

Alabama Rules of Criminal Procedure

Rule 3. Arrest warrant or summons upon commencement of criminal proceedings; search warrant.

Rule 3.7. Authority to issue search warrants.

Upon request of a law enforcement officer or district attorney, a search warrant authorized by this rule may be issued by:

(i) A magistrate who is authorized to practice law in the State of Alabama, or who is authorized by law to issue search warrants, within the magistrate's territorial jurisdiction; or

(ii) A municipal judge, if the search is to be conducted within the police jurisdiction of the municipality; or

(iii) A district judge within the county; or

(iv) A circuit judge within the judge's circuit.

[Amended eff. 12-1-97.]

Committee Comments as Amended Effective December 1, 1997

Rule 41(a), Fed.R.Crim.P., includes a provision setting out the authority to issue search warrants. Rule 3.7 is patterned on this federal rule, and the amendment effective December 1, 1997, specifically eliminated the following words in subsection (iii): "where the property to be searched is located." The intention of the amendment was to permit anticipatory search warrants. See *Ex parte Oswald*, 686 So.2d 368 (Ala.1996).

Inclusion of the provision that the magistrate be within the magistrate's territorial jurisdiction is supported by the case of *Womack v. State*, 281 Ala. 499, 205 So.2d 579 (1967), which states that "the decisive requirement [in determining the limits of the territory within which an officer issuing a search warrant may authorize a search] is ... that the magistrate must have jurisdiction of the place at which the search is directed to be made." 281 Ala. at 503, 205 So.2d at 583.