

SC CIRCULAR NO. 12, June 30, 1987

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ADMINISTRATIVE SUPERVISION OF COURTS

TO :

THE COURT OF APPEALS, SANDIGANBAYAN, REGIONAL TRIAL COURTS/ METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS

SUBJECT:

Guidelines on Issuance of Warrants of Arrests under Section 2, Article III, 1987 Constitution

Article III, Section. 2 of the 1987 Constitution of the Republic of the Philippines provides:

"Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized." (Emphasis supplied)

The foregoing provision is a verbatim reproduction of Article III, Section 3 of the 1935 Constitution, and Article IV, Section 3 of the 1973 Constitution, except that the word "personally" is now inserted after the word "determined" in the 1987 Constitution; in the 1935 Constitution, the term "warrants" was used generally while the 1973 and 1987 Constitutions specify both search warrant and warrant of arrest; and the authority to issue such warrants given in the 1973 Constitution to "other responsible officer: as may be authorized by law", in addition to the judge, has been deleted in the 1987 Constitution.

Conflicting interpretations of the new provision of the 1987 Constitution have been made by lower court judges, in view of the insertion of the word "personally". Hence, pursuant to the supervisory jurisdiction of this Court, the following guidelines are established for the guidance of the bench and bar:

- The purpose of a preliminary investigation is only to determine probable cause. As stressed in *Hashim vs. Boncan*, 71 Phil. 216, January 31, 1931 "x x x the investigating judge or prosecuting officer acts upon, probable cause and reasonable belief, not upon proof beyond a reasonable doubt. The occasion is not for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. When all this is fulfilled, the accused will not be permitted to cast about for fancied reasons to delay the proceedings; the time to ask for more is at the trial. x x x "
- Both under the 1935 and 1973 Constitutions, the settled rulings of our jurisprudence, which rulings the drafters

of the 1987 Constitution were certainly cognizant of and took into consideration, is that the judge, in determination of the existence of probable cause for the issuance of the warrant of arrest, may rely upon certification of the fiscal that he has conducted a preliminary investigation and that a probable cause exists. (See *Hashim vs. Boncan*, supra; and *Placer vs. Villanueva* 126 SCRA 463, citing *U.S. vs. Ocampo*, 18 Phil. 1 and *Amarga vs. Abbas*, 98 Phil. 739)

- The insertion of the word "personally" for the judge's determination of the existence of probable cause in the 1987 Constitution serves to underscore the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of a probable cause. He is proscribed from delegating this task of investigation to any other person. He must do it personally.

- In satisfying himself of the existence of a probable cause for the issuance of a warrant of arrest, the judge, following the established doctrine and procedure, may either:

- (a) Rely upon the fiscal's certification of the existence of probable cause whether or not the case is cognizable only by the Regional Trial Court and on the basis thereof, issue a warrant of arrest; or

- (b) If on the face of the information he finds no probable cause, he may disregard the fiscal's certification and require the submission of the supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of a probable cause.

- The Supreme Court admonition should be heeded that while the Constitution does confer upon the judge the power to conduct preliminary examination preparatory to issuing a warrant of arrest, sound policy reasons should curb the propensity to make use of such competence, since judges of the CFI and CCC (now RTC) "should not encumber themselves with the preliminary examination and investigation of criminal complaints" but should "concentrate on hearing and deciding criminal cases filed before their courts." (*Collector of Customs vs. Villaluz* and five other cases jointly decided, 71 SCRA 356 [1976]).

Strict compliance with these guidelines is hereby enjoined.

June 30, 1987.

(Sgd.) CLAUDIO TEEHANKEE

Chief Justice

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