

New Jersey

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

*Fourth Amendment
The people to be secure in
their persons, papers, and effects against
unreasonable searches and seizures, shall not
be subjected to unreasonable searches and no Warrants*



Blue to Gold

New Jersey Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



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SPOKANE, WASHINGTON

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— Anthony Bandiero

TABLE OF CONTENTS



PART I
Common Search Warrant Questions

Application Procedure 1

The Search Warrant 3

Execution of Search Warrant 3

Return and Records Procedure 5



PART II
N.J.S. Rules Related to Arrest and Search Warrants

A-21.10. Applications for search warrant; approval..... 12

2B:12-13. Powers of administrator..... 13



PART III
Rule 3:5 - Search Warrants

3:5-1. Authority to Issue..... 13

3:1-1. Scope..... 14

3:5-2. Grounds for Issuance..... 15

3:5-3. Issuance and Contents..... 16

3:5-4. Secrecy..... 18

3:5-5. Execution and Return With Inventory..... 19

3:5-6. Records; Confidentiality..... 21

3:5-7. Motion to suppress evidence and for return of property..... 22

3:5-8. Search and Seizure Without Search Warrant..... 24



PART IV
Rule 7:5 - Search Warrants; Suppression

7:5-1. Filing..... 25

New Jersey Search Warrant Laws

7:5-2. Motion to Suppress Evidence..... 27

7:5-3 Search and Seizure Without a Warrant..... 30

7:5-4 Motion to Suppress Medical Records Obtained Pursuant to
Rule 7:7-8(d) 31



PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	An applicant (N.J. R. Crim. P. 3-5:3); officers of Missing Persons Unit (§ 52:17B-9.8(3)(g))
2) Who has the authority to issue?	Any judge, municipal court administrator or magistrate of a court having jurisdiction in the municipality where property sought is located (§ 2B:12-13; N.J. R. Crim. P. 3:5-1)
3) Is an affidavit necessary?	Yes (or other testimony) (N.J. R. Crim. P. 3:5-3(a))
4) Can sworn oral testimony replace an affidavit?	Yes, by telephone, radio, or other means of electronic communication. If such testimony is recorded or summarized (N.J. R. Crim. P. 3:5-3(a), 3:5-3(b)) Note: if testimony is recorded, the applicant must sign a transcript of that record
5) Are there special provisions	Yes. Superior Court judge may

New Jersey Search Warrant Laws

for obtaining a warrant by telephone?	<p>issue search warrant upon sworn oral testimony of an applicant not physically present if such testimony is recorded and the issuing judge is satisfied that exigent circumstances require use of this procedure (N.J. R. Crim. P. 3:5-3(b))</p> <p>Note: issuing judge shall have recorded statement transcribed as soon as practicable and shall certify such transcription</p>
6) What property can be seized?	<p>—Obtained in violation of penal laws of any state</p> <p>—Possessed, controlled, designed, intended for use or used in any crime</p> <p>—Evidence of a crime</p> <p>(N.J. R. Crim. P. 3:5-2)</p>
7) Contents of application	
a) Who or what is to be searched?	No express provision
b) State the items being sought?	No express provision
c) State the basis for probable cause?	Yes. Must appear in the affidavit or testimony (N.J. R. Crim. P. 3:5-3(a))
d) Are there additional requirements?	No

New Jersey Search Warrant Laws

The Search Warrant

1) Does it require a standard format?	No
2) Required contents	<ul style="list-style-type: none">—Date of issuance—Property to be seized—Name or description of person/place to be searched—Hours (of the day) when warrant may be executed—Basis of probable cause for issuance—Names of affiants—Direction to any law enforcement officer—Direction to return warrant to issuing judge <p>For telephone warrants only:</p> <ul style="list-style-type: none">—Summary of exigent circumstances—Time of issuance of duplicate original warrant—The judge's name must be printed on the warrant <p>(N.J. R. Crim. P. 3:5-3(a), 3:5-3(b))</p>

Execution of Search Warrant

New Jersey Search Warrant Laws

1) How soon must search warrant be executed?	Within 10 days after its issuance (N.J. R. Crim. P. 3:5-5(a)) Note: if duplicate warrant is executed, executing officer shall enter the exact time of its execution on its face (N.J. R. Crim. P. 3:5-5(b))
2) Who may execute?	Any law enforcement officer, including Attorney General, any county prosecutor or sheriff or members of their staffs (N.J. R. Crim. P. 3:5-5(a)) Any law enforcement officer or other person authorized by law (§ 2B:12-14)
3) Where is the search warrant applicable?	Within the territorial jurisdiction of the issuing court (N.J. R. Crim. P. 3:5-1)
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes. Within the hours designated in the warrant (N.J. R. Crim. P. 3:5-3(a), 3:5-5(a))
b) Is execution limited during nighttime?	Yes. If authorized in the warrant (N.J. R. Crim. P. 3:5-5(a), § 33:1-59 (alcoholic beverages))
5) Is forced or unannounced entry allowed under the warrant?	No express provision



PART II

N.J.S.A. 2A:84A-21.10

Applications for search warrant; approval

In the event a search warrant is sought pursuant to Section 1 of this act,¹ all applications to the court for such warrants shall be approved in advance of their submission by the Attorney General or the prosecutor of the county in which execution of the warrant will take place.

