Also, our hands are somewhat tied by the language in 78-3a-106 -- that we have to use the same procedures for search warrants as in the criminal code.

>>> Judge Elizabeth Lindsley 4/20/2007 9:49 AM >>>

At the judges conference this week, we discussed the new search warrant rule and there are several concerns raised by the judges. Can we address those on May 4th?

From: Brent Johnson
To: Paul Cleverley
Date: 5/23/07 2:42PM
Subject: Re: Fwd: Verbal Warrants

I'll tell you what the critical issues are and then you can work with your staff to see what process works best. The recent court case talked about making certain that the information upon which a warrant or order is based is preserved from the time that the warrant is ordered or issued. Meaning that the information must be written or otherwise recorded. The information upon which a PO relies in requesting an order should be written or recorded at the time the order is requested. The order should also be in writing. Let me provide you an example of one way this might work. A pick up order is needed on a kid. The PO puts the basis for the pick-up order in a written affidavit. The affidavit can be either notarized or the PO can sign the affidavit under penalty of perjury. The PO then contacts the judge for authorization. If at all possible, the PO would e-mail the affidavit for the judge to review. The PO could also contact a PO who is closer to the judge and have that PO prepare the affidavit and personally deliver it to the judge for review. If these are not possible, the PO can read the affidavit over the phone. It would be best if this call could be recorded, but if there is no way to accomplish this and it is an emergency, the process could still proceed. The judge then authorizes the issuance of the order. It would again be best for the judge to authorize this over e-mail, because then it is recorded, or authorize it in person. I know this will change the way things are done to some extent, but it is important to make certain that we have an accurate record of the actions we take and the basis for those actions.

>>> Paul Cleverley 05/23/07 10:30AM >>>

We have hard copies of the orders already signed and implement them upon the verbal or email response from the Judge. I'll check with the Court's counsel to see if this process is sufficient or must be changed. Your DJJS staff needs immediate response from the Judge on pick up orders more often than our staff does because your kids are in custody.

Brent: Regarding this communication does our process of utilizing an already signed warrant upon the Judge's verbal or email OK meet the expectations of this new ruling?

So Paul, where Judge Higbee lives up in Cedar how are we going to access pickup orders when we need them during non-office hours?

Thanks,
Tami

>>> Judy Hammer 5/23/2007 8:27 AM >>>

Hi to you all,

Dan would like you to read this information from Ray Wahl regarding verbal warrants.

Judy

>>> Ray Wahl 5/21/2007 4:33 PM >>>

Based upon a recent Supreme Court decision, our judicial rule has been changed and judges will no longer issue verbal warrants. Just as workers do now during normal working hours, the affidavit and warrant will need to be available after hours. Your workers will need to check with their districts to determine the details on how this process will work. You should also know that we are doing some legal research to determine if the rule can be changed. I know that this will be an inconvenience to workers, but we needed to change our process to comport with the ruling. Please contact me if you have questions. Legal questions should be directed to our legal counsel, Brent Johnson. I would appreciate it if you work get this information to your staff as soon as possible; the rule took effect April 30, 2007.

Ray Wahl

Ray Wahl - Verbal Warrants

From: Ray Wahl
To: chiefs; Dan Maldonado; Duane Betournay; Juv TCE; Juvenile Court Judges
Subject: Verbal Warrants
CC: Susan Eisenman

Based upon a recent Supreme Court decision, our judicial rule has been changed and judges will no longer issue verbal warrants. Just as workers do now during normal working hours, the affidavit and warrant will need to be available after hours. Your workers will need to check with their districts to determine the details on how this process will work. You should also know that we are doing some legal research to determine if the rule can be changed. I know that this will be an inconvenience to workers, but we needed to change our process to comport with the ruling. Please contact me if you have questions. I would appreciate it if you work get this information to your staff as soon as possible; the rule took effect April 30, 2007.

Ray Wahl

Katie Gregory - Re: Verbal Warrants

From: Judge Elizabeth Lindsley
To: Ray Wahl
Date: 5/21/07 12:46PM
Subject: Re: Verbal Warrants

I will defer to you on letting the workers know. I can understand the reluctance to let them know one thing and then it hopefully changes back. To get a warrant now we need the affidavit and the warrant, just like they submit during business hours. I am sorry we went to Disney World and I missed the rules committee meeting where that was taken out of the rule.

>>> Ray Wahl 05/21/07 12:32PM >>>

I have not notified workers. I hesitate to do that and just when they get use to not having that alternative we change the rule and allow it. But if you think we should notify DCFS, JJS and all PO's, I can do that. As it is now, the judge can just tell the worker they cannot issue one but we are reexamining the rule. What do you think? By the way, under the current rule, exactly what would they need to bring to the judge?

Ray

>>> Judge Elizabeth Lindsley 05/21/07 12:27PM >>>

Judge Decker had a request for a verbal warrant on Friday from a JJS worker. Under Rule 7, that went into effect on April 30th, we can't issue verbal warrants anymore. Has anyone notified all of the workers? I know we are waiting for more information on the procedures for these but we are getting calls during shelter weeks requesting verbals. Any thoughts. Beth

Katie Gregory - Verbal Pick up orders

From: Judge Elizabeth Lindsley
To: Brent Johnson; Ray Wahl
Date: 5/7/07 9:24AM
Subject: Verbal Pick up orders
CC: Judge Charles Behrens; Katie Gregory

Comments
 - *waiting for research*

We had a lengthy discussion at Rules Committee on Friday regarding Rule 7. We specifically addressed paragraph (d)(7) being stricken that allowed for verbal warrants of detention after hours to be issued telephonically at the request of probation officers. The probation officers then would file an affidavit and the judge would sign a hard copy of the warrant the next business day. The rules committee members were worried about constitutional concerns and thought we should get warrants like the DCFS warrants for custody on abuse and neglect cases. I was not at the original meeting when this was taken out of the rule.

With that being out of the rule the question arises, Can Judges issue verbal warrants anymore? If we can, what kind of procedures do we need to follow? Do we need to put the probation officer under oath and record the request? Is it exigent circumstances if the probation, JJS or DCFS kid has run from their placement? These are the issues we are trying to figure out? Any guidance?

Should I forward this to Bronson and see if he can do some research? Katie indicated the Board would be discussing this on Friday.

Thank you in advance for any help on this issue. Judge Lindsley

Search warrant
arrest
warrant for custody

at issue
expect the
affidavit
next day

Q. Var P/lyce
must have
off first

Moab / Prie
detention
paper wants

CW
warrants
fax warrant
to home

is a pick up
order = search
warrant.

Can't file
mtn to
suppress
on
Armeding
persons
not
4th A S+ seiji
per Arden

prem. protocol for

verbal arrest warrants

if any.

after elem 8 (d)(7).

forward to Judge Lindsey

From: Brent Johnson
To: Ray Wahl
Date: 4/2/07 3:02PM
Subject: Re: Proposed rules on warrants

I think it is a warrant, but you should have it researched. Although even if it is not a warrant I am not certain that we could treat them different from a warrant.

Let me know when the TCE meeting is and I will be there unless I already have a conflict.

>>> Ray Wahl 04/02/07 09:44AM >>>

I have a question and suggestion:

- 1) Is a pick up order on a delinquent youth considered a warrant? If you want, I can have Bronson, the law clerk research this.
- 2) I would suggest that this be an agenda item at the TCE meeting in May. I know some of the TCE's have been dealing with this for a while and I think others would not be familiar with the issue at all.

Ray

CC: Katie Gregory