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TENN. R. CRIM. P. 41

(d) Copies and Record of Warrant. The magistrate shall prepare an original and two exact copies of each search warrant. **The magistrate shall keep one copy as a part of his or her official records.** The other copy shall be left with the person or persons on whom the search warrant is served. The exact copy of the search warrant and the endorsement are admissible evidence.



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STILL MANY QUESTIONS:

- What are my "official records"?
- How long do I have to keep the copy?
- Where do I keep the copy?

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WHAT ARE MY "OFFICIAL RECORDS"?

- Unfortunately, the Rule does not define "official records."
- Neither do the cases that analyze Rule 41.
- Might be a better question to ask our public records expert as to how to define a court's official records.



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HOW LONG AM I SUPPOSED TO KEEP MY COPY?

The purpose of having the magistrate retain a copy of the search warrant is to ensure the purity of the search process. For example, any alteration of the original warrant can be detected by comparison with the copy retained by the magistrate. The copy retained by the magistrate also gives the judge control to ensure that the warrant is executed and returned to the magistrate in a timely manner, as required by T.C.A. § 40-6-107.

State v. Gambrel, 783 S.W.2d 191, 192 (Tenn. Crim. App. 1989)

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OK, BUT HOW LONG DO I KEEP IT

- In *State v. Henry*, 680 S.W.2d 476, 478 (Tenn. Crim. App. 1984), the Court used the phrasing – “maintain[ing] his retained copy in his possession throughout the case.”
- Next question then is, what do the Courts mean by throughout the case.
 - Through the suppression hearing?
 - Through the trial and motion for new trial?
 - Through the direct appeal?
 - Through the post-conviction?
 - Forever?

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QUICK SIDE NOTE:

- Rule 41(f)(2) states that after the execution of the warrant “the magistrate **SHALL** transmit the executed original warrant with the officer’s return and inventory to the clerk of the court having jurisdiction of the alleged offense in respect to which the search warrant was issued.
- Not saying one has to or should dispose of their copy at this time; however, since you are responsible for transmitting the “executed original warrant” to the clerk of the court, this might be a good time to check the executed warrant against your copy.

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WHAT HAPPENS IF I DON'T KEEP A COPY OR SOMETHING HAPPENS TO MY COPY?

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- In *State v. Brewer*, 989 S.W.2d 349 (Tenn. Crim. App. 1997), the CCA held that the failure of the magistrate to retain a copy of the search warrant deprived the warrant of any efficacy, and, thus, the search was invalid.
- In reaching this conclusion, the Court reasoned that,
 - one of the express mandatory directives of the rule is that the magistrate make an original and two copies of the warrant. The rule is clear that the purpose of one of these copies is that it remain in the possession of the magistrate "as part of his or her official records." Thus, the object of the making of a magistrate's copy is that the magistrate have and keep the copy after issuance of the warrant. For this reason, we conclude that the magistrate's retention of a copy of the search warrant is implicit in the mandatory provisions of Rule 41(c), the provisions under which a failure to comply "shall make any search conducted. an illegal search and any seizure thereunder an illegal seizure."

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BUT THERE ARE EXCEPTIONS. . .

- In *State v. Gambrel*, 783 S.W.2d 191 (Tenn. Crim. App. 1989), the magistrate retained a physical copy of the warrant, but due to the weakness of the carbon impression, the wording that was written into the blanks in the form's printed language on the magistrate's copy was "barely legible." The court observed in *Gambrel* that the "purpose of having the magistrate retain a copy . . . is to insure the purity of the search process." 783 S.W.2d at 192. The Court noted that the rule protects against any post-issuance alteration of the original warrant and "gives the judge control to ensure that the warrant is executed and returned to the magistrate in a timely manner. . . ." *Id.* However, in *Gambrel* the written portion of the warrant was merely dim, not absent, and the Court held that the copy left with the magistrate was an "exact copy" that complied with Rule 41(c). *Id.*

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- In *State v. Henry*, 680 S.W.2d 476 (Tenn. Crim. App. 1984), the search warrant copy that had been retained by the magistrate was misplaced and could not be produced at the suppression hearing. The Court affirmed the trial court's determination the search was valid despite the absence of the magistrate's copy, noting that the magistrate initially retained a copy of the warrant. "Only sometime later did the magistrate's copy become lost." 680 S.W.2d at 478. In *Henry*, the record disclosed no "changes or deletions" or "improprieties" with the warrant, and moreover, the defendant failed to show that he was prejudiced in any manner by the loss of the once-existing copy. *Id.*

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