

Hello Judge Dailey and Terry. Happy New Year! I hope all is well.

I am writing to begin a discussion on a possible legislative or rule change to address a gap that I don't believe was intended by either the statutes or the Rules of Criminal Procedure between search warrants and court orders for production of records. Section 16-3-301.1(3)(a), C.R.S. provides that the court shall issue an order for production of records "only on receipt of an affidavit sworn to or affirmed before the judge ...", and subsection (10) states that the "provisions of this section shall govern the procedures for court orders for production of records.". Compare this to Section 16-3-303, which applies to search warrants, and subsection (3) provides that "procedures governing application for an issuance of search warrants consistent with this section may be established by rule of the supreme court." Crim.P 41(c)(3) allows search warrants to be applied for and issued electronically, and oaths to be administered by the court to the affiant by telephone.

The court, DA, and law enforcement have found that the procedures for issuing search warrants electronically works extremely well, especially during times the courthouse is closed (nights, weekends, and holidays). However, when an officer has a request for an order for production of records, the officer must travel to the judicial officer for the oath, which, in some instances, may be an hour drive each way for the officer. I cannot think of a reason why the same procedures authorized for search warrants could not be used for orders for production of records. The statute for production of records is relatively new (2003), while the statute for search warrants has been in place for quite a while. The authority to administer oaths by telephone and issue warrants electronically was added to the rule in 2011. Prior to the rule change, officers had to appear before a judicial officer to take an oath for search warrants, too.

I'd be pleased to discuss this with you in more detail. Thank you for considering this request.

My best,

James F. Hartmann
Chief Judge, 19th Judicial District
Water Judge, Division One
P.O. Box 2038
Greeley, CO 80632
(970) 475-2510