



2021 Annual Conference

Niagara Falls, New York

Integrity Issuing Search Warrants

September 28, 2021

Presented by:

Matthew L. Chivers, Esq.

Hon. Robert G. Bogle

Hon. Jeffrey B. McCabe

1.0 MCLE Law Practice Management

This program has been approved for credit in New York State for all attorneys including those who are Newly Admitted (less than 24 months) and administered by the Onondaga County Bar Association.

Presenters

Matthew L. Chivers, Esq.

Matt Chivers serves as a Court Attorney Referee and Special Counsel to the Town & Village Courts in the Fourth Judicial District. He joined the court system in 2007 working as a Resource Center Attorney at the Office of Justice Court Support. Prior to that, Matt served as an Infantry Officer in the United States Marine Corps and was engaged in the private practice of law based in Saratoga County. Originally from Binghamton, New York, he is a graduate of Siena College and Albany Law School.

Hon. Robert G. Bogle – Acting New York State Supreme Court Justice

Judge Bogle is a Nassau County Court Judge and Acting New York State Supreme Court Justice. He is also the Supervising Judge of the Nassau County Town and Village Courts. He is an Adjunct Professor of Criminal Justice at the C.W. Post Campus of Long Island University. He is a member of the New York State Advisory Committee on Judicial ethics and is a lecturer for the Judicial Education Program for the Office of Court Administration. Judge Bogle has published numerous articles and court decisions in the field of Criminal Court Practice. He is the Co-Author of “Village, Towns and District Courts in New York” by Thomson Reuters. He is the author of “Criminal Procedure in New York” (4 volumes) and is Directing Editor of “McKinney’s Forms Criminal Procedure Law (4 volumes). Both published by Thomson Reuters. He served as Valley Stream Village Justice (1986-2016) and Acting Long Beach City Court Judge (1996-2015), as well as President of the New York State Magistrates Association (2004-2005) and President of the Nassau County Magistrates Association (1995-96). In 2006, he received the New York State Magistrate of the Year Award and in 2008 he received the Frank Santagata Bar Association Award for service to the Nassau County Courts.

He has also served as Chief Court Attorney for the Nassau County Court Law Dept. (1999-2015), Law Secretary to the Hon. Ira H. Wexner, Supervising Judge of the Nassau County District and County Courts (1988-1999) and Deputy Nassau County Attorney for the Appeals and Major Litigation Bureaus (1983-1988). He is a graduate of Hofstra University School of Law and Niagara University (BA cum laude) and attended Cornell University and George Washington University. He has two sons, James and Robert and is married to his wife Kathleen.

Hon. Jeffrey B. McCabe

Judge McCabe is the current Town of Moreau Town Justice. He has held the presidency position for the Saratoga County Magistrates and Court Clerks Association (6 years). He has had a 26-year career as a Police Sergeant with the South Glens Falls Police Department. He has also been a D.A.R.E. Instructor, for 11 years, with the South Glens Falls School District.

INTEGRITY ISSUING SEARCH WARRANTS 2021

Presented by Hon. Robert G. Bogle

Valley Stream Village Justice

4th District Chief Counsel Matthew Chivers

Hon. Jeffrey B. McCabe

Moreau Town Justice

About the Presenters

- Hon. Robert G. Bogle, Village Justice Village of Valley Stream
 - Supervising Court Attorney, Nassau County Court Law Dept.
 - Special Counsel to Hon. Thomas A. Adams, 10th JD
 - Acting City Court Judge, Long Beach
- Matthew Chivers
 - Former Counsel for the NY Office of Justice Court Support
 - 4th Judicial District Chief Counsel
- Hon. Jeffrey B. McCabe
 - Town Justice Town of Moreau
 - President of the Saratoga County Magistrates and Court Clerks Association
 - Retired Police Sergeant 26 years South Glens Falls Police Department

TOPICS TO COVER

- The importance of Search Warrant training
- What is a Search Warrant
- Who may apply for a Search Warrant
- Who may issue a Search Warrant
- What type of Search Warrant is applied for and why
- What should be included in a Search Warrant application
- Who may execute a Search Warrant

TOPICS TO COVER

- Geographical Jurisdiction and the locations that a Search Warrant may be executed
- When can a Search Warrant be executed
- Handling the Return of the Warrant served
- Administrative Search Warrants
- Search Warrant inspection after issue
- Best Practices

SEARCH WARRANT

- A Court Order which permits:
 - Search of a designated premises, places, vehicles or person for seizing designated property and to deliver such to court.
 - Search of Designated premises for subject of arrest warrant pursuant to CPL, superior court warrant of arrest or bench warrant for a felony, or out of state or federal warrant for a felony (under NY laws) when designated place to be searched is the dwelling of a third party, not the subject of arrest warrant

Application of Search Warrant (by whom)

- A Police Officer
- District Attorney

Other Public Servant acting in the course of official duties.

