

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
MAINE RULES OF CRIMINAL PROCEDURE

2014 Me. Rules 01

Effective: May 6, 2014

All of the Justices concurring therein, the following amendments to the Maine Rules of Criminal Procedure are adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 3, subdivision (a) of the Maine Rules of Criminal Procedure is amended to read as follows:

(a) Nature and Contents. The complaint shall be a plain, concise, and definite written statement of the essential facts constituting the crime charged. The complaint is not required to negate any facts designated a “defense” or any exception, exclusion, or authorization set forth in the statute defining the crime. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the crime are unknown or that the defendant committed it by one or more specified means. The complaint shall state for each count the official or customary citation of the statute, rule, regulation, or other provision of law, the class of crime which the defendant is alleged therein to have violated and the municipality or other location where the crime is alleged to have occurred. Error in the citation of a statute or its omission shall not be grounds for the dismissal of the complaint or for reversal of a conviction if the error or omission was not prejudicially misleading.

All charges against a defendant arising from the same incident or course of conduct should be alleged in one complaint, except that special circumstances may require the use of separate instruments. A complaint may include multiple counts charged against a defendant when authorized pursuant to Rule 8(a). Nothing in

this rule shall prohibit the later commencement of additional charges arising from the original incident or course of conduct. The court may administratively consolidate such subsequent charges with the original complaint into a single case docket. Two or more defendants may not be charged in the same complaint.

If a prior conviction must be specially alleged pursuant to 17-A M.R.S. § 9-A(1) it may not be alleged in an ancillary complaint or separate count but instead must be part of the allegations constituting the principal crime. A prior conviction allegation made in one count may be incorporated by reference in another count.

Advisory Note – May 2014

The amendment modifies Rule 3, subdivision (a) by adding the words “or other location” after the word “municipality” to make clear that not every location within the criminal jurisdiction of the State in which a crime is alleged to have occurred is physically within a municipality. The most common examples are unorganized territories and locations outside any municipality on the Atlantic Ocean. In the case of unorganized territories, some have formal place names while others do not and thus necessitate referring to a numbered township and range, for example “T9R8.” In the latter circumstance, it is unnecessary to include further identification information such as “WELS.” In the case of Atlantic Ocean locations, except for islands with formal place names, location is best identified by utilizing GPS coordinates.

2. Rule 41B, subdivision (c) of the Maine Rules of Criminal Procedure is adopted to read as follows:

(c) Cell Phone or Other Electronic Device Location Information.

The following outlines the special statutory provisions both for obtaining the location information of a cell phone or other electronic device and for its in-court use at a trial, hearing, or proceeding as provided under 16 M.R.S. §§ 647 to 650-B. Additionally, it specifies how Rule 41 is to be applied; identifies the “appropriate court” in which the written statement must be filed to comply with 16 M.R.S. § 650(4); and makes all written statements confidential unless a court orders otherwise with respect to a specific written statement.

(1) Definitions. The definitions for “electronic communication service,” “electronic device,” “location information,” and other included statutorily defined terms are as provided under 16 M.R.S. § 647.

(2) Search Warrant Requirement; Application Process; Time Allowed for Execution. Unless an exception is provided by 16 M.R.S. § 650, a search warrant is required to obtain location information by 16 M.R.S. § 648. The application process for the issuance of the search warrant and its return are as provided in Rule 41. The time allowed for its execution, however, is provided by 16 M.R.S. § 648, not Rule 41(g).

(3) Notice Obligation to Identifiable Owner or User; Timing and Content of Written Notice. Unless waived as provided under 16 M.R.S. § 649(2), written notice to an identifiable owner or user is as provided under 16 M.R.S. § 649. Timing and content of the written notice is as provided under 16 M.R.S. § 649(1).

(4) Court Order Prohibiting an Electronic Communication Service or Location Information Service from Disclosing Existence of Search Warrant. A court order to a provider of electronic communication service or location information service not to notify any other person of the existence of the search warrant is as provided under 16 M.R.S. § 649(3).

(5) Exceptions to Warrant Requirement. Exceptions to the requirement of obtaining a search warrant in order to obtain location information is as provided under 16 M.R.S. § 650. In the event no warrant is obtained due to reliance upon the immediate danger of death or serious physical injury exception pursuant to 16 M.R.S. § 650(4), the required written statement must be filed with the Kennebec County Consolidated Clerk’s Office. Unless a court orders otherwise with respect to a specific written statement, all written statements are confidential.

