



IN THE SUPREME COURT OF ALABAMA

December 12, 2023

ORDER

IT IS ORDERED that Rule 3.8 and Rule 3.9, Alabama Rules of Criminal Procedure, be amended to read in accordance with Appendices A and C, respectively, to this order;

IT IS FURTHER ORDERED that the Committee Comments to Amendment of Rule 3.8 Effective February 1, 2024, and the Committee Comments to Amendment of Rule 3.9 Effective February 1, 2024, be adopted to read in accordance with Appendices B and D, respectively, to this order;

IT IS FURTHER ORDERED that the amendments of Rule 3.8 and Rule 3.9 and the adoption of the Committee Comments thereto are effective February 1, 2024; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 3.8 and Rule 3.9:

"Note from the reporter of decisions: The order amending Rule 3.8 and Rule 3.9, Alabama Rules of Criminal Procedure, and adopting the Committee Comments thereto, effective February 1, 2024, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d."

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Witness my hand and seal this 12th day of December, 2023.

Megan B. Rhodeseck

**Clerk of Court,
Supreme Court of Alabama**

**FILED
December 12, 2023**

**Clerk of Court
Supreme Court of Alabama**



IN THE SUPREME COURT OF ALABAMA

December 12, 2023

APPENDIX A

Rule 3.8. GROUNDS FOR ISSUANCE OF SEARCH WARRANT

A search warrant authorized by these rules may be issued if there is probable cause to believe that the property sought:

- (1) Was, or is expected to be, unlawfully obtained;
- (2) Was, or is expected to be, used as the means of committing or attempting to commit any offense under the laws of the State of Alabama or any political subdivision thereof;
- (3) Is, or is expected to be, in the possession of any person with the intent to use it as a means of committing a criminal offense or is, or is expected to be, in the possession of another to whom that person may have delivered it for the purpose of concealing it or preventing its discovery; or
- (4) Constitutes, or is expected to constitute, evidence of a criminal offense under the laws of the State of Alabama or any political subdivision thereof.



IN THE SUPREME COURT OF ALABAMA

December 12, 2023

APPENDIX B

Committee Comments to Amendment of Rule 3.8 Effective February 1, 2024

Subdivision (b) of this rule has been removed. A provision permitting the issuance of a search warrant based upon oral testimony, affidavit testimony, or a combination thereof, communicated by telephone or other reliable electronic means when the applicant is outside the presence of the issuing judge or magistrate, has been added as subdivision (b) of Rule 3.9, Ala. R. Crim. P.



IN THE SUPREME COURT OF ALABAMA

December 12, 2023

APPENDIX C

RULE 3.9 ISSUANCE OF SEARCH WARRANT

(a) Request Made by Applicant In the Presence of the Issuing Judge or Magistrate. A warrant shall issue on affidavit sworn to before the issuing judge or magistrate authorized by law to issue search warrants, establishing grounds for issuing the warrant. If the judge or magistrate is satisfied that probable cause to believe that grounds for issuing the warrant exists, the judge or magistrate shall issue a warrant naming or describing the person and particularly describing the property and place to be searched. Before ruling on a request for a warrant, the judge or magistrate may further examine, under oath, the affiant and any witnesses the affiant may produce. Such additional sworn examination shall be recorded verbatim by the court reporter, by recording equipment, or by other means and shall be considered part of the affidavit for purposes of those proceedings; provided, however, that in reproducing any additional sworn testimony, the confidentiality of confidential informants shall be preserved.

(b) Request Made by Applicant Outside the Presence of the Issuing Judge or Magistrate. A judge or magistrate who is authorized to issue search warrants may issue a warrant based upon oral testimony, affidavit testimony, or a combination thereof, communicated by telephone or other reliable electronic means by an applicant who is not in the presence of the judge or magistrate.

(1) *Procedures.* If the judge or magistrate decides to proceed under this subdivision, the following procedures apply:

(A) **Taking Testimony Under Oath.** The judge or magistrate must place under oath -- and may examine -- the applicant and any person on whose testimony the application is based.



