



SEARCH WARRANTS



THE FOURTH AMENDMENT PROTECTS PEOPLE BY REQUIRING A "NEUTRAL AND DETACHED MAGISTRATE"





ABOUT

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US

SEARCH

FOURTH AMENDMENT REQUIREMENTS

THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES THAT & "THE RIGHT OF THE PEOPLE TO BE SECURE. AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE." TO PASS CONSTITUTIONAL MUSTER, A SEARCH WARRANT MUST BE ISSUED BY A NEUTRAL AND DETACHED MAGISTRATE UPON PROBABLE CAUSE, WHICH MUST BE SUPPORTED BY OATH OR AFFIRMATION AND MUST PARTICULARLY DESCRIBE THE PLACE TO BE SEARCHED AND THE PERSONS OR THINGS TO BE SEIZED

TENNESSEE CONSTITUTION ARTICLE I, SECTION 7

ARTICLE I, SECTION 7 OF THE TENNESSEE CONSTITUTION PROVIDES THAT "THE PEOPLE SHALL BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND POSSESSIONS, FROM UNREASONABLE SEARCHES AND SEIZURES." THIS PROVISION IS IDENTICAL IN INTENT AND PURPOSE TO THE FOURTH AMENDMENT." ADDITIONALLY, SECTION 7 OF THE TENNESSEE CONSTITUTION EXPLICITLY PROHIBITS GENERAL WARRANTS.

PRESUMPTION OF REASONABLENESS

SEARCHES AND SEIZURES CONDUCTED PURSUANT TO VALID WARRANTS ARE PRESUMPTIVELY REASONABLE.

CONVERSELY, A WARRANTLESS SEARCH OR SEIZURE IS PRESUMED UNREASONABLE, AND EVIDENCE DISCOVERED

AS A RESULT THEREOF IS SUBJECT TO SUPPRESSION UNLESS THE STATE DEMONSTRATES THAT THE SEARCH OR

SEIZURE WAS CONDUCTED PURSUANT TO ONE OF THE NARROWLY DEFINED EXCEPTIONS TO THE WARRANT

REQUIREMENT.

WARRANTS

STATUTORY

TENNESSEE CODE ANNOTATED § 40-6-103

TENNESSEE CODE ANNOTATED SECTION 40-6-103 PROVIDES THE FOUNDATIONAL STATUTORY REQUIREMENTS FOR SEARCH WARRANT ISSUANCE. A SEARCH WARRANT CAN ONLY BE ISSUED ON PROBABLE CAUSE, SUPPORTED BY AFFIDAVIT, NAMING OR DESCRIBING THE PERSON, AND PARTICULARLY DESCRIBING THE PROPERTY, AND THE PLACE TO BE SEARCHED TENN. CODE ANN. § 40-6-103. THESE REQUIREMENTS WORK IN CONJUNCTION WITH CONSTITUTIONAL MANDATES TO ENSURE PROPER WARRANT ISSUANCE.

CORE ELEMENTS FOR VALID SEARCH WARRANTS

TO BE VALID, A SEARCH WARRANT MUST COMPLY WITH PROVISIONS OF THE UNITED STATES CONSTITUTION, THE TENNESSEE CONSTITUTION, AND TENNESSEE STATUTORY REQUIREMENTS STATE V. GUY, 679 S.W.3D 632 (TENN. CRIM. APP. 2023). THE STATUTORY FRAMEWORK REQUIRES MAGISTRATES TO VERIFY THAT EACH OF THESE ELEMENTS IS PRESENT BEFORE APPROVING ANY SEARCH WARRANT APPLICATION.

REQUIREMENTS

SAFEGUARDS AND REQUIREMENTS

TENNESSEE RULE OF CRIMINAL PROCEDURE 41 IMPOSES SPECIFIC PROCEDURAL SAFEGUARDS THAT ARE INTENDED TO SECURE A CITIZEN AGAINST CARELESSNESS AND ABUSE IN THE ISSUANCE AND EXECUTION OF SEARCH WARRANTS. RULE 41 PROVIDES THAT A WARRANT SHALL ISSUE ONLY ON AN AFFIDAVIT OR AFFIDAVITS THAT ARE SWORN BEFORE THE MAGISTRATE AND ESTABLISH THE GROUNDS FOR ISSUING THE WARRANT STATE V. GUY, 679 S.W.3D 632 (TENN. CRIM. APP. 2023).