(6) Conditions for In-Court Use of Location Information or Evidence Derived From It. Unless waived by a court under 16 M.R.S. § 650-A(2), use at a trial, hearing, or proceeding of location information or evidence derived from it is conditioned upon notice and the furnishing of certain warrant materials as provided by 16 M.R.S. § 650-A(1).

Advisory Note – May 2014

The amendment to Rule 41B adds a new subdivision (c) that outlines the special statutory provisions both for obtaining the location information of a cell

phone or other electronic device and for its in-court use at a trial, hearing, or proceeding as provided under 16 M.R.S. §§ 647 to 650-B, enacted by P.L. 2013, ch. 409, § 1 (effective Oct. 9, 2013), as modified by R.R. 2013, ch. 1, §§ 27-33 (reallocating the subchapter and sections enacted by chapter 409).

Independent of the special statutory provisions outlined, the Court itself in new subdivision (c)

(1) clarifies in paragraph (2) that the application process for the issuance of the search warrant, and the execution and return, other than the time allowed for its execution, are as provided in rule 41;

(2) specifies in paragraph (5) that the Kennebec County Consolidated Clerk's Office is the "appropriate court" in which all written statements are to be filed; and

(3) mandates in paragraph (5) that all written statements are confidential unless a court orders otherwise with respect to a specific written statement.

3. Rule 41B, subdivision (d) of the Maine Rules of Criminal Procedure is adopted to read as follows:

(d) Cell Phone or Other Portable Electronic Device Content Information.

The following outlines the special statutory provisions both for obtaining the content information of a cell phone or other portable electronic device and the consequences for violating its provisions as provided under 16 M.R.S. §§ 641-646.

(1) Definitions. The definitions for "content information," "electronic communication service," "portable electronic device," and other included statutorily defined terms are as provided under 16 M.R.S. § 641.

(2) Search Warrant Requirement. Unless an exception is provided under 16 M.R.S. § 644, a search warrant is required to obtain content information from a provider of electronic communication service by 16 M.R.S. § 642. The application process for the issuance of the search warrant, its execution and return are as provided in Rule 41.

(3) Notice Obligation to Owner or User; Timing and Content of Written Notice. Unless waived under 16 M.R.S. § 643(2), written notice to an owner or user is as provided by 16 M.R.S. § 643. Timing and content of the written notice is as provided by 16 M.R.S. § 643(1).

(4) Court Order Prohibiting Electronic Communication Service from Disclosing Existence of Search Warrant. A court order to a provider of electronic communication services not to notify any other person of the existence of the search warrant is as provided under 16 M.R.S. § 643(3).

(5) Exceptions to Warrant Requirement. Exceptions to the requirement of obtaining a search warrant in order to obtain content information are as provided under 16 M.R.S. § 644.

(6) Content Information Obtained in Violation of 16 M.R.S. §§ 641-644 Inadmissible. Content information obtained in violation of 16 M.R.S. §§ 641-644 is inadmissible in a criminal proceeding as provided under 16 M.R.S. § 645.

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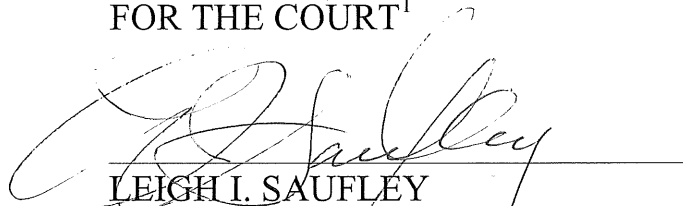
The amendment to Rule 41B adds a new subdivision (d) that outlines the special statutory provisions both for obtaining the content information of a cell phone or other portable electronic device and the consequences for violating its provisions as provided under 16 M.R.S. §§ 641-646, enacted by P.L. 2013, ch. 402, § 1 (effective Oct. 9, 2013).

Independent of the special statutory provisions outlined, the Court itself in paragraph (2) of new subdivision (d) clarifies that the application process for the issuance of the search warrant as well as the execution and return are as provided in Rule 41.

4. These amendments shall be effective May 6, 2014.

Dated: May 6, 2014

FOR THE COURT¹

A large, stylized handwritten signature in black ink, which appears to read "L. Saufley", is written over a horizontal line. The signature is fluid and cursive.

LEIGH I. SAUFLEY

Chief Justice

DONALD G. ALEXANDER

JON D. LEVY

WARREN M. SILVER

ANDREW M. MEAD

ELLEN A. GORMAN

JOSEPH M. JABAR

Associate Justices

¹ This Rule Amendment Order is approved after conference of the Court, all Justices concurring therein.