

On Application for Issuance of Search Warrant By: PSI GARRY FRANCO C. PUASO

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The PNP's anti-dangerous drugs campaign dubbed as "Project: Double Barrel" requires PNP members to apply for search warrants to validly search the houses of suspected drug pushers. Many operations were conducted wherein dangerous drugs were successfully confiscated. However, several cases filed in court in connection with such successful search and seizures were dismissed because the search warrants that authorized



the seizures were quashed. The PNP issued operational manuals but this topic is scantily discussed therein. Hence, this Directorate presented in this issue a deeper discussion on this matter and suggested a format for application for issuance of search warrant.

Q: What are the laws governing the application for issuance of search warrant?

A: They are the following:

1. Rule 126 (Search and Seizure) of the Rules of Criminal Procedure
2. Section 2 of Article 3 (Bill of Rights) of the constitution
3. Supreme Court Resolution in A.M. No. 99-20-09-SC
4. The penumbras of the right of citizens guaranteed by the Constitution, Civil Code, etc that uphold the right to privacy.
5. Rules on Evidence

Q: What is a Search Warrant?

A: A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court ([Sec. 1, Rule 126, ROC](#)).

Q: Where do you apply for Search Warrant?

A: In any court, meaning MTC or RTC, having territorial jurisdiction of the place where search warrant is to be served. [Example, if the place to be searched is in Quezon City, the application will have to be made in any court in Quezon City.](#)

Q: Is the answer in the preceding question an absolute rule? What if applying for a search warrant in Quezon City will hamper the operation because the subject has connections in the courts of Quezon City?

A: The preceding answer has exception. The applicant can also apply for issuance of search warrant in any court within the judicial region covering the place where it is going to be enforced; PROVIDED, the reasons that compelled the applicant to apply for search warrant in the court other than the court covering the place where it will be enforced is stated in the application.

Important:

Supreme Court resolution in A.M. No. 99-20-09-SC (Resolution Clarifying Guidelines on the Application for and Enforceability of Search Warrants) and subsequent amendments thereto, provide exemptions to the requirement that a compelling reason must be stated in the application for Search Warrant if applied outside the place where it will be served. Said Resolution provides, that in **special criminal cases**, the Executive Judges or in their absence, the Vice-executive Judges of RTCs of Manila and Quezon City can issue search warrant that can be served anywhere in the Philippines even if there will be no statements of the compelling reason stated in the application as long as the application will be endorsed by Chief of Office of PNP units.

These special criminal cases pertain to:

- a. those involving heinous crimes;
- b. illegal gambling
- c. illegal possession of firearm and ammunitions
- d. Violations of the Anti-dangerous drugs law,
- e. the intellectual property code,
- f. the Anti-money Laundering Act,
- g. the Tariff and Customs Code,
- h. and other relevant laws that may be enacted by Congress and may be included in the law by the Supreme Court.

Q: What are the requisites in the issuance of search warrant?

A: A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Q: How is the applicant examined?

A: The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

Q: When is the search warrant issued?

Republic of the Philippines
REGIONAL TRIAL COURT
8th Judicial Region
Branch 21
Laoang, Northern Samar

RECORDED BY *nk*
DATE OCT 03 2016
TIME 12:48 P

Republic of the Philippines,
Complainant,

versus

Search Warrant No. **07**
For: Vio. of Sec. 28, RA 10591

ROQUE HALAYAHAY of Brgy.
San Roque, San Isidro, N. Samar,
Respondent.

-----/

SEARCH WARRANT

TO ANY OFFICER OF THE LAW:

Greetings:

You are hereby ordered to SEARCH and SEIZE the following items which is under the control/possession of respondent Roque Halayahay of Brgy. San Roque, San Isidro, Northern Samar, to wit:

- a. One (1) Cal. Pistol of unknown models with several live ammunitions of said firearms;
- b. One (1) Cal. 9mm pistol of unknown models with several live ammunitions of said firearms.

to be guided by the location map as well as the residential house sketch as attached in the application for search warrant indicating the particular place and location of the items to be search and seize.

