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4. PROCEDURAL CHECKLISTS ON CRIMINAL PROCEDURE

1. For Cases Cognizable By The Municipal Trial Courts

Checklist I

Things To Check/Do Upon Receipt Of Complaint Or Information

1. Check if the offense charged is within court's jurisdiction.
2. If the offense is not within the court's jurisdiction, dismiss complaint/information, unless the complaint presents a case for preliminary investigation by the Municipal Trial Court.

When Case is for Preliminary Investigation

1. When the case is for preliminary investigation by the Municipal Trial Court, check the complaint as well as accompanying affidavits and other supporting documents if there is ground to continue with the inquiry.

1.1 If there is no such ground, dismiss the complaint.

1.2 If there is such ground, conduct preliminary investigation following the procedure in Rule 112, Section 3.

2. Without waiting for the conclusion of the preliminary investigation, the investigating judge may issue a warrant of arrest, after conducting an examination under oath of the complainant and his/her witnesses in the form of searching questions and answers to determine existence of probable cause and the necessity of placing the respondent under immediate custody so as not to frustrate the ends of justice.

Note: For purposes of issuing a warrant of arrest during preliminary investigation, it is mandatory that an examination in writing and under oath by searching questions and answers should be conducted by the investigating judge.¹¹¹

- 2.1 If there is probable cause but no such 'necessity,' do not issue arrest warrant; only issue the subpoena to respondent, attaching thereto a copy of the complaint, affidavits, and other supporting documents with the directive to submit counter affidavits within ten (10) days from receipt of order.

2.1.1 Illustrative case: Where no such 'necessity' exists

The issuance of warrant of arrest by the Municipal Judge conducting preliminary investigation is left to his/her sound judgment and discretion. The Supreme Court sustained Judge Samulde's refusal to issue an arrest warrant, holding that under the applicable rule, it is not obligatory, but merely discretionary, upon the investigating judge to issue a warrant for the arrest of the accused, for the determination of whether a probable cause exists and whether it is necessary to arrest the accused in order not to frustrate the ends of justice, is left to his/her sound

judgment or discretion. In this particular case, since the robbery charge was offshoot of a boundary dispute between the two property owners, the investigating judge did not believe there was any danger of the accused absconding before the filing of the information against him by the fiscal, hence, he found no need to place him under immediate custody.¹¹²

2.2 If, however, his/her findings and recommendations are affirmed by the provincial fiscal or city prosecutor or by the Ombudsman or his/her deputy, and the corresponding information is filed, he shall issue a warrant of arrest.¹¹³

3. If there is possible cause and such 'necessity', issue arrest warrant.

When Case is for Trial on the Merits

1. If the case presented by complaint or information is within the jurisdiction of the Municipal Trial Court, check if case is for 'summary procedure' or 'regular procedure.'

1.1 Summary Procedure Cases

1.1.1 Make preliminary determination whether to dismiss case outright for being patently without basis or merit or to require further proceedings to be taken.

1.1.2 When further proceedings are required, set the case for immediate arraignment of the accused who is under custody and if he pleads not guilty, render judgment forthwith; if he pleads not guilty, he shall be released without bail unless he is a recidivist, fugitive from justice, is charged with physical injuries, does not reside in the place where the violation of the law or ordinance was committed, or has no known residence.

1.2 Regular Procedure Cases

1.2.1 If the case is commenced by complaint or information, the procedure in section 3 (a), Rule 112 shall be observed;

1.2.2 If within ten (10) days from the filing of the complaint or information, the judge after evaluating the evidence or after personally examining in writing and under oath the complainant and his/her witnesses, the judge finds no probable cause he shall dismiss the case unless it is deemed necessary to require submission of affidavits of witnesses to aid him in arriving at the conclusion as to the existence of probable cause which should be done within ten (10) days from notice.

1.2.3 If the case is commenced by complaint, the court may either evaluate the supporting affidavits or personally examine in writing and under oath the complainant and his/her witnesses in the form of searching questions and answers to determine if there is probable cause; if there is, issue arrest warrant; otherwise, dismiss the case outright.

1.2.4 The court may, however, opt not to issue a warrant of arrest or a commitment order if the accused had already been arrested, and hold him for trial. However, if the judge is satisfied that there is no necessity for placing the accused under custody, he may issue a summons instead of a warrant of arrest. This refers only to cases which do not require preliminary investigation.¹¹⁴

1.2.5 'Searching Questions and Answers' means only, taking into consideration the purpose of the preliminary examination which is to determine whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof so that a warrant of arrest may be issued and the accused held for trial, such questions as have tendency to show the commission of a crime and the perpetrator thereof. What would be searching questions would depend on what is sought to be inquired into, such as: the nature of the

offense, the date, time, and the place of its commission, the possible motives for its commission; the subject, his/her age, education, status, financial and social circumstances, his/her attitude toward the investigation, social attitudes, opportunities to commit the offense; the victim, his/her age, status, family responsibilities, financial and social circumstances, characteristics, etc. The points that are subject of inquiry may differ from case to case. The questions, therefore, must to a great degree depend upon the judge making the investigation.