N.J.S.A. 2B:12-13
Powers of administrator

Any process, order, warrant or judgment issued by a municipal court may be signed by the judge or be attested in the judge's name and signed by the municipal court administrator. The municipal court administrator shall have the authority granted by law and the Rules of Court to administrators and clerks of courts of record.



PART III

Rule 3:5 - Search Warrants

N.J. Ct. R. 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.

**N.J. Ct. R. 3:1-1
Scope**

The writs and processes of the Superior Court may be directed anywhere within the jurisdiction of this State.

**N.J. Ct. R. 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.

N.J. Ct. R. 3:5-3 Issuance and Contents

(a)Electronic. Except as provided in paragraphs (b) and (c) of this rule, an applicant shall request a search warrant electronically in the Judiciary's computerized system used for such applications. The application shall include a certification in lieu of oath completed by the applicant in accordance with R. 1:4-4(b). If the judge is satisfied that grounds for granting the application exist or that there is probable cause to believe they exist, the judge may authorize issuance of the warrant electronically. The warrant shall contain the date of issuance and shall identify the property to be seized, name or describe the person or place to be searched, and specify 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 name of each person whose certification was submitted in support of the application. The execution of the search warrant and return shall be pursuant to R. 3:5-5(a).

(b)In-Person. An applicant for a search warrant may 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. The warrant shall contain the information specified in paragraph (a), including the name of each person whose affidavit or testimony has been taken in support thereof. The execution of the search warrant and return shall be pursuant to R. 3:5-5(a).



PART IV

Rule 7:5 - Search Warrants; Suppression

N.J. Ct. R. 7:5-1 Filing

(a)By Whom; Documents to Be Filed.

The judge issuing a search warrant shall attach to it the return, inventory, and all other papers related to the warrant, including affidavits and a transcript or summary of any oral testimony and, if applicable, a duplicate original search warrant. The judge shall promptly deliver these documents to the municipal court administrator, who shall file them with the vicinage Criminal Division Manager of the county in which the property was seized. The municipal court administrator shall retain in a confidential file copies of all papers filed with the Criminal Division Manager. If a tape or transmitted recording has been made, the municipal court administrator shall also send them to the Criminal Division Manager, but shall not retain a copy.

(b)Providing to Defendant; Inspection.

All completely executed warrants, together with the supporting papers and recordings described in paragraph (a) of this rule, shall be provided to the defendant in discovery pursuant to R. 7:7-7 and, upon notice to the county prosecutor and for good cause shown, available

New Jersey Search Warrant Laws

for inspection and copying by any other person claiming to be aggrieved by the search and seizure.

N.J. Ct. R. 7:5-2
Motion to Suppress Evidence

(a) Jurisdiction.

The municipal court shall entertain motions to suppress evidence seized with a warrant issued by a municipal court judge or without a warrant in matters within its trial jurisdiction on notice to the prosecuting attorney and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. In matters beyond the trial jurisdiction of the municipal court, and in matters where a search warrant was issued by a Superior Court judge, a motion to suppress evidence shall be made and heard in the Superior Court.

(b) Procedure.

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 submit a brief stating the facts and arguments in support of the search, within a time as determined by the judge, but no less than 10 days after submission of the motion. If the search was made without a warrant, written briefs in support of and in opposition to the motion to suppress shall be filed either voluntarily or in the discretion of the judge, who shall determine the briefing schedule. All motions to suppress shall be heard before the start of the trial. If the municipal court having jurisdiction over the motion to suppress evidence seized with a warrant has more than one municipal court judge, the motion shall be heard by a judge other than the judge who issued the warrant, such judge to be designated by the chief judge for that municipal court. If the municipal court having jurisdiction of

the motion to suppress evidence seized with a warrant has only one judge, who issued the warrant, the motion to suppress evidence shall be heard by the Municipal Court Presiding Judge for the vicinage, or such municipal court judge in the vicinage that the Assignment Judge shall designate.

(c) Order; Stay.

(1) Order Granting Suppression.

An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. All further proceedings in the municipal court shall be stayed pending a timely appeal by the State, pursuant to R. 3:24. The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.

(2) Order Denying Suppression.

An order denying suppression may be reviewed on appeal from an ensuing judgment of conviction pursuant to R. 3:23 whether the judgment was entered on a guilty plea or on a finding of guilt following trial.

(d) Waiver.

Unless otherwise ordered by the court for good cause, defendant's failure to make a pretrial motion to the municipal



ABOUT THE AUTHOR

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Anthony is an attorney and retired law enforcement officer with experience as both a municipal police officer and sergeant with a state police agency. Anthony has studied constitutional law for over twenty years and has trained countless police officers around the nation in search and seizure.

View his bio at BlueToGold.com/about



New Jersey SEARCH WARRANT GUIDE

This booklet is a straightforward and essential resource for anyone involved in writing or executing search warrants in New Jersey. Consolidating relevant statutes and procedural rules and offering clear answers to common questions and addressing real-world challenges.

Designed to be a quick reference, this booklet covers key topics such as warrant application, execution, and return procedures, as well as critical provisions from the New Jersey Code and New Jersey Rules of Criminal Procedure. Whether clarifying authority to issue warrants, addressing defects, or ensuring compliance with execution and return requirements, this guide provides the tools you need for accuracy and legal compliance.



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