The Officer is hereby enjoined to observed Section 11 of Rule 126 of the Rules of Court as well as Section 12 thereof, which is delivery of property and inventory thereof to this Court.

In Chambers, Laoang, Northern Samar, this 3rd day of October 2016.

[Signature]
DECOROSO M. TURLA
Executive Judge

A: If the judge is satisfied of the existence of facts (crimes) upon which the application is based or that there is probable cause to believe that they (crimes) exist, he shall issue the warrant.

Q: A judge issued a single search warrant commanding police officers to seize undetermined quantity of shabu and two Cal. 45 firearms inside the house of a suspected drug pusher. Is the search warrant valid?

A: No. The search warrant is not valid. A search warrant must be issued in connection with one, single, or specific offense only.

Note: This usually happens when during applications for search warrant, the applicant lumped in one application too many personal properties the possession of which are punished by different laws. Therefore, an applicant for search warrant must apply search warrant in connection with single or specific offense only. In this case, one application for search warrant for dangerous drugs and another for possession of weapons.

Q: A Search Warrant was issued but the Judge issuing the warrant cannot produce the transcript of stenographic notes of the proceedings when he issued the warrant. Is it a defective warrant?

A: In *Ogayon vs. People* (GR 188794, Sept 2, 2015), the SC held that the failure to attach the transcript of the judge examinations, though contrary to the rules, does not by itself nullify the warrant. What the constitution requires is for the judge to conduct examination to determine the existence of probable cause.

Q: In one case, the principal witness of the applicant for search warrant used a name different from his true name. During the proceedings treating the motion to quash the search warrant, the Judge handling the case ascertained that the witness used a name different from his true name. What is the effect of this dishonesty of the applicant?

A: This is an actual case and regardless of the result of the proceedings treating the motion to quash, this dishonesty cannot be tolerated. This act of the applicant is actually a mockery of the sacredness of the court.

Sample Application for Issuance of Search Warrant:

Republic of the Philippines
REGIONAL TRIAL COURT
8th JUDICIAL REGION
Branch 21
Catarman, Northern Samar

People of the Philippines
Plaintiff

Search Warrant No. _____

- VERSUS -

FOR:

Violation of _____

Respondent.
X - - - - - /

APPLICATION FOR SEARCH WARRANT

COMES NOW, the undersigned Deputy Chief of the Investigation Branch of Leyte Police Provincial Office, located in San Jose, Tacloban City, unto this Honorable Court most respectfully avers:

1. That the undersigned applied for issuance of search warrant in this Honorable Court and not in any court in _____ - where the search warrant will be enforced because (state the compelling reasons); (**Note:** In this paragraph, state the compelling reasons and the pieces of evidence that will prove such compelling reasons why a search warrant has to be obtained outside the place from which it will be enforced. **Note further:** disregard this paragraph and proceed immediately to paragraph 2 if the application for Search Warrant is filed in courts having territorial jurisdiction where it will be implemented.)

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2. That I was informed th _____ e of respondent), Filipino, of legal age, married to _____ and one of the engineers in the Regional Office of DPWH is keeping in his residence located in Brgy. Sampaguita, Tacloban City, the following: a) _____; b) _____ which act violates RA _____; (**Note:** here, simply provide the general statements about the crime)
3. That the undersigned caused the investigation and verification of the report. Witnesses Police Officers _____ and _____, who were able to gain entry in the residence of the respondent confirmed to me that the report is absolutely true; (**Note:** here, state how the report was confirmed)
4. That based on the report of above-named witnesses, respondent is keeping in the attic and in the room of his house, which house is actually located at #41, First Street, Brgy. Sampaguita, Tacloban City the following contrabands which act particularly violates Section _____ of RA _____ :
 - a. _____; and,
 - b. _____;

(**Note:** The place inside the house to be searched must be clearly stated and the address of the house to be searched must be clearly determined. The most important thing to remember in this paragraph is to convince the Judge that respondent owned or if not, has control over the place to be searched.