ENDORSEMENT REQUIREMENTS

TENNESSEE RULE OF CRIMINAL PROCEDURE 41(C)(3)(D) REQUIRES THAT A MAGISTRATE ENDORSE ON A SEARCH WARRANT THE HOUR, DATE, AND NAME OF THE OFFICER TO WHOM THE WARRANT WAS DELIVERED FOR EXECUTION. THE PURPOSE OF THIS ENDORSEMENT REQUIREMENT IS TO ENSURE THAT IF A SEARCH WARRANT IS EXECUTED PRIOR TO ITS ISSUANCE, SUCH DISCREPANCY WILL BE APPARENT ON THE FACE OF THE WARRANT.

TCRP 41

COMPLIANCE STANDARDS

TENNESSEE HAS INTERPRETED THESE RULES STRICTLY; THE LANGUAGE IS PLAIN AND THE REQUIREMENTS ARE MANDATORY. IF A MAGISTRATE DOES NOT COMPLY WITH RULE 41'S REQUIREMENTS, THE RULE DIRECTS A COURT TO GRANT AN AGGRIEVED PARTY'S MOTION TO SUPPRESS THE EVIDENCE SEIZED AS A RESULT OF A NONCOMPLIANT WARRANT.

DEFINITION

TOTALITY-OF-CIRCUMSTANCES Test

PRACTICAL APPLICATION GUIDELINES

PROBABLE CAUSE



DEFINITION

PROBABLE CAUSE REQUIRES REASONABLE GROUNDS FOR SUSPICION, SUPPORTED BY CIRCUMSTANCES INDICATIVE OF AN ILLEGAL ACT. THE STANDARD REQUIRES MORE THAN MERE SUSPICION, BUT LESS THAN ABSOLUTE CERTAINTY. TO ENSURE THAT THE MAGISTRATE EXERCISES INDEPENDENT JUDGMENT, THE AFFIDAVIT MUST INCLUDE MORE THAN CONCLUSORY ALLEGATIONS FROM THE AFFIANT.

PROBABLE CAUSE



TOTALITY-OF-CIRCUMSTANCES Test

TENNESSEE COURTS HAVE ADOPTED THE TOTALITY-OF-CIRCUMSTANCES ANALYSIS FOR EVALUATING PROBABLE CAUSE DETERMINATIONS. THIS APPROACH ALLOWS MAGISTRATES TO CONSIDER ALL RELEVANT FACTORS AND CIRCUMSTANCES WHEN DETERMINING WHETHER PROBABLE CAUSE EXISTS FOR WARRANT ISSUANCE.

PROBABLE CAUSE



PRACTICAL APPLICATION GUIDELINES

WHEN REVIEWING PROBABLE CAUSE, MAGISTRATES SHOULD EXAMINE WHETHER THE AFFIDAVIT CONTAINS SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT A REASONABLE BELIEF THAT CRIMINAL ACTIVITY HAS OCCURRED AND THAT EVIDENCE OF SUCH ACTIVITY WILL BE FOUND IN THE PLACE TO BE SEARCHED. THE DETERMINATION MUST BE BASED ON PROBABILITIES AND PRACTICAL CONSIDERATIONS RATHER THAN TECHNICAL LEGAL REQUIREMENTS.

