

## **Search Warrants and the 10-Day Rule**

Penal Code section 1534 states that a search warrant is only valid for 10 days, and that it shall be executed and returned within 10 days of issuance. If the search warrant is not served within 10 days, it is void. Government Code section 6800 states that “[t]he time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.”

*People v. Clayton* (1993) 18 Cal.App.4th 440, specifically held that the 10 days is computed by not counting the day the search warrant is issued.

*People v. Stevenson* (1976) 62 Cal.App.3d 915, held that if the 10th day to return the search warrant falls on a Saturday, the search warrant can be returned on the next business day, which is Monday, without violating the mandates of Penal Code section 1534.

Penal Code section 1534(a) mandates that “[t]he documents and records of the court relating to the warrant need not be open to the public until the execution and return of the warrant or the expiration of the 10-day period after issuance. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record.”

In cases involving high-technology evidence, where it takes substantial time to complete a forensic analysis on seized electronic equipment (e.g., cell phones, computers), or obtain records from service providers (e.g., Facebook, Google or Microsoft), affiants are asking the court to suspend the 10-day rule. This is wrong for several reasons. First, the search warrant must be executed (served) within 10 days according to the legislative mandate, or it becomes invalid. Second, courts have no power to ignore valid statutes enacted by the Legislature, and therefore, such an order is immediately invalid. Third, affiants are confusing the execution of the search warrant with the forensic examination of the device or receipt of the records sought under the warrant. An item may be lawfully seized within 10 days, but the forensic examination of the item may take longer than 10 days. Likewise, a record holder can be compelled to produce records within 10 days, but examination and analysis of those records may take longer than 10 days. As long as the warrant authorizes the forensic examination of the seized electronic items, it does not matter that it takes longer than 10 days to complete the examination or obtain the records sought because the warrant is executed (served) within the 10-day life of the warrant.

It is important to recognize that the 10-day rule relates to execution (service) of the warrant and not the examination of the evidence. Confusion sometimes occurs because the affiant is required to file a search warrant return within 10 days following the execution (service) of the search warrant (See Pen. Code § 1534). However, not all of the information has been obtained because the forensic

examination of the electronic device(s) has not been completed or the records sought have not yet been received from the service provider. An easy remedy to this situation is to file a return with the court stating that electronic item(s) were seized and delivered to a crime lab for forensic analysis, or that the warrant has been served on the service provider, but the records have yet to be received; then file an amended return after the forensic analysis of the electronic item(s) is completed or the records sought are obtained from the service provider.