**Rule 241 – Working Proposals**

**Version 10-30-2018**

**Rule 241. Search and Seizure**

**(a)** **Authority to Issue Warrant.** A judge of any court shall have power to issue a search warrant under this Rule ~~only~~ when~~:~~

**~~(1)~~**  It relates to a charter or ordinance violation involving a serious threat to public safety or order~~; and~~

**~~(2)~~**~~The violation is not also a violation prohibited by state statute for which a search warrant could be issued by a district or county court~~.

**(b)** **Grounds for Issuance.**

**(1)**  A search warrant may be issued to search for and seize property which is located within the municipality and which:

**(I)**  Is designated or intended for use in committing a charter or ordinance violation;

**(II)**  Has been used as a means of committing a charter or ordinance violation; or

**(III)**  The possession of which is prohibited by charter or ordinance.

**(2)**  A search warrant may be issued for the inspection of private premises by an authorized public inspector upon showing that:

**(I)**  The premises are located within the municipality;

**(II)**  The inspection is required or authorized by charter or ordinance in the interest of public safety; and

**(III)**  The owner or occupant of such private premises has refused entry to the public inspector, or the premises are locked and the public inspector has been unable to obtain permission of the owner or occupant to enter. This rule shall not be construed to require the issuance of a warrant for emergency inspections, or in any other case where warrants are not presently required by law.

**(c)** **Issuance and Contents.** A search warrant shall issue only on affidavit sworn to or affirmed before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist, or that there is probable cause to believe that they exist, the judge shall issue a search warrant identifying the property and naming or describing the person or place to be searched. The search warrant shall be directed to any officer authorized by law to execute it in the municipality wherein the property is located. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for any property specified. The search warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the judge to whom it shall be returned.

**(d)** **Execution and Return With Inventory.** The search warrant may be executed and returned only within 14 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and receipt for any property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant for the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

**(e)** **Motion for Return of Property and to Suppress Evidence.** A person aggrieved by unlawful search and seizure may move the municipal court for the municipality where property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:

**(1)**  The property was illegally seized without warrant;

**(2)**  The warrant is insufficient on its face;

**(3)**  The property seized is not that described in the warrant;

**(4)**  There was not probable cause for believing the existence of the grounds on which the warrant was issued;

**(5)**  The warrant was illegally executed.

The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the court where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

**(f)** **Scope and Definition.** This Rule does not modify any statute inconsistent with it regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.