PROBABLE CAUSE

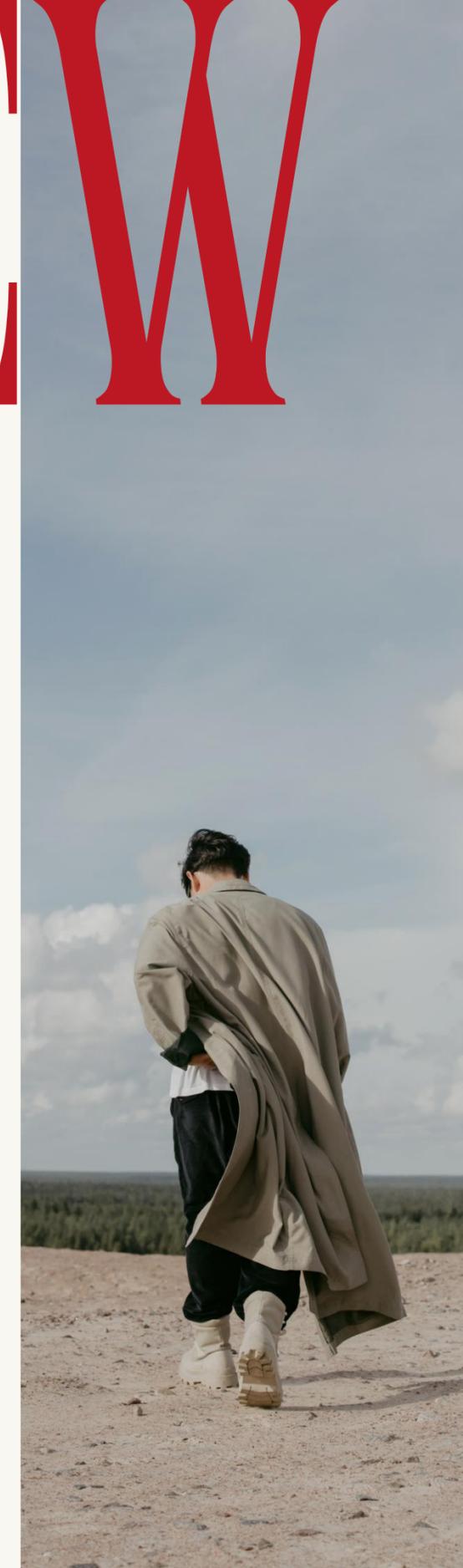


AFFIDAVIT REVIEW

INFORMANT INFORMATION EVALUATION

REQUIRED CONTENT AND FORMAT

RED FLAGS AND COMMON DEFICIENCIES



AFFIDAVIT REVIEW

INFORMANT INFORMATION EVALUATION

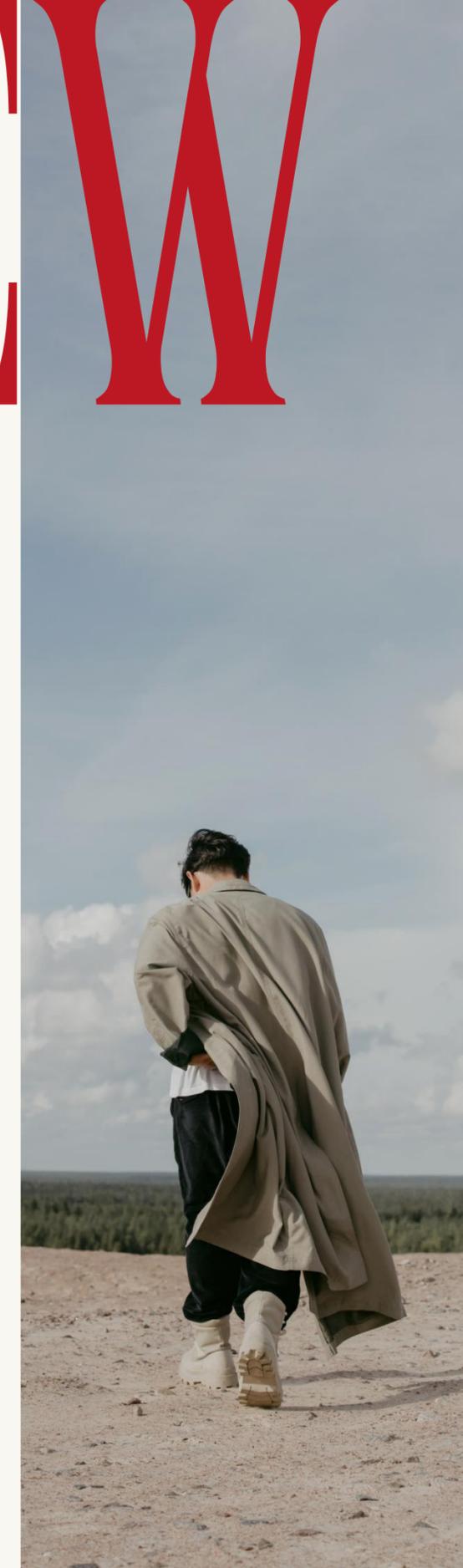
WHEN AFFIDAVITS RELY ON INFORMATION FROM CONFIDENTIAL INFORMANTS, MAGISTRATES MUST EVALUATE BOTH THE BASIS FOR THE INFORMANT'S KNOWLEDGE AND THE INFORMANT'S CREDIBILITY OR RELIABILITY. A SUPPRESSION MOTION WAS PROPERLY DENIED WHERE THE SEARCH WARRANT AFFIDAVIT MET THE AGUILAR-SPINELLI TEST BY STATING THAT A CONFIDENTIAL INFORMANT HAD GIVEN INFORMATION ON NARCOTICS TRAFFICKING RESULTING IN SEVERAL SEIZURES AND ARRESTS, NOTING THAT A SPECIFIC NUMBER OF SEIZURES AND ARRESTS WAS NOT REQUIRED TENN. R. CRIM. P. RULE 41.



