

**RESOLUTION 03-15-2007**

**DIGEST**

Search Warrants: Required Filing with the Court

Amends Penal Code section 1528 to require the filing of search warrant applications with the clerk of the court.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1528 to require the filing of search warrant applications with the clerk of the court. This resolution should be approved in principle because it would prevent the loss or destruction of search warrant applications, and would assure that they are available in the event of a challenge to the warrant.

In some counties, there is no consistent system for storing, filing and maintaining warrant applications. This resolution provides for a consistent and uniform system, applicable in all counties, that would permit the prosecution and defense alike to track search warrants and refer to them logically and consistently in later proceedings.

This resolution would also require the person requesting a warrant to notify the judge or magistrate of a previous application which has been denied. This would prevent “judge shopping” and is consistent with civil practice. (See Code Civ. Proc., § 1008 [reconsideration].)

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1528 to read as follows:

- 1    §1528
- 2           (a) If the magistrate is thereupon satisfied of the existence of the grounds of the
- 3 application, or that there is probable cause to believe their existence, he or she must issue a
- 4 search warrant, signed by him or her with his or her name of office, to a peace officer in his
- 5 or her county, commanding him or her forthwith to search the person or place named for the
- 6 property or things or person or persons specified, and to retain the property or things in his
- 7 or her custody subject to order of the court as provided by Section 1536.
- 8           (b) The magistrate may orally authorize a peace officer to sign the magistrate's name
- 9 on a duplicate original warrant. A duplicate original warrant shall be deemed to be a search
- 10 warrant for the purposes of this chapter, and it shall be returned to the magistrate as provided
- 11 for in Section 1537. The magistrate shall enter on the face of the original warrant the exact

12 time of the issuance of the warrant and shall sign and file the original warrant and the  
13 duplicate original warrant with the clerk of the court as provided for in Section 1541.

14 (c) The magistrate shall, at the time a warrant application is presented to him or her  
15 or as soon thereafter is practicable, cause the clerk of the court to issue a unique file number  
16 to each warrant application in every case regardless of whether the warrant is actually  
17 issued. The warrant application and all supporting documents shall be filed with and  
18 retained by the clerk of the court under the unique file number. If the warrant application or  
19 supporting documents or any portion thereof have been ordered sealed by a magistrate, the  
20 clerk of the court shall maintain the sealed documents under seal.

21 (d) Every person who presents a search warrant application and/or supporting  
22 documents to a magistrate must inform the magistrate in writing of any other identical or  
23 substantially similar warrant application submitted by the same law enforcement agency for  
24 the same location within the past 90 days that was refused issuance including the name of  
25 the magistrate who denied the other application. A copy of the other identical or  
26 substantially similar warrant application must be presented to the magistrate, identified by  
27 the court's unique file number, at the time the current warrant application is presented or as  
28 soon thereafter as practicable.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

#### STATEMENT OF REASONS

Existing Law: There is no existing law that requires persons seeking search warrants to file them with the clerk of the court and to obtain a court file number. There is no existing law that requires a person seeking a search warrant to inform the magistrate that an identical or similar application was made to another magistrate who refused to issue the warrant.

This Resolution: Requires that search warrants be uniquely numbered and filed with the clerk of the Superior Court. Sealed warrants and affidavits would be retained by the clerk in a sealed condition. Also, persons seeking a search warrant after an identical or substantially similar warrant has been refused by another magistrate would be required to inform the magistrate that they presented the same or similar warrant to another magistrate who refused to issue the warrant.

The Problem: There is no uniform system for the filing and retention of search warrant applications. Sometimes warrants are retained by the court, sometimes not; sometimes warrants are retained by law enforcement; sometimes not. As a result, warrant applications simply disappear, having become lost, misplaced or destroyed. This does not occur maliciously in most cases, but often occurs because law enforcement officers go directly to judges for warrant issuance and completely bypass the court clerk's office. This resolution creates a uniform system that will require that all search warrants, whether issued or not, that are presented for signature be retained by the court clerk's office. This should eliminate the nightmare that occurs when a warrant application is being challenged but the original has become lost or misplaced.

The recent decision in *People v. Galland* (2006) 146 Cal.App.4th 277, establishes that this is a problem that does occur and is improper. The Los Angeles and Orange County Superior Courts have admitted that for years they allowed the police to keep the only version of sealed affidavits. This resolution resolves this issue.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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