Further, enumerate th _____ 7 _____ things the respondent is keeping. See to it that the enumerated things are p _____ le by a single provision of law to conform to the requirement that a search warrant must be issued in connection with a single offense. If there are other things punishable by another provision of law or that constitutes another offense, another application for issuance of search warrant for that other offense is necessary.)

5. Attached are the following to support this application:
 - a. Certification issued by the Municipal Engineer to prove that the house to be searched is owned by the respondent;
 - b. Affidavit of Police Officer _____;
 - c. Affidavit of Police Officer _____;

[**Note:** In the case of Alvarez vs CFI of Tayabas, 64 Phil. 33, 44 (1937), SC held that: the true test of sufficiency of a deposition or affidavit to warrant issuance of search warrant is whether it has been drawn in such a manner that perjury could be charged thereon and affiant be held liable for damages caused.]

- d. Vicinity sketch of the Location of the house;

Note: The Supreme Court consistently declared that the description of the place to be searched is sufficient if the officer serving the warrant can, using reasonable effort, ascertain and identify the place intended and distinguish it from others.

- e. Sketch of the house and the location of the items to be seized;
- f. Negative Certification (from FEO in case of firearms, from PCSO in case of illegal numbers game, etc)
- g. And others

(**Note:** attach here the piec _____ f _____ evidence that will prove the statements averred in the preceding paragraphs.)

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6. WHEREFORE, the undersigned most respectfully prays that this Honorable Court issue a search warrant against the respondent authorising the undersigned or any police officer to search the premises described in paragraph 4; and, to seize and bring to this Court the things or properties enumerated in the same paragraph.

Tacloban City for Catarman, Northern Samar.

_____(Date)_____

FRANCO CAÑETE LIPAY
Police Senior Inspector

**VERIFICATION AND
CERTIFICATION OF NON-FORUM SHOPPING**

Republic of the Philippines)
Province of Northern Samar)
Municipality of Catarman)s.s

I, FRANCO CAÑETE LIPAY, under oath, depose and say that:

1. I am the applicant and I prepared this application for search warrant, read, and understood all the allegations therein;
2. The same are true and correct of my own knowledge; and, on the basis of authenticated documents in my possession; and,
3. That I have not commenced any application for search warrant against the same party in any court, tribunal or other agency and that to the best of my knowledge, no such application is pending in any court, tribunal, or agency and if I learn that a similar application has been filed or pending before any court, tribunal, or agency, I shall make the required notification within five (5) days from receipt thereof.

(Note: Although applications for search warrant need not be verified and does not need a certification against forum shopping, it is recommended that "verification and certification of non-forum shopping" must be stated in the application itself. The reason is, criminals today knew that whenever an applicant for search warrant is denied by one judge, it is easy for him to apply search warrant in another judge and so on and so forth. During proceedings to quash the warrant, this ground is always cited. The Supreme Court, in the case of Washington Distillers vs CA (GR No. 118151, 22 August 1996) considered the practice as intolerable and violates the prohibition on forum shopping.

IN TRUTH WHEREOF, I have hereunto affixed my signature this
_____ in _____, Philippines.

FRANCO CAÑETE LIPAY
Police Senior Inspector

SUBSCRIBED AND SWORN TO BEFORE ME this _____ in
_____, Philippines

(Judge)

Recommend Approval for Filing:

(Unit Head)

Approved for Filing:

(Provincial Director)

Important:

These "Recommendation for approval" and "Approval for filing" portions which are the last portion of the application for search warrant complies with the requirement of Supreme Court resolution in A.M. No. 99-20-09-SC and subsequent amendments thereto that applications for search warrant for **special criminal cases** must be indorsed by unit head. However, in practice, the application must be duly indorsed; meaning, a separate endorsement letter must be on top of the application for search warrant.

Note: Further study about this topic is encouraged. Please feel free to inform us any of your concerns.