

# SEARCH WARRANTS FOR SUPERIOR COURT JUDGES

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## Search Warrant Basics

- A warrant is a court order authorizing the search of a person, vehicle, premises, or other place
- Requires probable cause to believe that evidence of a crime will be found therein
- Usually sought by a LEO
- Always executed by a LEO
- Principal sources of law
  - Fourth Amendment
  - Article I, section 20 of the state constitution
  - G.S. 15A-241 et seq.

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## Search Warrants and SCJs



- SCJs may issue search warrants valid statewide, G.S. 15A-243(a)(3)
- SCJs may issue search warrants for "electronic communication services" under the federal Stored Communications Act, 18 U.S.C. § 2703(a), 2711(3)(B)
  - Magistrates may not, and it is unclear whether DCJs may
- Some LEOs prefer to seek warrants from SCJs in serious cases
- What types of warrant applications do you see? How often?

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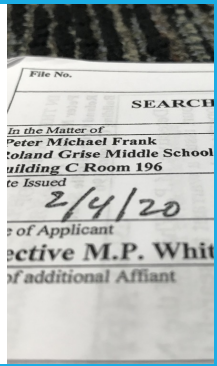
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## How to Review an Application

- The application may be on AOC-CR-119, typically with attachments, but it doesn't need to be
- You may examine the applicant under oath, G.S. 15A-245(a), but I don't recommend it
- You must make a record of any testimony that goes beyond the written application, id.
- Be alert for things the officer knows but failed to include



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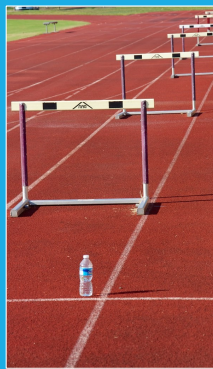
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## Probable Cause

- How high a hurdle is probable cause?
- Does the height of the hurdle vary with the severity of the crime?
- Staleness
  - Two months is "a general rule," *State v. Lindsey*, 58 N.C. App. 564 (1982), but how long depends on the facts.
  - What if the affidavit doesn't specify recency? See *State v. Kochetkov*, 280 N.C. App. 351 (2021).



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## Informants and Probable Cause

### Citizen witnesses

- Most reliable
- Information may provide probable cause by itself, if sufficiently detailed and there's no reason to disbelieve it

### Confidential informants

- Less reliable
- Information may provide probable cause only if bolstered in some way, such as (1) past reliability or (2) corroboration

### Anonymous tipsters

- Least reliable
- Generally requires corroboration
- Classifying people who put their "anonymity at risk"

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## Broad Requests

- "Any and all evidence of [the crime that is the focus of the investigation]"
- "All persons on the premises," e.g., in a drug case
- Digital devices pertaining to the suspect(s) in cases that are not obviously digital

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## Addressing Deficiencies

- How much should you "coach" applicants about defects?
- Amending the application
- Editing the warrant

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## Technology Warrants

- Common
- Warrants for devices
  - Limits on scope?
  - Connected cloud services?
  - Can you order a suspect to provide a passcode or a biometric identifier?
- Getting information from service providers like Verizon or Facebook
  - Warrants for location data and communication content
  - Orders for most other data
  - Wiretap orders for future content
- Hybrid and Frankenstein orders
- Peer and social pressure vs. knowing what you're signing

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## Suicide and Overdose Warrants

- Is there probable cause to believe that evidence of a crime will be found?
- Suicide isn't a crime, G.S. 14-17.1 ("The common-law crime of suicide is hereby abolished.")
- Overdosing isn't a crime, but overdose scenes may contain evidence of drug offenses or death by distribution

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## Copies and Recordkeeping

- Need at least three copies
  - Original, to be executed and returned
  - Service copy
  - Clerk's copy
- G.S. 15A-245(b) ("The issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk.")
  - Can you rely on the LEO do this for you?
  - What about other kinds of orders, e.g., pen register orders?

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## Special Issues with Remote Applications

- Remote applications are generally authorized by G.S. 7A-49.6
- But:
  - Can you "notarize" the written application remotely?
  - Can you sign the warrant using an electronic signature?
- Suggested practice:
  - Applicant swears to the accuracy of the affidavit before a notary, perhaps one in his or her agency
  - Applicant scans the application and emails it to you
  - You print the search warrant out and sign it with a pen
  - You scan the search warrant and email it to the applicant
  - You provide the original search warrant and a copy of the application to the clerk

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**QUESTIONS?**

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14