AFFIDAVIT REVIEW

REQUIRED CONTENT AND FORMAT

THE AFFIDAVIT SUPPORTING A SEARCH WARRANT APPLICATION MUST CONTAIN FACTS TENDING TO ESTABLISH PROBABLE CAUSE GROUNDS. THE AFFIDAVIT MUST BE SWORN AND WRITTEN, AND CANNOT BE WAIVED OR SUBSTITUTED. IT MUST CONTAIN FACTUAL ALLEGATIONS RATHER THAN MERE CONCLUSIONS, PROVIDING SUFFICIENT DETAIL FOR THE MAGISTRATE'S INDEPENDENT JUDGMENT.



AFFIDAVIT REVIEW

RED FLAGS AND COMMON DEFICIENCIES

MAGISTRATES SHOULD BE ALERT TO AFFIDAVITS THAT CONTAIN ONLY CONCLUSORY STATEMENTS WITHOUT SUPPORTING FACTUAL DETAIL. ADDITIONALLY, AFFIDAVITS THAT FAIL TO ESTABLISH A SUFFICIENT NEXUS BETWEEN THE ALLEGED CRIMINAL ACTIVITY AND THE PLACE TO BE SEARCHED SHOULD BE SCRUTINIZED CAREFULLY.



PARTICULARITY REQUIREMENTS

PLACE TO BE SEARCHED SPECIFICATIONS

THE WARRANT MUST IDENTIFY THE PROPERTY OR PLACE TO BE SEARCHED WITH SUFFICIENT PARTICULARITY TO ENABLE THE SEARCHER TO REASONABLY ASCERTAIN AND IDENTIFY THE LOCATION AUTHORIZED TO BE SEARCHED. TENNESSEE CODE ANNOTATED SECTION 40-6-103 REQUIRES SEARCH WARRANTS TO DESCRIBE PARTICULARLY THE PLACE TO BE SEARCHED.

ITEMS TO BE SEIZED DESCRIPTIONS

THE WARRANT MUST NAME OR DESCRIBE THE PROPERTY OR PERSON TO BE SEIZED WITH SUFFICIENT SPECIFICITY. State v. Guy, 679 S.W.3d 632 (Tenn. Crim. App. 2023). To satisfy the particularity requirement, a warrant “must enable the searcher to ascertain and identify the things which are reasonably authorized to be seized”.

AVOIDING GENERAL WARRANT VIOLATIONS

ARTICLE I, SECTION 7 OF THE TENNESSEE CONSTITUTION SPECIFICALLY PROHIBITS GENERAL WARRANTS. WHERE a search warrant authorizes a quest for unneeded and unnecessary documents, not per se criminal, and during its execution other objects, in plain view, are seized — with or without any nexus — the result is a search pursuant to a general warrant Tenn. Const. Art. I, § 7.



EXECUTION

DOCUMENTATION REQUIREMENTS

PROPER DOCUMENTATION DURING WARRANT EXECUTION IS ESSENTIAL FOR MAINTAINING THE INTEGRITY OF THE SEARCH PROCESS. OFFICERS MUST COMPLY WITH RETURN AND INVENTORY OBLIGATIONS AS SPECIFIED IN TENNESSEE PROCEDURAL RULES.