PER CPL 690.25 Execution of Warrant must be performed by police officer, so need police agency to assist and to conduct search.

What can be searched for? CPL 690.10

- Types of Property

Reasonable cause to believe that it is:

Stolen

Unlawfully Possessed

Has been used, or being used, to commit or conceal the commission of an offense against the laws of this State or another State.

If in violation of laws of another State, conduct must constitute a felony in this State

What can be searched for? CPL 690.10

- Constitutes evidence or tend to demonstrate that an offense was committed in this state or another state, or that a particular person participated in the commission of an offense in this state or another state
 - If in violation of laws of another state, conduct must constitute a felony in this state

What can be searched for? CPL 690.10

- Search must direct a search of one or more of the following:
 - A designated or described place or premises
 - A designated or described vehicle
 - A designated or described person

A search of a place or vehicle, will also include a search of any person present thereat or therein

Where applicable? CPL 690.20

- If issued by a District Court, NYC Criminal Court or a Superior Court Judge, sitting as a local criminal court:
 - May be executed anywhere in this State.

If issued by City, Town or Village Court

May be executed only in the county of issuance or an adjoining county

Who can execute? CPL 690.25

- Must be addressed to Police Officer, whose geographical jurisdiction of employment embraces or is embraced or partially embraced by the County of Issuance.
 - Does not need to be addressed to a specific police officer
 - May be executed anywhere in county of issuance or adjoining county

Who can execute the Search? CPL 690.25

- May be executed in any other County of the state, if
 - Geographical area of employment embraces the entire county of issuance, or issued to a member of the police department of a city located in such county of issuance.
 - For example, a search warrant issued to the State Police, County Sheriff or City PD can be executed in any County within NYS because addressed officer has jurisdiction over entire County of issuance (NYSP or Sheriff) or is a member of City PD.
 - If warrant is issued to a town or village PD, can only execute in county of issuance or adjoining county.

When Executable: CPL 690.30

- Must be executed not more than 10 days after issuance and then returned to Court without delay
- Can be executed any day of the week between 6:00am and 9:00pm., unless express permission otherwise provided.
 - If applicable, an explanation as to why the warrant cannot be executed between the hours of 6:00am and 9:00pm or if a, "NO KNOCK," warrant is being sought.

Application requirements CPL 690.35

- Name of the Court and name and title of the Applicant
- Statement that there is reasonable cause to believe that property of a kind described in CPL 690.10 may be found in or upon a designated or described place, vehicle or person, or subject of an appropriate arrest warrant.
- Allegations of fact supporting such statement based either upon personal knowledge or information and belief.
 - If information and belief, sources and grounds for such belief must be stated including supporting depositions of others may be submitted

Application must contain CPL 690.35

- A request that the Court issue a Search Warrant directing search and seizure of property or persons in question
- If to execute an arrest warrant, must include a copy of the arrest warrant and the accusatory instrument.

The Application CPL 690.35

- For personal property, application shall be made to:
 - Local Criminal Court, having preliminary jurisdiction over the underlying offense or geographical jurisdiction over the location to be searched.

The Application CPL 690.35

- To execute an Arrest Warrant, the application shall be made to:
 - Local Criminal Court with Geographical Jurisdiction over the location where the premises to be searched is located.
 - OR which issued the underlying arrest warrant

The Application CPL 690.35 Town not available

- If town Court has jurisdiction but not available to issue, SW Can be issued by:
 - Local criminal court of any village within such town
 - Any adjoining town of the same county
 - Village embraced in whole or part by such adjoining town(Same County)
 - City of the same county