IN THE SUPREME COURT OF ALABAMA

December 12, 2023

(B) Creating a Record of the Testimony. If the applicant does no more than attest to the contents of a written affidavit submitted by reliable electronic means, the judge or magistrate must acknowledge the attestation in writing on the affidavit. If the judge or magistrate considers only oral testimony, or oral testimony in addition to affidavit testimony, the judge or magistrate shall either record the testimony by a voice recording device or make a stenographic or longhand verbatim record of the testimony. If a voice recording device is used or a stenographic record is made, the judge or magistrate shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and transcription with the court. If a longhand verbatim record is made, the judge or magistrate shall file a signed copy with the court.

(C) Preparing a Duplicate Original Warrant. The applicant must prepare a duplicate original warrant and must read its contents verbatim, or transmit by reliable electronic means a copy of the duplicate original warrant, to the judge or magistrate.

(D) Preparing an Original Warrant. If the applicant reads the contents of the duplicate original warrant to the judge or magistrate, the judge or magistrate shall enter what is so read into a document to be known as the original warrant. If the applicant transmits by reliable electronic means a copy of the duplicate original warrant to the judge or magistrate, the copy of the duplicate original warrant received by the judge or magistrate may serve as the original warrant.



IN THE SUPREME COURT OF ALABAMA

December 12, 2023

(E) Modifying the Warrant. The judge or magistrate may modify the warrant. If the judge or magistrate modifies the warrant, he or she must either (i) transmit by reliable electronic means a copy of the modified warrant to the applicant or (ii) file with the court the modified original warrant and direct the applicant to modify the duplicate original warrant accordingly.

(F) Issuing the Warrant. To issue the warrant under this subdivision, the judge or magistrate must (i) sign the original warrant, (ii) enter the date and time of issuance on the original warrant, and (iii) transmit by reliable electronic means a copy of the original warrant to the applicant or direct the applicant to sign the judge's or magistrate's name and enter the date and time on the duplicate original warrant.

(G) Executing the Warrant. The person who executes the warrant issued under this subdivision shall enter the exact time of execution on the face of the copy of the original warrant that has been transmitted by reliable electronic means or on the face of the duplicate original warrant, whichever is applicable.

(2) *Limitation on Motions to Suppress.* Absent a finding of bad faith, evidence obtained pursuant to a warrant issued pursuant to this subdivision is not subject to a motion to suppress on the ground that issuing the warrant in the manner permitted by this subdivision was unreasonable under the circumstances.

(c) **Hearsay.** The finding that grounds for issuing the warrant exist or that there is probable cause to believe that they exist may be based, in whole or in part, upon hearsay evidence, provided that there is



IN THE SUPREME COURT OF ALABAMA

December 12, 2023

substantial basis for believing the evidence under the totality of the circumstances, given all the circumstances before the judge or magistrate, including the credibility of the informer and the basis of his or her knowledge.



IN THE SUPREME COURT OF ALABAMA

December 12, 2023

APPENDIX D

Committee Comments to Amendment of Rule 3.9 Effective February 1, 2024

Current subdivision (b) has been added to this rule, essentially replacing what was formerly subdivision (b) of Rule 3.8, Ala. R. Crim. P. Rule 3.9(b), which is based upon Rule 4.1, Fed. R. Crim. P., permits the issuance of a search warrant based upon oral testimony, affidavit testimony, or a combination thereof, communicated by telephone or other reliable electronic means when the applicant is outside the presence of the issuing judge or magistrate.

Due to the fast pace of change in the digital sphere, the phrase "reliable electronic means," which appears throughout subdivision (b), has not been specifically defined; however, such means include, but are not limited to, email and video-conferencing technology. The forms of electronic means permitted by the rule are limited only by the requirement of reliability.

Former subdivision (b) is now subdivision (c).