PROPER EXECUTION PROCEDURES

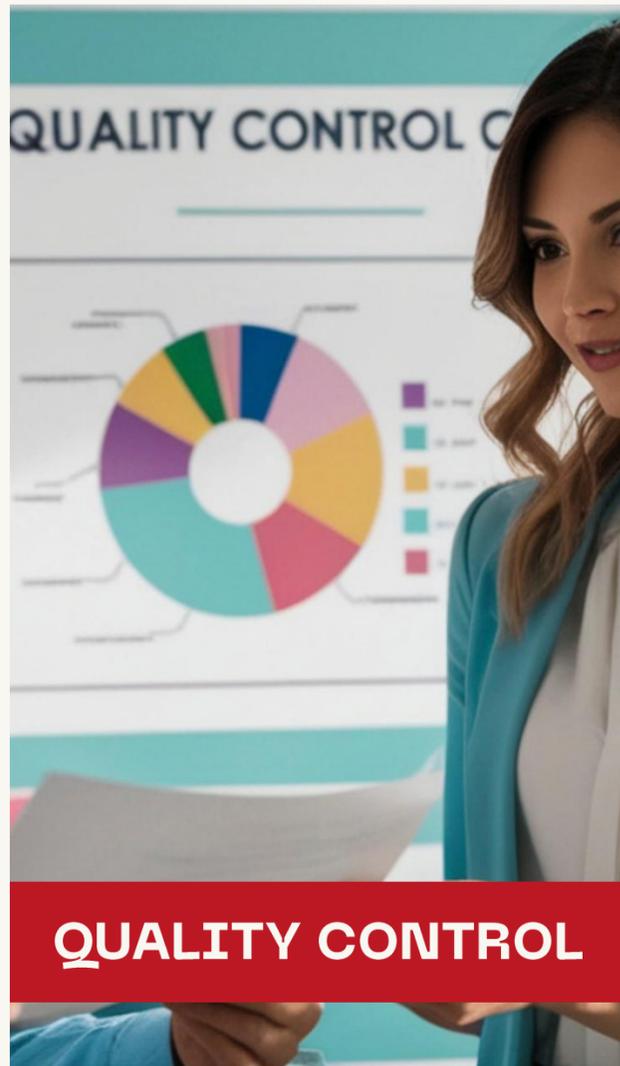
LAW ENFORCEMENT OFFICERS MUST EXECUTE SEARCH WARRANTS WITH UTMOST ATTENTION TO DETAIL. RULE 41 PROCEDURAL SAFEGUARDS "ARE INTENDED ;TO SECURE THE CITIZEN AGAINST CARELESSNESS AND ABUSE IN THE ISSUANCE AND EXECUTION OF SEARCH WARRANTS.. A POLICE OFFICER'S DUTY INCLUDES ACTING WITH DUE CARE IN THE SEEKING AND EXECUTION OF SEARCH WARRANTS, INCLUDING THE REQUIREMENTS SET FORTH IN RULE 41 AND ANY APPLICABLE STATUTES.

SERVICE AND NOTICE REQUIREMENTS

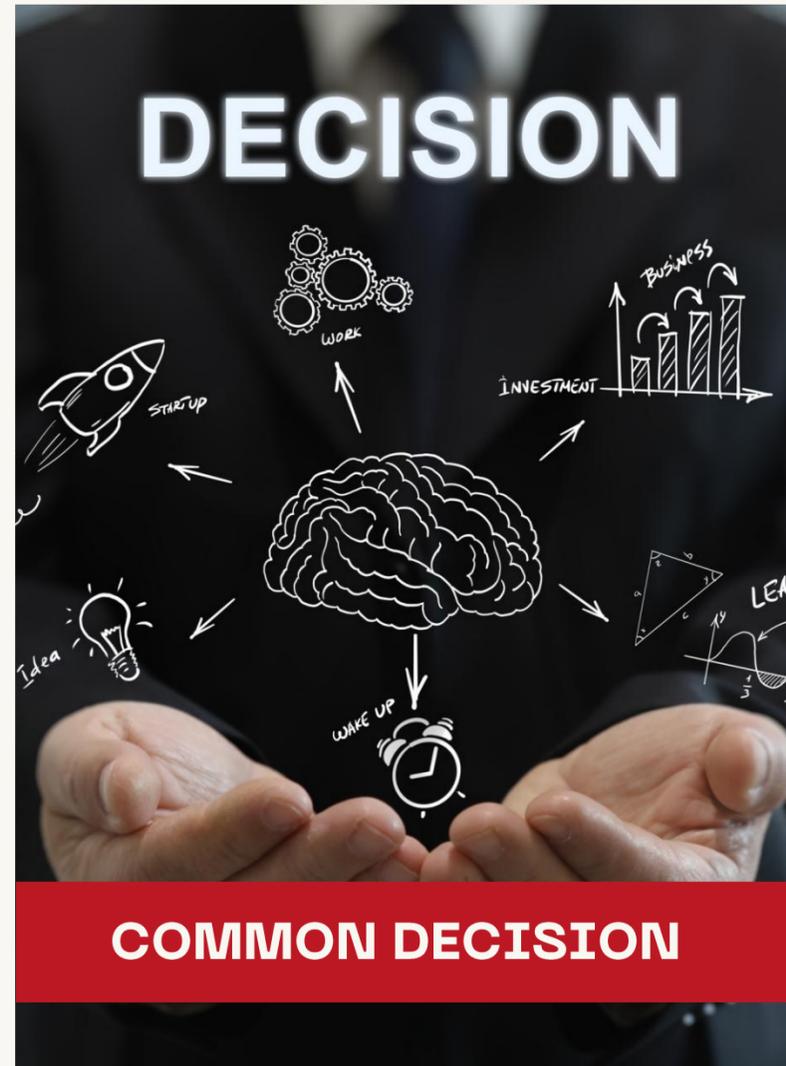
IN CASES WHERE DEFENDANTS ARE IN CUSTODY WHEN SEARCH WARRANTS ARE EXECUTED, OFFICERS MAY PROPERLY LEAVE THE WARRANT AT THE DEFENDANT'S RESIDENCE, THE PLACE FROM WHICH THE PROPERTY WAS TAKEN.

