

RULE CHANGE 2011(3)
COLORADO RULES OF CRIMINAL PROCEDURE
CRIMINAL RULE 4.2.
CRIMINAL RULE 41

**Rule 4.2. Arrest Warrant Without Information,
Felony Complaint, Or Complaint**

If a warrant for arrest is sought prior to the filing of an information, felony complaint, or complaint, such warrant shall issue only on affidavit sworn to or affirmed before the judge, or a notary public and determined by a judge to relate facts sufficient to establish probable cause that an offense has been committed and probable cause that a particular person committed that offense. A warrant may be obtained by facsimile transmission (FAX) or electronic transmission pursuant to procedures set forth in Rule 41, in which event the procedure in Rule 41 shall be followed. The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the person so named and to take the person without unnecessary delay before the nearest judge of a court of record.

Rule 41. Search, Seizure, and Confession

(a) through (b) [No Change]

(c) Application for Search Warrant

(1) through (2.5) [No Change]

(3) Application and Issuance of a Warrant by Facsimile: or Electronic Transmission. A warrant, signed affidavit, and accompanying ~~papers~~documents may be transmitted by electronic facsimile transmission (fax) or by electronic transfer with electronic signatures to the judge, who may act upon the transmitted ~~papers~~documents as if they were originals. A warrant affidavit may be sworn to or affirmed by administration of the oath over the telephone by the judge. Upon receipt of an affidavit by electronic transfer with an electronic signature, a judge or magistrate shall mark the affidavit as “original.” A warrant approved by the judge or magistrate, signed with electronic signature, shall be marked as “original.” The judge or magistrate shall facilitate the filing of the original affidavit and original warrant in an un-editable format with the clerk of the court. The issuing judge or magistrate shall also forward a copy of the warrant and affidavit, with electronic signatures, to the affiant. This subsection (c)(3) does not authorize the court to issue warrants without having in its possession either ~~the original or~~

~~the fax~~ a faxed copy of the signed affidavit and warrant or an electronic copy of the affidavit and warrant with electronic signatures.

(d) through (e) [No Change]

(f) **Return of Papers to Clerk.** The judge who has issued a warrant shall attach to the warrant a copy of the return, inventory, and all other ~~papers~~documents in connection therewith, including any affidavit in application for the warrant, and shall file them with the clerk of the district court for the county of origin. If a case has been filed in the district court after issuance of the warrant, the clerk of the district court shall notify the clerk of the county court which issued it that the warrant has been filed in the district court. When the warrant has been issued by the county judge and there is no subsequent filing in the district court, after the issuance of the warrant, the documents shall remain in the county court. Any ~~papers compiled by the applicant and~~ documents transmitted by fax or electronic transmission to the judge to obtain the warrant, ~~and the papers received~~documents transmitted by the judge ~~after transmission by the applicant, and the papers received by the applicant after retransmission by the judge to the applicant~~ shall be filed with the clerk of the court ~~as if they were originals. Standards for paper quality and transmission shall be as provided by the Colorado Rules of Civil Procedure.~~

(g) through (h) [No Change]

Rule 41.1. Court Order for Nontestimonial Identification

(a) through (b) [No Change]

(c) **Basis for order.** An order shall issue only on an affidavit or affidavits sworn to or affirmed before the judge, or by the procedures set forth in Crim. P. 41(c)(3), and establishing the following grounds for the order:

(1) through (3) [No Change]

(d) through (i) [No Change]

Amended by the Court, En Banc February 10, 2011, effective immediately.

By the Court:

Alex J. Martinez
Justice, Colorado Supreme Court