The Application
CPL 690.35
Village Court Not Available

- If Village Court has jurisdiction, but not available to issue search warrant, can be issued by
 - Town Court of the Town Embracing such Village (Within same county)
 - Any other Village Court within such town embracing the Village (within same county)
 - Or, Such Town or Village is not available either, by the local criminal court of:
 - Any adjoining Town within the same county
 - Village embraced in whole or in part by such adjoining town (same county)
 - City of the same county

Oral Applications
CPL 690.36

- May be communicated to a judge via electronic means, including:
 - Radio, telephone or other means
- Applicant must ID Self and purpose of communication
- Applicant must make statement from CPL 690.35
- Judge shall place applicant under oath, as well as any other person providing information in support of application

Oral Applications CPL 690.36

- Oaths and all remaining communications must be recorded either by voice recording or verbatim stenographic or verbatim longhand notes
 - If voice recorded, judge must have transcribed and certify accuracy of transcription and filed original record and transcription with court within 24 hours of issuance of warrant
 - If long-hand notes taken, judge shall transcribe a copy and file it within 24 hours of issuance

Determination of Application CPL 690.40

- **REASONABLE CAUSE DEFINED**
- Standard: reasonable cause to believe that property of a kind or character designated in CPL 690.10, may be found in or upon described person, place of vehicle
- See CPL 70.10(2)

Determination of Application CPL 690.40

- Court may examine any person, under oath, whom it believes may possess pertinent information
 - Must be recorded or summarized on the record by the Court
- If the Court is satisfied that reasonable Cause to believe that property of a kind or character designated in CPL 690.10, located in or upon described place, premises or person, or person subject to arrest warrant as previously described

Determination of Application CPL 690.40

- Court may grant application and issue Search Warrant directing search and seizure of said place, premises, vehicle or person
- Court may further grant application for search to be made at any time, day or night, without notice
 - If oral application, applicant shall prepare warrant and shall read it verbatim to the Judge

Form and Content of Search Warrant CPL 690.45

- Name of issuing Court and signature of issuing Judge(Unless oral)
- If oral, shall be indicated and shall state name of issuing Judge and time and date, in which such Judge directed its issuance.
- Name, Department or classification of the Police Officer to whom it's addressed
- Description of Property which is the subject of the search(or person if executing Arrest Warrant)

Form and Content of Search Warrant

- Designation or description of Place, Premise, Vehicle or Person to be searched, but means of an address, ownership, name or any other means essential to identification with certainty
- Direction that the warrant be executed between 6:00am and 9:00pm unless otherwise authorized
- No notification if authorized
- Direction that the warrant and any property seized thereto be returned and delivered to the Court without unnecessary delay
- If to execute an arrest warrant,, a copy of the arrest warrant and the underlying accusatory instrument

Execution of the Search Warrant CPL 690.50

- Unless specifically authorized otherwise, executing officer must give or make reasonable effort to give notice of authority and purpose prior to entry
 - If not thereafter admitted, can forcibly enter
 - See use of force under NYPL 35

Execution of Warrant CPL 690.50

- Upon seizing property, must write and subscribe a receipt itemizing property taken and contained name of Court by which warrant was issued.
 - If property taken from person, receipt issued to person
 - If property taken from premise, place or vehicle, receipt given to owner, tenant, or other person in possession(if present) or leave receipt in premises or vehicle
- If executing search warrant for an arrest warrant, officer must file statement with the court that issued search warrant to setting forth that person arrested and brought back to court issuing arrest warrant

Disposition of property seized CPL 690.55

- Upon receiving property seized pursuant to search warrant, Court must either
 - Retain it in the custody of the Court
 - Direct that it be held in custody of the person who applied for the warrant, executed warrant, or agency by which either is employed, upon condition that said property be returned to the Court upon order
- If retained by local criminal court, must deliver it upon request of another criminal court in which a criminal action involving or relating to such property is pending

Storage of Applications

- Original Application should be kept and secured by the Court
- Original Warrant should be provided to the applicant
 - Court should keep a copy with the application
- Open to the public?
 - NO! even if arrest results, original application does not become part of the court file
 - Warrant may become part of the Court file (Open to public)

MAKE SURE YOU

- Read the application and the request made!
 - Your discretion and judgement at stake
 - Secure your records
 - Don't comply with unwarranted pressures to issue
 - Take your time and review
 - Make notes if you need to
 - If Application is amended, upon your inquiries, initial along with applicant
 - Swear the applicant under oath and note precise time and date. (USE your laptop recorder)