DOCUMENTATION

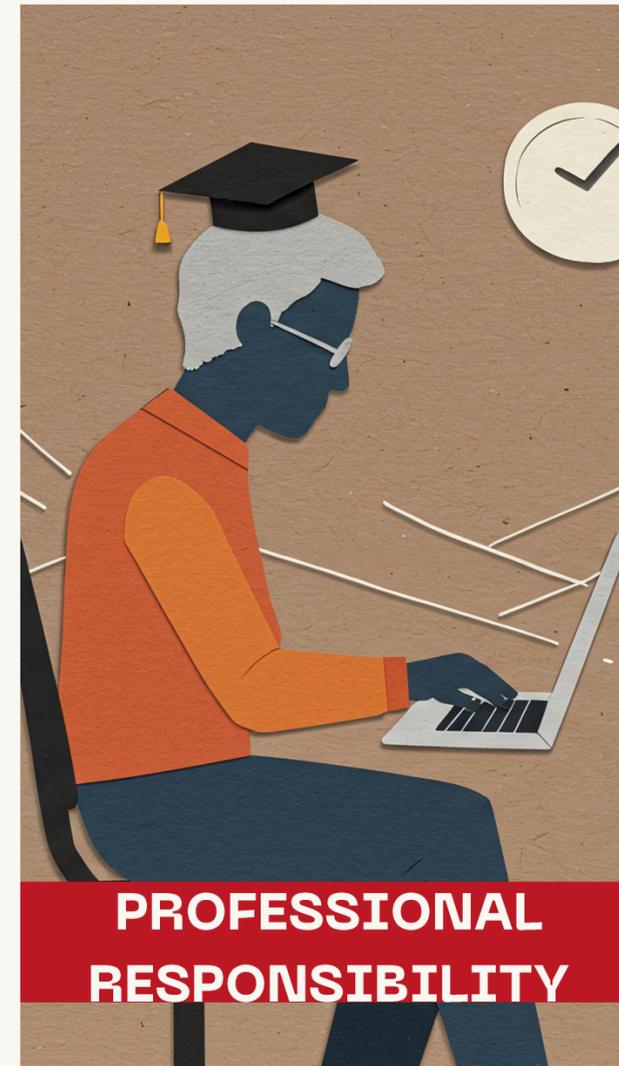
PRACTICAL APPLICATION



QUALITY CONTROL

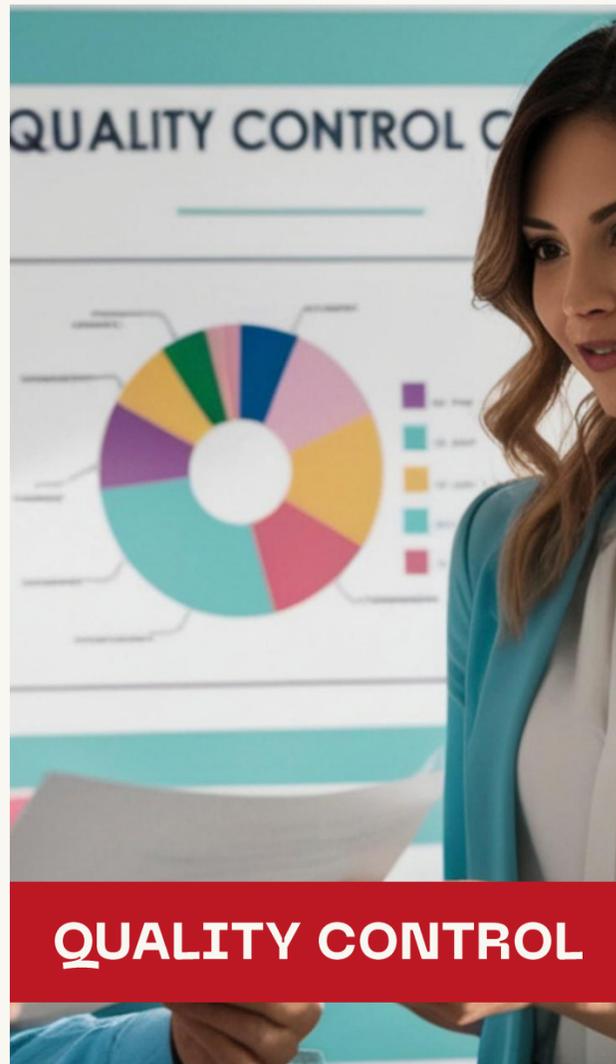


COMMON DECISION



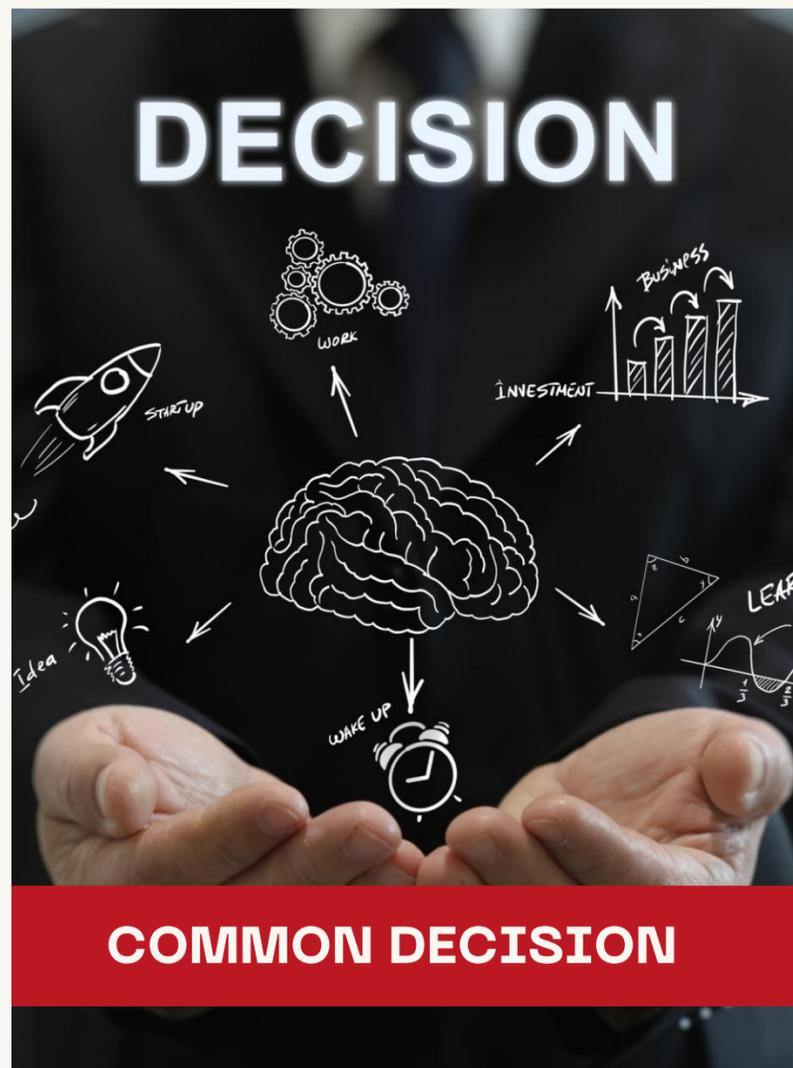
**PROFESSIONAL
RESPONSIBILITY**

PRACTICAL APPLICATION



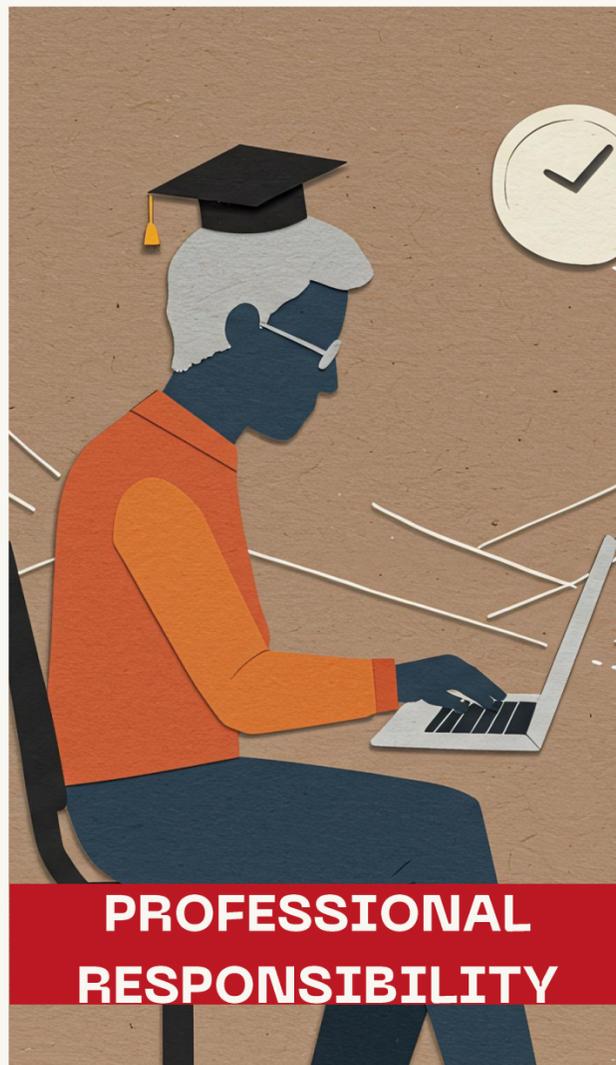
MAGISTRATES SHOULD IMPLEMENT SYSTEMATIC REVIEW PROCEDURES TO ENSURE CONSISTENT APPLICATION OF SEARCH WARRANT REQUIREMENTS. THIS INCLUDES