



Republic of the Philippines
Supreme Court
Office of the Court Administrator
Manila

OCA CIRCULAR NO. 40-2016

TO : ALL JUDGES OF FIRST AND SECOND LEVEL COURTS

SUBJECT : CONSTITUTIONAL REQUIREMENTS AND RULES IN THE ISSUANCE OF ARREST AND SEARCH WARRANTS

In view of persistent reports on the pernicious issuance of defective warrants, all judges are enjoined to strictly observe the constitutional requirements and rules in the issuance of warrants.

1. In the issuance of warrants of arrest, the judge shall determine the existence of probable cause. "What the law requires as *personal determination* on the part of a judge is that he should not rely *solely* on the report of the investigating prosecutor. This means that the judge should consider not only the report of the investigating prosecutor but also the affidavit and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court."¹ "As long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest."²
2. In such instances, the judge has the option either: to issue the warrant of arrest if there is necessity to place the

1 *People v. Grey*, G.R. No. 180109, July 26, 2010; *AAA v. Hon. Carbonell*, G.R. No. 171465, June 8, 2007; *Okabe v. Gutierrez*, G.R. No. 150185, May 27, 2004.

2 *Joya v. Judge Marquez*, G.R. No. 162416, January 31, 2006.

accused under custody;³ to refuse to issue the warrant if there is no probable cause;⁴ or, to order the prosecutor to present additional evidence in case of doubt.⁵

3. In the issuance of **search and seizure warrants**, the judge must personally examine the complainant and his witnesses under oath or affirmation, in the form of searching questions and answers.⁶ The personal examination must not be merely routinary or *pro forma*, but must be probing and exhaustive.⁷
4. The judge shall require a particular description of the place to be searched and of the persons or things to be seized.⁸ "A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officer to it, satisfies the constitutional requirement of definiteness."⁹
5. The heads of the National Bureau of Investigation (NBI), the Philippine National Police (PNP), the Anti-Crime Task Force (ACTAF) and the Philippine Drug Enforcement Agency (PDEA) shall personally endorse (or authorize) all applications for search warrants involving heinous crimes, illegal gambling, illegal possession of firearms and ammunitions as well as violations of the Comprehensive Dangerous Drugs Act of 2002, the Intellectual Property Code, the Anti-Money Laundering Act of 2001, the Tariff and Customs Code, as amended, and other relevant laws that may hereafter be enacted by Congress, and included by the Supreme Court, for the search of the places to be particularly described therein, and the seizure of property or things as prescribed in Rule 126 of the Rules of Court, and to issue the warrants,

3 *Hao v. People*, G.R. No. 183345, September 17, 2014; *Enriquez v. Judge Sarmiento*, A.M. No. RTJ-06-2011, August 7, 2006; Section 6, Rule 112, Rules of Court.

4 *Mendoza v. People*, G.R. No. 197293, April 21, 2014.

5 *Id.*; Section 6, Rule 112, Rules of Court.

6 Section 2, Article III, Constitution; *People v. Tee*, G.R. Nos. 140546-47, January 20, 2003.

7 *People v. Tee*, G.R. Nos. 140546-47, January 20, 2003; Section 5, Rule 126, Rules of Court.

8 *Castillo v. People*, G.R. No. 185128, January 30, 2012; *People v. Tuan y Baludda*, G.R. No. 176066, August 11, 2010; *Nala v. Judge Barroso, Jr.*, G.R. No. 153087, August 7, 2003.


9 *People v. Tee*, G.R. Nos. 140546-47, January 20, 2003; *People v. Tuan y Baludda*, G.R. No. 176066, August 11, 2010.

if justified.¹⁰

6. The authorized judges shall keep a special docket book listing the details of the applications and the results of the searches and seizures made pursuant to the warrants issued.¹¹

For strict compliance.

10 February 2016


JOSE MIDAS P. MARQUEZ
Court Administrator

¹⁰ *Laud v. People*, G.R. No. 199032, November 19, 2014; *Spouses Marimla v. People*; G.R. No. 158467, October 16, 2009; Supreme Court, Re: Resolution Clarifying the Guidelines on the Application for and Enforceability of Search Warrants, Administrative Matter No. 99-10-09-SC [A.M. No. 99-10-09-SC] (2000); Supreme Court, Re: Guidelines on the Selection and Designation of Executive Judges and Defining their Powers, Prerogatives and Duties, Administrative Matter No. 03-8-02-SC [A.M. No. 03-8-02-SC] (2004); Office of the Court Administrator, Office of the Court Administrator Circular No. 87-2013 [OCA Circular No. 87-2013] (2013).

¹¹ A.M. No. 03-8-02-SC, Section 12; OCA Circular No. 87-2013.