1.2.6 Form of Searching Questions for Simple Theft

(The witness is duly sworn to and gives his/her name and other personal circumstances)

Q. - Are you the same complainant in this complaint for simple theft?

A. -

Q. - Describe the ring allegedly stolen from you.

A. -

Q. – When and how did you learn that your ring was stolen?

A. –

Q. – When and how did you come to know the accused?

A. –

Q. – Where does the accused reside?

A. –

Q. – Do you know the accused's present whereabouts?

A. –

Q. – Is the accused related to you by blood or marriage?

A. –

Q. – Did you have any kind of dealing with the accused before the date in question? If so, what?

A. –

Q. – Do you know of any reason why the accused would take your ring without your consent?

A. –

Q. – Do you owe the accused anything?

A. –

Q. – When and how did you acquire the ring?

A. –

Q. – What is the approximate value of the ring?

A. –

Q. – Did you actually witness the taking of your ring?

A. –

Q. – State the name or names of the person or persons, if any, who know the alleged theft.

A. –

Q. – Do you wish to state anything else?

A. -

If the judge still finds no probable cause despite the additional evidence, he shall, within ten (10) days from its submission or expiration of said period, dismiss the case. When he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, and hold him for trial. However, if the judge is satisfied that there is no necessity for placing the accused under custody, he may issue summons instead of a warrant of arrest.

Checklist II

Things To Check/Do After The Issuance Of Arrest Warrant And Before Trial Stage

1. If arrest warrant was properly released and a report has been properly submitted but accused could not be apprehended for a considerable length of time, issue alias arrest warrant and order for archiving of case.

1.1 If report is submitted with accused being arrested and he does not post bail forthwith, issue corresponding commitment pending trial and have it served on warden or head of the jail or place of detention, along with the corresponding notice to produce the accused before the court for arraignment on the date and time already fixed by the court.

1.2 In case of a summary procedure case and accused is arrested under an arrest warrant issued for failure of accused to appear when required (per second paragraph Section 10 of the Summary Rule), set case for immediate arraignment, the warden or head of the jail or place of detention likewise being served with corresponding commitment pending trial and notice to produce the accused for arraignment before the court.

1.3 If accused files bail bond, cash bond deposit, or recognizance, check sufficiency of documentation, particularly the corresponding signatures on the requisite documents, and if in order, approve it and issue corresponding release order for immediate service on officer concerned.

2. At the scheduled arraignment, judge shall inform accused who appears without counsel of his/her right to counsel and shall ask accused if he desires to have one.

2.1 In proper cases, appoint counsel de oficio for the accused who appears without counsel.

3. Arraignment must be in open court; accused must be furnished a copy of the complaint or information; accused must be present at the arraignment and plea must be made of record; if accused refuses to plead, or he makes a conditional plea of guilty (e.g., entering a plea of guilt provided the penalty to be meted shall only be a fine), then

enter a plea of not guilty for the accused.

4. If accused wants to plead guilty to lesser offense, both prosecutor and offended party must consent thereto.

5. If accused pleads guilty, impose corresponding sentence, unless court desires to receive evidence to determine penalty to be imposed, including civil indemnity in the proper cases.

6. If the plea is not guilty, set case for trial.

7. After arraignment, as a measure to expedite the trial, where the accused and counsel agree, conduct a pre-trial conference, without impairing the rights of the accused, on the following matters, to wit: (a) plea bargaining; (b) stipulation of facts; (c) marking for identification of parties evidence; (d) waiver of objections to admissibility of evidence; and, (e) such other matters as will promote a fair and expeditious trial.

7.1 After pre-trial, issue order reciting the actions taken, the facts stipulated, and evidence marked.

7.2 Check if agreement/s or admission/s made entered during pre-trial were properly reduced to writing and duly signed by the parties charged and their counsel.

111 Rules of Court, Rule 112, Sec. 6 (b); *Ortiz v. Palaypayon*, A. M. No. MTJ-93-823, July 25, 1994, 234 SCRA 391.

112 *Samulde v. Salvani, Jr.*, No. L-78606, September 26, 1988, 165 SCRA 734.

113 Rules of Court, Rule 113, Sec. 5 (b).

114 *Ibid*, Rule 112, Sec. 9 (b).

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