MAINTAINING CHECKLISTS OF CONSTITUTIONAL, STATUTORY, AND PROCEDURAL REQUIREMENTS THAT MUST BE SATISFIED BEFORE WARRANT APPROVAL.

PRACTICAL APPLICATION



WHEN REVIEWING SEARCH WARRANT APPLICATIONS, MAGISTRATES SHOULD PAY PARTICULAR ATTENTION TO THE SUFFICIENCY OF PROBABLE CAUSE ALLEGATIONS, THE PARTICULARITY OF PLACE AND ITEM DESCRIPTIONS, AND THE PROPER COMPLETION OF ALL REQUIRED PROCEDURAL ELEMENTS.

PRACTICAL APPLICATION



**PROFESSIONAL
RESPONSIBILITY**

**THE RESPONSIBILITY FOR PROPER SEARCH WARRANT
APPROVAL EXTENDS BEYOND MERE TECHNICAL
COMPLIANCE
TO ENCOMPASS THE FUNDAMENTAL PROTECTION OF
CONSTITUTIONAL RIGHTS. MAGISTRATES SERVE AS
NEUTRAL
AND DETACHED DECISION-MAKERS WHO MUST
CAREFULLY BALANCE LAW ENFORCEMENT NEEDS WITH
INDIVIDUAL PRIVACY PROTECTIONS.**

THOUGHTS

THANK YOU

PRESENTER

JOE AGEE

GRAPHIC DESIGN

KYLE CARTER

FIRM

THE LAW OFFICE OF LAURIE Y. YOUNG