

Inspection Warrants
Rev. 10.6.04

There are several means by which government agencies may obtain documents and other physical evidence. The most obvious means to ask for them. If this is not possible or advisable, other means are available: administrative subpoenas, administrative inspection and/or search warrants. This presentation applies only to obtaining warrant evidence prior to the filing of a complaint and is not intending to cover obtaining evidence through post filing discovery methods.

ADMINISTRATIVE INSPECTION WARRANTS

Code of Civil Procedure §1822.50

This is an **inspection** warrant, it is not a search warrant. It allows you to conduct an inspection, to review documents, take photographs and samples regarding matters within the jurisdiction of the agency. You are not allowed to seize any original documents unless you obtain them by other means (such as consent).

The purpose of the inspection is limited to that described in the applicable statute (I.e. for ARB/APCD inspectors H&S Code §41510: to inspect sources and any records required to be maintained by applicable law or regulation). CCP §1822.50; see also Marshall v. Barlow's Inc. 436 US 307, 324 n.22; Ced's Inc. v. US (1984) 745 F2d 1092.

Key to the sample **affidavit**:

- 1) It is not required by statute that the warrant and/or affidavit be prepared or reviewed by an attorney. However, some judges may require that an attorney review and approve the warrant.
- 2) Be sure the heading of the warrant and the affidavit are exactly the same. In the sample warrant, the property address was unknown, so the parcel number was used. It is a good idea to use the address and the parcel number if you have this information. Names of individuals usually are not used, as this is an inspection of a location not persons. Use business name and address if applicable.
- 3) Leave the court number space blank. Warrants are usually file alphabetically according to site address by the clerk as usually there is not pending court case.
- 4) The affidavit is required by CCP §1822. The affidavit may be by oral examination in front of the judge. A written affidavit may also be supplemented by oral testimony. If oral testimony is used, be sure to have it recorded by a court reporter. CCP §1822/51.

- 5) Begin the text by introducing the affiant and describing his/her position, qualifications and experience.
- 6) Warrants are issued based upon a showing that there is cause to believe that violations may exist or that an area wide inspection is occurring. CCP §1822.52. Refer to what kind of violations you are looking for, however you need not cite specific code sections. This paragraph should lay out the outline of your warrant. It should include a summary of any special endorsements or waivers you are requesting.
- 7) Describe the location where the inspection is to take place. The test for sufficiency is that someone not familiar with the location could find and inspect the correct location using this description alone. Include any areas not to be inspected. You can always attach a map as an exhibit. You must also establish that the location is within the jurisdiction of the court.
- 8) The identity of the owner is needed to address the issue of notice and consent, discussed below.
- 9) This paragraph begins with the statement of the inspector's reason to believe violations exist. Chronological narratives usually are the easiest way to lay out the facts.
- 10) You may refer to information received from others (hearsay is permitted). Be sure to include specific references for how you came to know the information, for example the name and position. This paragraph also establishes the basis for the location of the property.
- 11) You are not required to request consent to inspect and be denied prior to requesting a warrant. You may get this precondition waived if you state facts in the affidavit justifying failure to do so. Examples could be safety concerns based on your or others prior problems with the person involved, that is not possible to contact the owner, or that the nature of the violation involves evidence easily disposed of so that prior notice negates the purpose of the inspection. CCP §1822.51.
- 12) This warrant did not involve a refusal.
- 13) This describes the cause to believe a violation exists. Use specific code sections here. If more than one agency has violations, set them out so that they may be included in the warrant.

There are several special endorsements you may request to waive procedural requirements regarding the execution of the warrant. Each waiver must have specific grounds stated in the affidavit. The sample warrant contains a separate signature line for the judge for each endorsement.

The waivers are:

- For execution between 6pm and 8am; the grounds must be that this is “reasonably necessary to effectuate the purpose of the regulation being enforced”. CCP §1822.56.
- For immediate execution where prior consent has been sought and refused; Note, you do not have to seek prior consent to obtain an inspection warrant (see discussion in affidavit #18); but if you have and were refused, you must give 24 hour notice of the warrant unless you establish in the affidavit that “immediate execution is reasonable necessary in the circumstances shown. CCP This lays out each agency to be involved in the execution of the warrant. Other examples would be police or sheriff if affidavit described safety concerns, Animal Control if dogs had been observed on the property, other agencies with concurrent jurisdiction such as the Department of Toxics (hazardous waste).

For execution in the absence of the business owner.

16) Cite applicable inspection authority. Examples:

Animal Control: local County Code or Penal Code §597e.

Air pollution; H&S §41510 (includes sampling authority)

Fire Dept. Uniform Fire Code §2107

DTSC re hazardous waste and CUPAs re hazardous waste and UGST: H&S §25185

Local agency designated to enforce HMMP: H&S §25508

Building inspectors/code enforcement officers Uniform Building Code §203.

Regional Water Quality Control Boards: Water Code §13265.

17) This sentence should probably be in the first paragraph.

18) This should include summary of all special waivers (this one should include the request for execution in absence of the owner).

19) The affidavit must be signed after the judge administers the oath of the affiant.

20) Judge’s signature. Be sure you get the spelling for future reports (their signatures are illegible, get their business card).

Key to the sample inspection **warrant**:

1) See comment #1 above.

2) Be sure the heading is the same in the warrant and the affidavit.

- 3) List every agency that will partake in the inspection. If not listed, the agency cannot go in unless they have independent basis (i.e. CHP to check in wrecking yard for stolen vehicles). Other agencies may include Animal Control for dogs seen on the property, Sheriff for security etc. You must explain in the affidavit why each agency is needed.
- 4) Cite authorization sections.
- 5) This describes the purpose of the warrant and the limits of your inspection authority. It isn't listed, you cannot do it.
- 6) The premises description must match that in the affidavit.
- 7) This describes what you are looking for and for what violation.
- 8) Warrants are good for 14 days after they are signed. CCP § 1822.55. A return to the warrant (which tells the judge what you did) must be filed within the time stated in the warrant (the statute does not set this time, we suggest no later than 10 days after the execution limit expires).
- 9) Each special endorsement must be separately signed.