

NMDPS - SEARCH WARRANT – TELEPHONE APPROVAL

In Dona Ana County, an officer got a search warrant by telephone. The Judge gave an oath over the telephone and the officer read the written affidavit, word for word. Once approved, the warrant was immediately executed. Later, the officer obtained the judge's signature on the search warrant and affidavit.

The Constitution of New Mexico states no warrants shall issue without a written showing of probable cause (the affidavit). Does this mean a written affidavit has to be in front of a judge prior to approval of a search warrant? To determine this, one must understand what the word "showing" or "to show" means.

Showing is not simply visually "showing" someone something. It can occur visually but also in other ways. For example, it can mean to make apparent or clear, or to establish by argument or reasoning. Supreme Court held a "showing" of a written statement can be accomplished by visually seeing an affidavit or hearing it over the telephone.

Either way, a person is protected. An oath is given, a written affidavit is read, and the person's property to be searched is given a copy of the search warrant, affidavit, and inventory. The courts encourage warrants and this is another way to get one. State v. Boyse (2013).

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- It is recommended a search warrant be obtained in person, by fax or computer.



Ya know you can call these in now!